



Fort Myers Beach Town Council

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

Agenda

Monday, September 23, 2024

6:00 PM

ORDER OF BUSINESS

- I. CALL TO ORDER**
- II. INVOCATION**
- III. PLEDGE OF ALLEGIANCE**
- IV. APPROVAL OF FINAL AGENDA**
- V. PUBLIC COMMENT**
- VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS**
- VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS**
- VIII. APPROVAL OF MINUTES**
 - A. Town Council - September 9, 2024
 - B. Town Council Budget Hearing - September 9, 2024
- IX. CONSENT AGENDA**
- X. ITEMS REMOVED FROM CONSENT AGENDA**
- XI. PUBLIC HEARINGS**
 - A. Resolution 24-189; SEZ20240200, 6500 & 6502 Estero Privateer
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20240200 TO ALLOW REPAIRS TO A RETAINING WALL IN THE EC ZONING DISTRICT AS AUTHORIZED BY SECTION 6-366 OF THE TOWN OF FORT MYERS LAND DEVELOPMENT CODE FOR PROPERTY LOCATED AT 6500 AND 6502 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

- B. Resolution 24-187; SEZ20240024, 1400 Estero Blvd, Lani Kai
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVE/ APPROVE WITH CONDITIONS/ DENY SPECIAL EXCEPTION FOR 1400 ESTERO BLVD, LANI KAI RESORT TO REBUILD PAVER DECKS, BEACH-BAR STRUCTURES, WALKWAYS, COVERED SCREENED AREAS, GAZEBO, PLANTING AREAS AND WOOD DECKING TO PRE-IAN CONDITION FULLY IN THE EC ZONING.
- C. Resolution 24-190; 3030 Shell Mound FMB Art Association
**Request to continue to a date certain of October 7, 2024 at 9:00 AM
A RESOLUTION VACATING AN UTILITY EASEMENT LOCATED OVER REAL PROPERTY OWNED BY FORT MYERS BEACH ART ASSOCIATION, GENERALLY LOCATED AT 3030 SHELL MOUND BOULEVARD, FORT MYERS BEACH; ACCEPTING AND ACCEPTING AND APPROVING A COMPARABLE REPLACEMENT EASEMENT TO BE LOCATED ON THE SAME REAL PROPERTY, SUBJECT TO TERMS AND CONDITIONS AS CONTAINED IN A SECOND AMENDED AND RESTATED UTILITY EASEMENT AGREEMENT; DIRECTING THE TOWN COUNCIL TO ACCEPT THE SECOND AMENDED AND RESTATED UTILITY EASEMENT AND AGREEMENT; DIRECTING CLERK TO RECORD THIS RESOLUTION; AUTHORIZING THE MAYOR TO SIGN ALL NEEDED DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.**
- D. Ordinance 24-27; DCI20240155, 2545 & 2555 Estero Blvd., FMB Fire Control District
AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 2545 AND 2555 ESTERO BLVD., GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-00458.0000; 19-46-24-W3-00458.0010 IN FORT MYERS BEACH, TO ALLOW A FIRE STATION AND A MIXED USE DEVELOPMENT INCLUDING CIVIC, RESIDENTIAL, LODGING, RETAIL, OFFICE AND MARINE USES; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.
- E. Ordinance 24-28; CPD20240015 1836 & 1840 Estero Blvd - EIBC
**Request to continue to a date certain of October 7, 2024 at 9:00 AM
AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING A TOWN OF FORT MYERS BEACH ORDINANCE, AND APPROVING THE CONDITIONS FOR THE COMMERCIAL PLANNED DEVELOPMENT REZONING FOR THE PROPERTIES LOCATED AT 1836 AND 1840 ESTERO BLVD. (LESS THE AREA WITHIN THE ENVIRONMENTALLY CRITICAL ZONING DISTRICT), GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W4-03200.00CE AND 19-46-24-W4-03200.1010 FORT**

MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

F. Ordinance 24-26; CB Zoning District Amendment

First reading and Public Hearing on a proposed ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING 1) TABLE 34-2 TITLED "USE SUB-GROUPS PERMITTED IN EACH ZONING DISTRICT" IN CHAPTER 34, ARTICLE III, DIVISION 2 TO AMEND THE ALLOWED SUB-GROUPS, FOR THE CB ZONING DISTRICT, FROM LIMITED TO OPEN FOR THE LODGING, OFFICE, AND RETAIL USE GROUPS; 2) THE LAND DEVELOPMENT CODE SUBDIVISION V. – CB ZONING DISTRICT FOUND IN CHAPTER 34, ARTICLE III, DIVISION 5. – REDEVELOPMENT ZONING DISTRICT TO PLACE LIMITATIONS ON NEW OUTDOOR DINING AND OUTDOOR ENTERTAINMENT USES; PROVIDING FOR SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS; CONFLICTS OF LAW; AND PROVIDING AN EFFECTIVE DATE. Open the public hearing and schedule for second reading and final adoption on October 7, 2024 at 9:00 a.m.

G. Ordinance 24-20; DCI20240130 Margaritaville Signs

Request to Continue to a date certain of October 7, 2024

First Reading and Public Hearing on a proposed ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING TOWN OF FORT MYERS BEACH ORDINANCE NO. 24-01, AND APPROVING DEVIATIONS FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 1170, 1180/1192, 1204/1206 ESTERO BLVD., 251 CRESCENT ST., 1150 FIFTH ST. AND UNADDRESSED PARCELS, PARCELS GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-00205.0070 (MCP PARCEL #3), 24-46-23-W3-00006.0000 (MCP PARCEL #1), 24-46-23-W3-00206.0060 (MCP PARCEL #1), 24-46-23-W3-00009.0000 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0494.2609 (MCP PARCEL #2), 24-46-23-W3-00205.0070, 19-46-24-W4-U0491.2610 (MCP PARCEL #2), 19-46-24-W4-0140B.0070 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0496.2608 (MCP PARCEL #2), AND 19-46-24-W4-U0498.2607 (MCP PARCELS #2 AND #6) FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE. Open the public hearing and schedule for second reading and final adoption on September 23, 2024 at 6:00 PM.

H. Ordinance 24-17; Advisory Committees

**Request to continue to a date certain of October 7, 2024 at 9:00 AM
Second Reading and Final Public Hearing of an Ordinance entitled: AN
ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA,
AMENDING SECTION 2-94 "QUALIFICATIONS AND APPOINTMENTS OF
MEMBERS" AND SECTION 2-96 "REMOVAL OF AGENCY, BOARD,
COMMITTEE OR COMMISSION MEMBERS" OF DIVISION 2
"PROCEDURES FOR THE ESTABLISHMENT OF BOARDS,
COMMITTEES AND COMMISSIONS" OF ARTICLE IV "BOARDS,
COMMISSIONS, COMMITTEES AND OTHER AGENCIES" OF CHAPTER 2
"ADMINISTRATION" AND SECTION 34-113 "COMPOSITION,
APPOINTMENT AND COMPENSATION OF MEMBERS" OF DIVISION 3
"LOCAL PLANNING AGENCY" OF ARTICLE II "ZONING PROCEDURES"
OF CHAPTER 34 "ZONING DISTRICTS, DESIGN STANDARDS AND
NONCONFORMITIES" OF THE CODE OF ORDINANCES OF THE TOWN
OF FORT MYERS BEACH, FLORIDA, REMOVING PROPERTY
OWNERSHIP AS A QUALIFICATION REQUIREMENT FOR THE
MEMBERS OF THE TOWN'S AGENCIES, BOARDS, COMMITTEES OR
COMMISSIONS, INCLUDING THE TOWN'S LOCAL PLANNING AGENCY;
ELIMINATING DUPLICATIVE LANGUAGE; ADDING A GRANDFATHER
PROVISION FOR CURRENT NON-QUALIFYING MEMBERS OF THE
TOWN'S BOARDS, AGENCIES, COMMISSIONS, AND COMMITTEES;
ADDING A PROVISION TO SECTION 34-113, REGARDING THE
MANDATORY ANNUAL FINANCIAL DISCLOSURE FORM AS REQUIRED
BY THE FLORIDA COMMISSION ON ETHICS; PROVIDING FOR
CODIFICATION, SEVERABILITY, SCRIVENER'S ERRORS, CONFLICTS
OF LAW, AND AN EFFECTIVE DATE.**

I. Resolution 24-178; Updating Town Council Procedure and Policy Manual

**Request to continue to a date certain of October 7, 2024
A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA,
AMENDING SECTIONS 2 AND 5 OF THE TOWN'S POLICIES AND
PROCEDURES MANUAL TO MAKE IT CONSISTENT WITH ELIGIBILITY
REQUIREMENTS FOR MEMBERS OF THE TOWN'S AGENCIES,
BOARDS, COMMITTEES AND COMMISSIONS AND TO UPDATE
REFERENCE TO REQUIRED FINANCIAL DISCLOSURE FORMS; AND
PROVIDING FOR AN EFFECTIVE DATE.**

J. Ordinance 24-19; Amendment for Immobilization Payment Options

**Second and Final Reading of proposed Ordinance 24-19 entitled AN
ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA,
AMENDING SECTION 28-30 "IMMOBILIZATION AND IMPOUNDING OF
ILLEGALLY PARKED VEHICLES" OF DIVISION 1 "GENERALLY" OF
ARTICLE II "STOPPING, STANDING AND PARKING" OF CHAPTER 28
"TRAFFIC AND VEHICLES" OF THE CODE OF ORDINANCES OF THE
TOWN OF FORT MYERS BEACH, TO INCLUDE THE ACCEPTED
METHODS OF PAYMENT OF ANY FINES AND CHARGES RELATED TO**

ILLEGAL PARKING AND IMMOBILIZATION OF ILLEGALLY PARKED VEHICLES; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER'S ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

K. Ordinance 24-25; Public Camping or Sleeping

Second Reading and Final Public Hearing on proposed Ordinance 24-25 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING CHAPTER 16, ARTICLE I OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH BY CREATING SECTION 16-1 "PUBLIC CAMPING OR SLEEPING ON ANY PUBLIC PROPERTY, PUBLIC BUILDING, OR PUBLIC RIGHT-OF-WAY PROHIBITED," AND AMENDING ARTICLE IV OF CHAPTER 32, TO REMOVE SECTIONS 32-70 "APPLICABILITY," 32-71 "INTENT," AND 32-72 "PROHIBITED"; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER'S ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

L. Ordinance 24-30; Unsafe Building Code Appeals

Request to continue to a date certain of October 21, 2024 at 9:00 a.m. Second Reading and Final Public Hearing on proposed Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING: 1) DIVISION 3 "UNSAFE BUILDING ABATEMENT CODE" OF ARTICLE I "PROPERTY MAINTENANCE CODES"; AND 2) DIVISION 2 "LEE COUNTY'S BOARDS OF ADJUSTMENT AND APPEALS" OF ARTICLE II "BUILDING CODES" OF CHAPTER 6 "MAINTENANCE CODES, BUILDING CODES AND COASTAL REGULATIONS" OF THE LAND DEVELOPMENT CODE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, TO AMEND EXISTING PROVISIONS RELATED TO APPEALS OF THE BUILDING OFFICIAL'S DECISIONS; DIVESTING THE LEE COUNTY CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS OF THE RESPONSIBILITY FOR REVIEW OF APPEALS OF THE TOWN BUILDING OFFICIAL'S DECISIONS INCLUDING BUT NOT LIMITED TO DETERMINATION OF AN UNSAFE BUILDING; AUTHORIZING THE TOWN OF FORT MYERS BEACH SPECIAL MAGISTRATES TO HEAR APPEALS OF THE TOWN'S BUILDING OFFICIAL'S DECISIONS; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

M. Ordinance 24-24; Building Coverage Instead of FAR

Second Reading and Public Hearing of an ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING 1) TABLE 34-3 TITLED "DIMENSIONAL REGULATIONS IN CONVENTIONAL ZONING DISTRICTS" IN CHAPTER 34, ARTICLE III, DIVISION 4 TO CREATE NOTE (10) TO PROVIDE THAT DETACHED SINGLE-FAMILY AND TWO-FAMILY HOMES WITHOUT A COMMERCIAL USE, IN ANY CONVENTIONAL ZONING DISTRICT WHERE THAT USE IS

ALLOWED, MAY BE EVALUATED BY BUILDING COVERAGE RATHER THAN FAR; 2) SECTION 34-675(C) IN CHAPTER 34, ARTICLE III, DIVISION 5 TO PROVIDE THAT BUILDING INTENSITY OF COMMERCIAL AND MIXED-USE BUILDINGS SHALL BE EVALUATED USING FLOOR AREA RATIO (FAR) AND DETACHED SINGLE-FAMILY AND TWO-FAMILY RESIDENCE INTENSITY SHALL BE EVALUATED USING BUILDING COVERAGE NOT TO EXCEED 40% IN THE DOWNTOWN ZONING DISTRICT; 3) SECTION 34-683 IN CHAPTER 34, ARTICLE III, DIVISION 5 RELATED TO THE CREATION OF NEIGHBORHOOD CENTERS IN THE SANTINI ZONING DISTRICT TO PROVIDE THAT DETACHED SINGLE-FAMILY AND TWO-FAMILY RESIDENCE BUILDING COVERAGE SHALL NOT EXCEED 40%; 4) SECTION 34-693 IN THE VILLAGE ZONING DISTRICT REGULATIONS TO PROVIDE THAT COMMERCIAL AND MIXED-USE BUILDING INTENSITY SHALL BE EVALUATED USING FLOOR AREA RATIO (FAR) AND DETACHED SINGLE-FAMILY AND TWO-FAMILY RESIDENCE INTENSITY SHALL BE EVALUATED USING BUILDING COVERAGE AND SHALL NOT EXCEED 40%; 5) SECTION 34-705 IN THE CB ZONING DISTRICT TO PROVIDE THAT FOR COMMERCIAL AND MIXED-USE DEVELOPMENTS FLOOR AREA RATIOS SHALL NOT EXCEED 1.0 AND BUILDING COVERAGE FOR DETACHED SINGLE-FAMILY AND TWO-FAMILY RESIDENCES, BUILDING COVERAGE SHALL NOT EXCEED 40%; PROVIDING FOR SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS; CONFLICTS OF LAW; AND PROVIDING AN EFFECTIVE DATE.

XII. ADMINISTRATIVE AGENDA

- A. Ratification of Mayors signatures and changes to resolution
Motion to ratify the Mayor's signature and the changes made to Resolution 24-183 which was approved on September 9, 2024
- B. CDBG-DR Public Facilities and Critical Infrastructure Awards
Accept CDBG-DR Funding awards in the amounts of up to \$8,336,753.00 and \$4,681,844.90 for the projects submitted to the Public Facilities and Critical Infrastructure CDBG-DR programs.
- C. Lobbyist Ronald L. Book, P.A. Contract Renewal
Authorize the Town Manager to renew and execute an agreement in the amount of \$45,000 with the Town's State Lobbyist, Ronald L. Book, P.A.
- D. Contract for Sale, 6221 Estero Boulevard
Authorize the Mayor or Town Manager to sign all needed closing documents and for both to sign the closing statement approving the final expenditure of Town funds for the property at 6221 Estero Boulevard.

- E. Settlement Agreement (131 Estero, LLC)
Proposed settlement agreement between the Town of Fort Myers Beach, Florida, and Kaminskiy at 131 Estero, LLC, the Owner of 131/133 Estero Blvd.
- F. Bandes Construction 3rd Amendment
Authorize the Mayor to execute Amendment #3 to the previous Non-Exclusive Right of Way Agreement with Bandes Construction Company, Inc. to extend the agreement for one additional month under the same terms and conditions.

XIII. FINAL PUBLIC COMMENT**XIV. TOWN MANAGER'S ITEMS****XV. TOWN ATTORNEY'S ITEMS****XVI. COUNCILMEMBERS ITEMS AND REPORTS****XVII. ADJOURNMENT**

NOTE: THIS MEETING IS STREAMED LIVE ON YOUTUBE.

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



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

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



Fort Myers Beach Town Council

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

Minutes

Monday, September 9, 2024

9:00 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

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

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Council Member King moved to approve the final agenda with A. and D. under Public Hearings continued, seconded by Council Member Safford.
The motion carried unanimously.

V. PUBLIC COMMENT

Ron Fleming, resident, commented on the quality of the sand from the beach renourishment. He noted shells, rocks and shards in the sand. He encouraged council members to inspect the sand at Shell Point.

Steve Johnson, resident, asked the council not to proceed with item I. under Public Hearings concerning the new FAR (Floor Area Ratio). He felt the residents should have the opportunity to provide input.

Jennifer Rusk, resident, found a dead female sea turtle on the beach. A new development was draining the water from their pool into the drain on her street and she was concerned about flooding issues. She took a video of the interaction and stated the town needed help with code enforcement staffing because of the backlog. She felt it was important to stick with the Comprehensive Plan (Comp. Plan) and Land Development Code (LDC).

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Safford encouraged people to attend Revive the Vibe this Saturday.

Council Member Woodson commented that the ribbon-cutting ceremony for the newly built house on Hibiscus was outstanding.

Vice Mayor Atterholt recognized the town leadership and staff regarding the \$13+ million from Lee County's CDBG-DR (Community Development Block Grant Disaster Recovery) funding. Town Manager Hyatt and Operations & Compliance Director Frankie Kropacek discussed how the funds would impact the town.

Council Member King recognized the public works staff for cleaning the area between the sidewalk and the curb. He thanked Danielle DiBona and Shanette Thomas at Bay Oaks for assisting the Paralympic athletes so they could practice for their pickleball tournament. He thanked Jacob for fixing the sound issues.

Mayor Allers thanked the staff for their work with the CDBG-DR funding.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

Cultural and Environmental Learning Center Advisory Board (CELCAB) Chair Barbara Hill commented on redeveloping Newton Beach Park. She noted that CELCAB was reviewing the draft of the new collections management policy. The strategic plans for the Mound House and Newton Park needed an update and she requested that the plans be part of the town's strategic plan conversation. She indicated that Phase 1 of the Mound House was underway, but Phase 2 needed funding. She discussed the accreditation of the Mound House and stated it would be one of two accredited museums in Southwest Florida.

VIII. APPROVAL OF MINUTES

A. Emergency Town Council - August 5, 2024

Council Member King moved to approve the minutes, seconded by Council Member Woodson.

The motion carried unanimously.

B. Town Council - August 19, 2024

Council Member King moved to approve the minutes, seconded by Council Member Woodson.

The motion carried unanimously.

IX. CONSENT AGENDA

Council Member Safford pointed out that the date on pages 38, 43, 48 and 53 should be September 9, not August 9.

Council Member Safford moved to approve the consent agenda, seconded by Council Member Woodson.

The motion carried unanimously.

- A. Resolutions 24-162 through 24-165; Extending Local State of Emergency for Hurricane Ian

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

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

The motion carried unanimously.

- B. Resolutions 24-166 through 24-169; Extending Local State of Emergency for Hurricane Idalia

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

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

The motion carried unanimously.

- C. Resolutions 24-170 through 24-173; Extending Local State of Emergency for Tropical Storm Debby

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

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

The motion carried unanimously.

X. ITEMS REMOVED FROM CONSENT AGENDA

XI. PUBLIC HEARINGS

Town Attorney Stuparich explained the quasi-judicial procedures. Town Clerk Baker confirmed that all agenda items were properly noticed and she swore in those providing testimony. Mayor Allers reported a conflict with the Margaritaville item and will submit the appropriate paperwork.

A. Resolution 24-xx; VAR20240100, 51 Pearl Street

Applicant has requested a continuance to a later date. A RESOLUTION OF THE TOWN OF FORT MYERS BEACH APPROVING WITH CONDITIONS VARIANCE 20240100, REQUESTING VARIANCES FROM LDC TABLE 34-3 OF 13 FEET FROM THE STREET SETBACK FOR A FRONT SETBACK OF 12 FEET, A VARIANCE OF 3 FEET FROM THE WEST SIDE SETBACK FOR A SIDE SETBACK OF 4 FEET 6 INCHES FOR THE MECHANICAL EQUIPMENT AND BALCONY AND ANOTHER VARIANCE OF 15.11% FROM THE BUILDING COVERAGE FOR A BUILDING COVERAGE OF 55.11% TO BUILD A NEW SINGLE FAMILY STRUCTURE IN THE RM ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 51 PEARL STREET, FORT MYERS BEACH, FLORIDA; AND PROVIDING FOR AN EFFECTIVE DATE.

Continued to a later date.

B. Ordinance 24-18; DCI20240143, 1668 I St, Beach Bar

Second reading and Public Hearing on proposed Ordinance 24-18 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING A REQUEST TO REZONE THE PROPERTY LOCATED AT 1668 I STREET, GENERALLY IDENTIFIED AS STRAP NUMBER 19-46-24-W4-0070B.0110 FORT MYERS BEACH, FROM DOWNTOWN TO COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING, WITH DEVIATIONS, FOR A BAR AND RESIDENCE; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the ordinance. Ex parte communications: Council Member Safford and Mayor Allers spoke to the owner and visited the site. No disclosure from other members. The applicant confirmed receipt of the agenda and background materials.

Community Development Planner Sarah Propst reviewed the background of the request as stated on the blue sheet.

Jim Ink represented the client and noted that the new structure would have one residential unit instead of two.

Greg Boyd, owner, described the vibe of his establishment.

Mr. Ink estimated it would take 18 months to complete construction. No public comment.

Council Member Safford moved to approve the ordinance, seconded by Council Member Woodson.

The motion passed unanimously by roll call vote.

C. Ordinance 24-20; Margaritaville

First Reading and Public Hearing on a proposed ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING TOWN OF FORT MYERS BEACH ORDINANCE NO. 24-01, AND APPROVING DEVIATIONS FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 1170, 1180/1192, 1204/1206 ESTERO BLVD., 251 CRESCENT ST., 1150 FIFTH ST. AND UNADDRESSED PARCELS, PARCELS GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-00205.0070 (MCP PARCEL #3), 24-46-23-W3-00006.0000 (MCP PARCEL #1), 24-46-23-W3-00206.0060 (MCP PARCEL #1), 24-46-23-W3-00009.0000 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0494.2609 (MCP PARCEL #2), 24-46-23-W3-00205.0070, 19-46-24-W4-U0491.2610 (MCP PARCEL #2), 19-46-24-W4-0140B.0070 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0496.2608 (MCP PARCEL #2), AND 19-46-24-W4-U0498.2607 (MCP PARCELS #2 AND #6) FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE. Open the public hearing and schedule for second reading and final adoption on September 23, 2024 at 6:00 PM.

Mayor Allers read the title of the ordinance. The property owner confirmed receipt of the agenda and background materials.

Community Development Senior Planner Jason Smalley reviewed the background of the request as stated on the blue sheet.

Ex parte communications: Council Member King visited the site; Council Member Woodson spoke to the owner and Council Member Safford visited the site. There were no disclosures from other members.

Tom Torgerson, applicant, stated that although permits were approved, one sign had to be relocated due to the location of the gas line and the other was at the request of Lee County for safety reasons.

Public comment:

Lynne Dagnese did not think the signs should be so high. She agreed that the sand was terrible and commented on allowing high-rises all over the island.

Public comment closed.

Vice Mayor Atterholt asked Mr. Torgerson whether he considered installing signs informing the public that the pedestrian overpass was available for everyone. Mr. Torgerson replied that signs were ordered and would be installed in a couple of weeks.

Vice Mayor Atterholt moved the ordinance to a second reading on September 23, 2024, seconded by Council Member King.

The motion carried 4-0 by roll call vote, with Mayor Allers abstaining.

D. Ordinance 24-10; Comprehensive Plan Adoption Hearing

Continued from August 19, 2024

Second Reading, Adoption and Final Public Hearing of an Ordinance Entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN IN ITS ENTIRETY, PURSUANT TO 163.3184 (3), FLORIDA STATUTES; PROVIDING FOR ADOPTION OF THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN 2040, INCLUDING AMENDMENTS TO THE FUTURE LAND USE ELEMENT AND THE FUTURE LAND USE MAP, THE COMMUNITY DESIGN ELEMENT, THE TRANSPORTATION ELEMENT, THE HOUSING ELEMENT, THE HISTORIC PRESERVATION ELEMENT, THE UTILITIES ELEMENT, THE CONSERVATION ELEMENT, THE COASTAL MANAGEMENT ELEMENT, THE RECREATION, & OPEN SPACE ELEMENT, THE INTERGOVERNMENTAL COORDINATION ELEMENT, AND THE CAPITAL IMPROVEMENTS ELEMENT; INCLUSIVE OF ALL ASSOCIATED TABLES, EXHIBITS AND MAPS; AUTHORIZING FINDINGS AND ADMINISTRATIVE ACTIONS; PROVIDING FOR TRANSMITTAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR SCRIVENER'S ERRORS; AND PROVIDING FOR EFFECTIVE DATE.

Continued to a later date.

E. Ordinance 24-17; Advisory Committees

Second Reading and Final Public Hearing of an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 2-94 "QUALIFICATIONS AND APPOINTMENTS OF MEMBERS" AND SECTION 2-96 "REMOVAL OF AGENCY, BOARD, COMMITTEE OR COMMISSION MEMBERS" OF DIVISION 2 "PROCEDURES FOR THE ESTABLISHMENT OF BOARDS, COMMITTEES AND COMMISSIONS" OF ARTICLE IV "BOARDS, COMMISSIONS, COMMITTEES AND OTHER AGENCIES" OF CHAPTER 2 "ADMINISTRATION" AND SECTION 34-113 "COMPOSITION, APPOINTMENT AND COMPENSATION OF MEMBERS" OF DIVISION 3 "LOCAL PLANNING AGENCY" OF ARTICLE II "ZONING PROCEDURES" OF CHAPTER 34 "ZONING DISTRICTS, DESIGN STANDARDS AND NONCONFORMITIES" OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH, FLORIDA, REMOVING PROPERTY OWNERSHIP AS A QUALIFICATION REQUIREMENT FOR THE MEMBERS OF THE TOWN'S AGENCIES, BOARDS, COMMITTEES OR COMMISSIONS, INCLUDING THE TOWN'S LOCAL PLANNING AGENCY; ELIMINATING DUPLICATIVE LANGUAGE; ADDING A GRANDFATHER PROVISION FOR CURRENT NON-QUALIFYING MEMBERS OF THE TOWN'S BOARDS, AGENCIES, COMMISSIONS, AND COMMITTEES; ADDING A PROVISION TO SECTION 34-113, REGARDING THE MANDATORY ANNUAL FINANCIAL DISCLOSURE FORM AS REQUIRED BY THE FLORIDA COMMISSION ON ETHICS; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER'S ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

Mayor Allers read the title of the ordinance. Town Attorney Stuparich explained that the grandfather provision was added for advisory committee members who would not be eligible to reapply based on the changes in the ordinance. Vice Mayor Atterholt stated that one committee member would not be eligible to reapply, but he had extensive knowledge and experience. Council Member King suggested that registered voters, property owners and residents of 33931 be eligible to serve on committees. Council Member Safford agreed but stated the Audit Committee and the LPA (Local Planning Agency) members must be voters on the island. A consensus was reached to remove the grandfather provision.

Public comment:

Terry Cain commented that people from all over Lee County used to be able to participate on the advisory committees.

Public comment closed.

Council Member King moved to continue the hearing on September 23, 2024, seconded by Council Member Safford.

The motion carried unanimously by roll call vote.

- F. Resolution 24-178; Updating Town Council Procedure and Policy Manual **A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTIONS 2 AND 5 OF THE TOWN'S POLICIES AND PROCEDURES MANUAL TO MAKE IT CONSISTENT WITH ELIGIBILITY REQUIREMENTS FOR MEMBERS OF THE TOWN'S AGENCIES, BOARDS, COMMITTEES AND COMMISSIONS AND TO UPDATE REFERENCE TO REQUIRED FINANCIAL DISCLOSURE FORMS; AND PROVIDING FOR AN EFFECTIVE DATE.**

Mayor Allers read the title of the resolution. Town Attorney Stuparich stated the resolution would be changed to reflect the change in the previous item.

Council Member King moved to continue the hearing to September 23, 2024, seconded by Council Member Safford.

The motion carried unanimously by roll call vote.

- G. Ordinance 24-19; Amendment for Immobilization Payment Options
First Reading and Public Hearing on proposed Ordinance 24-19 entitled AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 28-30 "IMMOBILIZATION AND IMPOUNDING OF ILLEGALLY PARKED VEHICLES" OF DIVISION 1 "GENERALLY" OF ARTICLE II "STOPPING, STANDING AND PARKING" OF CHAPTER 28 "TRAFFIC AND VEHICLES" OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH, TO INCLUDE THE ACCEPTED METHODS OF PAYMENT OF ANY FINES AND CHARGES RELATED TO ILLEGAL PARKING AND IMMOBILIZATION OF ILLEGALLY PARKED VEHICLES; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER'S ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE. Open the public hearing and schedule for second reading and final adoption on September 23, 2024 at 6:00 PM.

Mayor Allers read the title of the ordinance. Operations & Compliance Manager Thomas Yozzo reviewed the background of the request as stated on the blue sheet. He noted the only change was the method of payment. Mayor Allers clarified that vehicles would not be towed for an expired meter. Public comment:

Danielle Martin, owner of Angel Towing, clarified that nothing else changed but the payment method.
Public comment closed.

Council Member King moved the ordinance to a second reading on September 23, 2024, seconded by Council Member Woodson.
The motion carried unanimously by roll call vote.

H. Ordinance 24-25; Public Camping or Sleeping

First Reading and Public Hearing on proposed Ordinance 24-25 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING CHAPTER 16, ARTICLE I OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH BY CREATING SECTION 16-1 "PUBLIC CAMPING OR SLEEPING ON ANY PUBLIC PROPERTY, PUBLIC BUILDING, OR PUBLIC RIGHT-OF-WAY PROHIBITED," AND AMENDING ARTICLE IV OF CHAPTER 32, TO REMOVE SECTIONS 32-70 "APPLICABILITY," 32-71 "INTENT," AND 32-72 "PROHIBITED"; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER'S ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE. Open the public hearing and schedule for second reading and final adoption on September 23, 2024 at 6:00 PM.

Council Member Allers read the title of the ordinance. Town Attorney Stuparich explained that a new Florida law was passed regulating public camping and sleeping on public property.
No public comment.

Council Member King moved the ordinance to a second reading on September 23, 2024, seconded by Council Member Safford.
The motion carried unanimously by roll call vote.

I. Ordinance 24-24; Building Coverage Instead of FAR

First Reading and Public Hearing of an ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING 1) TABLE 34-3 TITLED "DIMENSIONAL REGULATIONS IN CONVENTIONAL ZONING DISTRICTS" IN CHAPTER 34, ARTICLE III, DIVISION 4 TO CREATE NOTE (10) TO PROVIDE THAT DETACHED SINGLE-FAMILY AND TWO-FAMILY HOMES WITHOUT A COMMERCIAL USE, IN ANY CONVENTIONAL ZONING DISTRICT WHERE THAT USE IS ALLOWED, MAY BE EVALUATED BY BUILDING COVERAGE RATHER THAN FAR; 2) SECTION 34-675(C) IN CHAPTER 34, ARTICLE III, DIVISION 5 TO PROVIDE THAT BUILDING INTENSITY OF COMMERCIAL AND MIXED-USE BUILDINGS SHALL BE EVALUATED USING FLOOR AREA RATIO (FAR) AND DETACHED SINGLE-FAMILY AND TWO-FAMILY RESIDENCE INTENSITY SHALL BE EVALUATED USING

BUILDING COVERAGE NOT TO EXCEED 40% IN THE DOWNTOWN ZONING DISTRICT; 3) SECTION 34-683 IN CHAPTER 34, ARTICLE III, DIVISION 5 RELATED TO THE CREATION OF NEIGHBORHOOD CENTERS IN THE SANTINI ZONING DISTRICT TO PROVIDE THAT DETACHED SINGLE-FAMILY AND TWO-FAMILY RESIDENCE BUILDING COVERAGE SHALL NOT EXCEED 40%; 4) SECTION 34-693 IN THE VILLAGE ZONING DISTRICT REGULATIONS TO PROVIDE THAT COMMERCIAL AND MIXED-USE BUILDING INTENSITY SHALL BE EVALUATED USING FLOOR AREA RATIO (FAR) AND DETACHED SINGLE-FAMILY AND TWO-FAMILY RESIDENCE INTENSITY SHALL BE EVALUATED USING BUILDING COVERAGE AND SHALL NOT EXCEED 40%; 5) SECTION 34-705 IN THE CB ZONING DISTRICT TO PROVIDE THAT FOR COMMERCIAL AND MIXED-USE DEVELOPMENTS FLOOR AREA RATIOS SHALL NOT EXCEED 1.0 AND BUILDING COVERAGE FOR DETACHED SINGLE-FAMILY AND TWO-FAMILY RESIDENCES, BUILDING COVERAGE SHALL NOT EXCEED 40%; PROVIDING FOR SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS; CONFLICTS OF LAW; AND PROVIDING AN EFFECTIVE DATE. Open the public hearing and set the second reading and final hearing for September 23, 2024 at 6:00 PM

Mayor Allers read the title of the ordinance. Planner Propst reviewed the background of the request as stated on the blue sheet. She confirmed that it would only affect single-family and two-family detached homes. Mayor Allers clarified that the ordinance would only affect the calculation of the size of the home that could be built.

No public comment.

Council Member King moved the ordinance to a second reading on September 23, 2024, seconded by Council Member Woodson.

The motion carried unanimously by roll call vote.

J. Emergency Ordinance 24-29; Unsafe Building Appeals

First and Final Reading and Public Hearing on proposed Emergency Ordinance entitled: AN EMERGENCY ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING 1) DIVISION 3 "UNSAFE BUILDING ABATEMENT CODE" OF ARTICLE I "PROPERTY MAINTENANCE CODES"; AND 2) DIVISION 2 "LEE COUNTY'S BOARDS OF ADJUSTMENT AND APPEALS" OF ARTICLE II "BUILDING CODES" OF CHAPTER 6 "MAINTENANCE CODES, BUILDING CODES AND COASTAL REGULATIONS" OF THE LAND DEVELOPMENT CODE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, TO AMEND EXISTING PROVISIONS RELATED TO APPEALS OF THE BUILDING OFFICIAL'S DECISIONS; DIVESTING THE LEE COUNTY CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS OF THE RESPONSIBILITY FOR REVIEW OF APPEALS OF THE TOWN BUILDING OFFICIAL'S DECISIONS INCLUDING BUT NOT LIMITED TO DETERMINATION OF AN UNSAFE BUILDING; AUTHORIZING THE TOWN OF FORT MYERS BEACH SPECIAL MAGISTRATES TO HEAR APPEALS OF THE TOWN'S

BUILDING OFFICIAL'S DECISIONS; PROVIDING FOR NON-CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

Mayor Allers read the title of the emergency ordinance. Town Attorney Stuparich reviewed the background of the request as stated on the blue sheet. She noted that the interlocal agreement with the Lee County Board of Appeals expired in 2017 and this ordinance would be effective immediately. She described the process of red-tagging buildings and indicated the timeline was between two and four weeks.

No public comment.

Council Member King moved to approve the emergency ordinance, seconded by Council Member Safford.

The motion carried unanimously by roll call vote.

K. Ordinance 24-30; Unsafe Building Code Appeals

First Reading and Public Hearing on proposed Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING: 1) DIVISION 3 "UNSAFE BUILDING ABATEMENT CODE" OF ARTICLE I "PROPERTY MAINTENANCE CODES"; AND 2) DIVISION 2 "LEE COUNTY'S BOARDS OF ADJUSTMENT AND APPEALS" OF ARTICLE II "BUILDING CODES" OF CHAPTER 6 "MAINTENANCE CODES, BUILDING CODES AND COASTAL REGULATIONS" OF THE LAND DEVELOPMENT CODE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, TO AMEND EXISTING PROVISIONS RELATED TO APPEALS OF THE BUILDING OFFICIAL'S DECISIONS; DIVESTING THE LEE COUNTY CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS OF THE RESPONSIBILITY FOR REVIEW OF APPEALS OF THE TOWN BUILDING OFFICIAL'S DECISIONS INCLUDING BUT NOT LIMITED TO DETERMINATION OF AN UNSAFE BUILDING; AUTHORIZING THE TOWN OF FORT MYERS BEACH SPECIAL MAGISTRATES TO HEAR APPEALS OF THE TOWN'S BUILDING OFFICIAL'S DECISIONS; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE. Open the public hearing and schedule for second reading and final adoption on September 23, 2024 at 6:00 PM.

Mayor Allers read the title of the ordinance. Town Attorney Stuparich reviewed the background of the request as stated on the blue sheet. No public comment.

Council Member King moved the ordinance to a second reading on September 23, 2024, seconded by Council Member Safford.

The motion carried unanimously by roll call vote.

L. Resolution 24-180; Schmucker Special Magistrate Second Amendment

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A SECOND AMENDMENT TO THE AGREEMENT FOR SPECIAL MAGISTRATE SERVICES BETWEEN THE TOWN AND MONICA SCHMUCKER, TO PROVIDE SERVICES FOR APPELLATE REVIEW OF THE TOWN BUILDING OFFICIAL'S DECISIONS AS MAY BE REQUIRED UNDER THE TOWN CODE; ADDING REQUIRED STATUTORY PROVISIONS RELATED TO COERCION OF LABOR OR SERVICES TO THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Attorney Stuparich reviewed the background of the request as stated on the blue sheet and noted that state law required the addition of the last phrase in the title.

No public comment.

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

The motion carried unanimously by roll call vote.

M. Resolution 24-181; DOAH First Amendment

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A FIRST AMENDMENT TO THE ADMINISTRATIVE LAW JUDGE SERVICES BETWEEN THE TOWN AND DEPARTMENT OF ADMINISTRATIVE HEARINGS TO PROVIDE SERVICES FOR APPELLATE REVIEW OF THE TOWN BUILDING OFFICIAL'S DECISIONS AS MAY BE REQUIRED UNDER THE TOWN CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Attorney Stuparich reviewed the background of the request as stated on the blue sheet. No public comment.

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

The motion carried unanimously by roll call vote.

XII. ADMINISTRATIVE AGENDA**A. Resolution 24-177; STA 38 Carlos Circle**

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH AUTHORIZING THE TOWN MANAGER OR HIS DESIGNEE TO APPROVE STA 38 IN THE AMOUNT OF 145,990.00 WITH TETRA TECH UNDER CONTRACT NO. 22-25-AD FOR TIER 1 PROJECT CARLOS CIRCLE AND ANY ASSOCIATED DOCUMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Director Kropacek stated that this would allow Tetra Tech to draft an engineering plan to address the flooding issues.

Council Member King moved to approve the resolution, seconded by Council Member Safford.

The motion carried unanimously by roll call vote.

B. Resolution 24-179; Town Hall Emergency Elevator Repairs

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING THE EMERGENCY ACCEPTANCE AND PURCHASE BY THE TOWN MANAGER OF SERVICES FROM GENERAL ELEVATOR SOLUTIONS IN THE AMOUNT OF \$139,553.00 FOR THE COMPLETION OF A HYDRAULIC ELEVATOR MODERNIZATION FOR THE NEW TOWN HALL BUILDING; AND PROVIDING AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Director Kropacek commented that the elevator should be repaired by the beginning of the year.

Vice Mayor Atterholt moved to approve the resolution utilizing ARPA (American Rescue Plan Act of 2021) funds, seconded by Council Member Safford.

The motion carried unanimously by roll call vote.

C. Special Event: Revive the Vibe Fest 2024

Requesting approval of a special event permit for the Revive The Vibe Fest 2024 on Saturday, September 14, 2024. Requesting approval to close First through Third Streets off of Old San Carlos Blvd, allowing for open containers and allowing amplified sound, contingent upon approval of the Lee County Sheriffs Office and FMB Fire District.

Director Kropacek revealed that the organizers requested mechanical items to be added to the special event permit on Friday. The Lee County Sheriff's Office (LCSO) and the FMB Fire District must approve the items before the permit can be issued.

Zoe Wright, President of the FMB Revival nonprofit, described the event and explained that the mechanical items were offered for free at the last minute. Council Member Woodson verified that the town would not be liable for potential injuries from the mechanical bull.

Mayor Allers moved to approve the special event permit with the condition upon the amendment, seconded by Vice Mayor Atterholt.
The motion carried unanimously by roll call vote.

D. FY24-25 Benefit Renewal

Town of Fort Myers Beach Insurance Plan Year 24-25 Renewal Overview

Human Resources Manager Talissa Oliveira reviewed the renewal details as stated on the blue sheet. She noted the total increase for medical insurance was approximately \$64,500.00 and the vision and supplemental plans did not increase. She added that the increase was \$18,000.00 less than they anticipated. Manager Oliveira explained that she was investigating an app to implement tax-free health savings and she was implementing a wellness program in January.

Council Member Woodson moved to approve the renewal, seconded by Council Member Safford.

The motion carried unanimously by roll call vote.

E. Authorize Auditor Engagement Letters

Authorize the Town Manager to execute the Engagement Letters with Mauldin & Jenkins to provide independent external auditor services for Fiscal Year 2024.

Finance Director Joe Onzick stated that this was the third year of the contract and the cost was \$51,000.00 with an additional fee of \$5,000.00 for a single FEMA audit.

Council Member Safford moved to authorize, seconded by Council Member Woodson.

The motion carried unanimously by roll call vote.

F. Town CEMP Administrative Updates

Town Comprehensive Emergency Management Plan (CEMP) Administrative Updates and Input

Legislative Liaison/Deputy Clerk Jason Freeman reviewed the CEMP as stated on the blue sheet. He noted that the reentry plan would be posted on the town's website. The reentry procedure was discussed.

Council Member Safford moved to approve the plan, seconded by Council Member Woodson.

The motion carried unanimously by roll call vote.

G. Angela Crist - USF Institute of Government

Town Council Strategic Planning Proposal Input

Town Manager Hyatt reviewed the second phase and noted the cost was \$225,427.60. The cost could be covered by ARPA funds if utilized by the end of the year. Input included moving the community focus groups to a time when most of the community was in town.

Council Member Safford moved to approve the proposal, seconded by Council Member Woodson.

The motion carried unanimously by roll call vote.

H. Resolution 24-182; Implementing FEMA letter dated July 19, 2024

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, DIRECTING THE TOWN MANAGER TO IMPLEMENT ALL REQUIREMENTS SET FORTH IN A LETTER DATED JULY 19, 2024, FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY (“FEMA”); AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Director Kropacek reviewed the background of the request as stated on the blue sheet. He noted that FEMA directed that all temporary structures within two blocks north of Estero and all shipping containers used by construction companies at the condos be removed by November 18, 2024. Structures included anything that could not be towed by a light-duty truck. He added that the town would be on probation if the directive was not followed. Storage pods on lots could remain if rebuilding plans were on file with the town and the directive did not apply to people with residential temporary use permits on the other side of Estero two lots in. Director Kropacek stated that code personnel had started contacting people who were affected. Mayor Allers suggested including a map of the affected areas with the press release. Director Kropacek stated that the town hall trailers were compliant.

Mayor Allers moved to approve the resolution, seconded by Council Member Woodson.

The motion carried unanimously by roll call vote.

I. 24-183, Resolution Authorizing Town Manager to Sign FEMA CDL Application

A RESOLUTION TO AUTHORIZE THE TOWN MANAGER OF THE TOWN OF FORT MYERS BEACH, TO REQUEST A LOAN UNDER THE COMMUNITY DISASTER LOAN PROGRAM OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) FOR A MAXIMUM AMOUNT OF \$4,081,357, TO DRAW UPON IF NEEDED TO FUND ESSENTIAL GOVERNMENT SERVICES AS A RESULT OF LOST REVENUES, TO RECEIVE AND MANAGE THESE FUNDS, AND FOR OTHER PURPOSES; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Director Onzick utilized slides to explain the Authorization to Sign the FEMA CDL Application.

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

The motion carried unanimously by roll call vote.

XIII. FINAL PUBLIC COMMENT

Terry Cain thanked the town council and staff for their hard work. She commented on the incident command system and indicated that the state of FL had one of the best systems.

XIV. TOWN MANAGER'S ITEMS

Town Manager Hyatt reminded political candidates not to place signs in the right-of-way.

Culture, Parks & Recreation Director Jeff Hauge indicated the joint meeting with CELCAB had to be moved to September 18, 2024. All council members were available.

Director Kropacek stated that starting September 1, 2024, all building application materials will be submitted to the town clerk 14 days before the LPA and town council meetings.

Senior Planner Smalley stated that the thatch roof and cover over the stairs at Margaritaville will be approved administratively unless otherwise directed. All council members approved.

XV. TOWN ATTORNEY'S ITEMS

No items.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Safford recognized the Island Pancake House and encouraged people to visit.

Council Member Woodson requested a sign at Crescent and 5th Ave. to direct people to North Estero. Director Hauge revealed that signs would be installed in the next few days.

Vice Mayor Atterholt indicated that the sand should be inspected if it is riddled with shells. Environmental Projects Manager Chadd Chustz stated that the coastal engineer was doing quality control testing and shells were to be expected. He added that the sand was from the same borrow area used in 2011. Vice Mayor

Atterholt questioned whether old wells had to be capped before permitting new wells. Director Kropacek replied positively and stated that regulations had to be followed. Vice Mayor Atterholt questioned whether performance metrics were linked to the strategic plan. Town Manager Hyatt replied positively.

Council Member King commented that the town's website was problematic and difficult to navigate. He questioned whether they were considering a new system. Town Manager Hyatt replied that they would investigate options.

Mayor Allers questioned the status of the etched glass with the Chapel by the Sea. Vice Mayor Atterholt replied that prospects for the glass had diminished, but nothing was definite. Mayor Allers was talking about permitting when the recording skipped. Director Kropacek responded that discussions with the county were ongoing. Mayor Allers asked Town Clerk Baker to research the date the town took over permitting from Lee County.

He encouraged the staff to get a second opinion regarding the infrastructure Tetra Tech was putting in the ground. He received consensus. He noted that some people were doing work without a permit in easements and questioned what the town could do. Town Attorney Stuparich responded that they had to research the easement documents and litigation might be necessary.

Vice Mayor Atterholt questioned whether Tetra Tech could provide their opinion to compare and contrast with the third vendor. There were no objections. Director Kropacek stated a vendor was working to keep drains clear, but he was revisiting their services. He preferred to have the service in-house.

XVII. ADJOURNMENT

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

The meeting was adjourned at 1:06 p.m.



Fort Myers Beach Town Council

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

Minutes

Monday, September 9, 2024

5:01 PM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

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

Town Manager Hyatt received a consensus to move the elections to Bay Oaks Recreation Center on November 5, 2024.

II. APPROVAL OF FINAL AGENDA

No recording.

III. PUBLIC COMMENT

No recording.

IV. PUBLIC HEARINGS

A. Resolution 24-174; FY25 Proposed Millage Rate

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, ADOPTING THE PROPOSED AD VALOREM MILLAGE RATE FOR THE TOWN OF FORT MYERS BEACH, FLORIDA FOR FISCAL YEAR 2024-2025 COMMENCING OCTOBER 1, 2024 AND ENDING SEPTEMBER 30, 2025 FOR THE PURPOSE OF PROVIDING SUFFICIENT FUNDS FOR THE GENERAL FUND; SETTING THE SECOND AND FINAL PUBLIC HEARING FOR MONDAY, SEPTEMBER 23, 2024 AT 5:01 P.M. TO ADOPT THE FINAL OPERATING AD VALOREM MILLAGE RATE FOR FISCAL YEAR 2024-2025; AND PROVIDING AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution.

Council Member Woodson moved to table the resolution, seconded by Council Member Safford.

The motion carried unanimously by roll call vote.

Council Member King moved to reopen the resolution, seconded by Council

Member Woodson.

The motion carried unanimously by roll call vote.

Director Onzick reported that the ad valorem millage rate for FY24 and FY25 is proposed to be set at 0.99 mills, which is 0.99 for each \$1,000.00 of assessed valuation. The current year rollback rate is 0.6561 mills. The proposed operating millage rate is 50.867% greater than the rollback rate. No public comment.

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

The motion carried unanimously by roll call vote.

B. Resolution 24-175; FY25 Tentative Budget

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, ADOPTING THE TENTATIVE BUDGET FOR FISCAL YEAR 2024-2025 COMMENCING OCTOBER 1, 2024 AND ENDING ON SEPTEMBER 30, 2025; SETTING THE SECOND AND FINAL BUDGET ADOPTION PUBLIC HEARING FOR MONDAY, SEPTEMBER 23, 2024 AT 5:01 P.M. AND PROVIDING FOR AN EFFECTIVE DATE

Mayor Allers read the title of the resolution.

Council Member King moved to table the resolution, seconded by Council Member Safford.

The motion carried unanimously by roll call vote.

Council Member Woodson moved to reopen the resolution, seconded by Council Member Safford.

The motion carried unanimously by roll call vote.

Director Onzick presented the Overview, Guiding Principles, Structurally Balanced Zero Based Budget, Maintaining Millage Rate, Roll Back Rate, Fort Myers Beach Share of Property Tax Bill, Surrounding Millage Rates, Tentative General Fund Budget Basic Component Comparison, Bridge Loan Calculation, Changes in Position Count by Department since F24, FY25 Tentative Budget, General Fund Revenue by Source, General Fund Expense by Category, General Fund Expenses by Department, Expense Budgets of All Funds, All Funds Expense by Category, Capital Budget Items, FDEM FEMA Project Loan, All Funds Revenue by Source, Use of Reserves, Grant Revenue, Other Revenue Detail, \$10 MM Capital Improvement Note, DEO Bridge Loan, FDEM FEMA Project Loan, Florida State Revolving Fund and Correction Needed for Debt Service Budget.

Council Member King moved to table the resolution, seconded by Council Member Woodson.

The motion carried unanimously by roll call vote.

Council Member King moved to reopen the resolution, seconded by Council Member Safford.

The motion carried unanimously by roll call vote.

No public comment.

Council Member Safford moved to approve the resolution, seconded by Council Member King.

The motion carried unanimously by roll call vote.

C. Resolution 24-176; FY25 Tentative Fee Schedule

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, ADOPTING THE TENTATIVE FEE SCHEDULE FOR FISCAL YEAR 2024-2025 COMMENCING OCTOBER 1, 2024 AND ENDING ON SEPTEMBER 30, 2025; AND PROVIDING FOR AN EFFECTIVE DATE

Mayor Allers read the title of the resolution.

Finance Director Joe Onzick included slides in his presentation: Summary of Fee Schedule Changes, New Mound House Fee Schedule and Fee Refund Policy. Council Member Safford did not think a 100% refund for the Mooring Field made fiscal sense unless it was because of a hurricane or unforeseen circumstance. He suggested that a fee of \$50.00 be charged for any cancelation outside 30 days; cancelations within 30 days would receive credit for one calendar year but no refund, and if they left early, they did not receive anything unless it was a hurricane or unforeseen circumstance.

Town Attorney Stuparich clarified that people who requested permit refunds would be denied because the permit fees covered administrative costs.

Director Onzick reviewed the Allocation of Short-Term Rental Fees to Workforce Development After Expenses. Council Member Woodson questioned the workforce housing allocation. Town Attorney Stuparich stated that the fees could be allocated to a different category by resolution. She indicated she would review the interlocal agreement with the school regarding allocating funds.

Vice Mayor Atterholt described the firewall to prevent subsidizing stormwater fees and a new rate study. Director Onzick replied that there was no need to subsidize the stormwater fees. A consulting firm was collecting information for a rate study, which included a full cost-of-service study. The study aimed to stabilize the rate and avoid rate increases.

Increasing fees for the Mooring Field was discussed, but no action was taken.

Mayor Allers questioned whether the cost of items like special exceptions or replacing an existing fence could be lowered across the board. Director Onzick replied that the departments were discussing fees. The impact fee discussions were close to wrapping up. Mayor Allers questioned whether resident passes could be decreased. Town Manager Hyatt will research administrative fees and bring it back at the next hearing.

No public comment.

Council Member King moved to approve the resolution, seconded by Council Member Safford.

The motion carried unanimously by roll call vote.

V. FINAL PUBLIC COMMENT

No public comment.

VI. ADJOURNMENT

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

The meeting was adjourned at 6:57 p.m.

DRAFT

1. **Request:**

Meeting Date: September 23, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20240200 TO ALLOW REPAIRS TO A RETAINING WALL IN THE EC ZONING DISTRICT AS AUTHORIZED BY SECTION 6-366 OF THE TOWN OF FORT MYERS LAND DEVELOPMENT CODE FOR PROPERTY LOCATED AT 6500 AND 6502 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

Why the action is necessary:

The Town Council approves Special Exceptions for structures in the EC Zoning District.

What the action accomplishes:

Town Council may approve the repairs to the existing retaining wall, which will allow the property to continue utilizing the area landward of the retaining wall.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Judith Frankel, Principal Planner

5. **Background:**

This is an application for a Special Exception to repair existing retaining in EC zoning district (200 feet along west boundary; 61 feet along north boundary; and 60 feet along south boundary). The applicant is proposing to repair an existing retaining wall within the Environmentally Critical (EC) zoning district that is in need of maintenance after Hurricane Ian damaged the property. The subject property is located 2.01 miles north of Big Carlos Pass Bridge on the south side of Estero Blvd. Based on historical aerials, this retaining wall has been in place since the early 1970s. The applicant provided aerial images dating to 1972 along with available records. A special exception will allow for the repair of the existing retaining wall cap. At their meeting on September 3rd, 2024, the LPA voted 7-0 to recommend that the Town Council approve this application.

Attachments:

1. Staff Report
2. Exhibit A-Signed sealed engineering Site plan
3. Exhibit B-LIST OF PROPERTY OWNERS EXHIBIT 5-1
4. Exhibit C-Postcards
5. Exhibit D Complete Application and Survey
6. RESOLUTION NUMBER 24-163 ns

Financial Impact:

Unknown

6. **Alternative Action**

Deny

7. **Management Recommendations:**

Approve with conditions

8. Recommended Approval:

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

Created/Initiated - 9/9/2024
Approved - 9/9/2024
Approved - 9/16/2024
Approved - 9/16/2024
Final Approval - 9/16/2024



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Special Exception

CASE NUMBER: SEZ20240200

CASE NAME: Special Exception for repair of an existing retaining wall in the EC zoning district.

Town Council
HEARING DATE: September 23rd, 2024, at 6:00 PM

STAFF
RECOMMENDATION: APPROVAL

**PREPARED/
SUBMITTED BY:** Judith Frankel, AICP, Principal Planner

I. APPLICATION SUMMARY

Applicant/Owner: Stokes Marine. Inc./The Privateer of Fort Myers Beach

Requests: Special exception to repair the existing retaining wall in EC zoning district (200 feet along west boundary; 61 feet along north boundary; and 60 feet along south boundary)

Physical Address: 6500 and 6502 Estero Blvd

STRAP #: 33-46-24-W3-02000.00CE

FLU: Mixed Residential and Recreation

Zoning: Residential Multi-family and Environmentally Critical

Adjacent zoning and land uses:

North: Commercial Boulevard (CB)
Boulevard

South: Environmentally Critical (EC)
Recreation

East: Commercial Resort (CR)
Medium Residential

West: Residential Multifamily (RM)
Medium Residential

II. BACKGROUND AND ANALYSIS

Background:

The applicant is proposing to repair an existing retaining wall within the Environmentally Critical (EC) zoning district that is in need of maintenance after Hurricane Ian damaged the property. The subject property is located 2.01 miles north of Big Carlos Pass Bridge on the south side of Estero Blvd. Based on historic aerials, this retaining wall has been in place since at least the early 1970s. The applicant provided aerial images dating to 1972 along with available records from Lee County. Any type of development within the EC zoning district requires a special exemption to be approved. In this case the special exception will allow for the repair of the existing retaining wall cap. The applicant is concurrently applying for the required Coastal Construction Control Line (CCCL) permit with the Department of Environmental Protection (DEP) for this proposed work scope.

The application refers to the subject structure as a seawall in the provided documents, however LDC section 26-75 defines the structure to be repaired as a retaining wall. Per sec. 26-41, "Retaining wall means a vertical bulkhead constructed landward of the mean high-water line and landward of wetland vegetation to protect the shoreline from erosion." The wall to be repaired is located landward of the mean high-water mark as shown on the provided property survey.

The condominium has met the application criteria of providing notice to the condominium ownership of this special exception application and staff has received a list of the unit numbers which have acknowledged from more than the code required 75% of owners.

Analysis:

The condominium structures at The Privateer of Fort Myers Beach were built in 1968, per Lee Property Appraiser. The applicant provided an Enabling Declaration from Lee County dated 1964, which appears to be analogous to a Development Order. The retaining wall is not mentioned in the provided document and permit records are not available to verify that the retaining wall was built at the same time as the condominium, however it likely was part of the original design. It is visible in the 1972 aerial photograph and was therefore built prior to the creation of the 1978 CCCL.

The LDC allows for repairs to existing retaining and sea wall structures. The location, seaward of the 1978 CCCL necessitates the approval of a special exception. Per LDC sec. 26-77(d), Existing seawall walls and retaining walls along the Gulf of Mexico may be maintained but may not be rebuilt.

Neighborhood Compatibility:

The retaining wall has been in the same location since at least 1972 and will not change the character of the subject property. It appears to have been in place prior to the establishment of the 1978 CCCL.

Findings and Conclusions:

Section 6-366(b)(3) Regulations and Considerations

LDC Section 6-366 includes additional regulations and considerations for special exception approval of repairs in the EC zoning district:

- a. Any repairs must comply with all relevant local and state floodplain regulations.*

The development must comply with local and state floodplain requirements.

- b. Repairs may not damage existing dunes or dune vegetation.*

The repairs and proposed structures are proposed landward of the dune. No dunes or native vegetation will be impacted.

- c. Repairs, other than those limited to emergency repairs to enclose a damaged structure may not be completed during sea turtle nesting season.*

Sea turtle nesting season began May 1st and ends on October 31st.

- d. A new special exception must be applied for each time the structure is repaired.*

This will be a condition of the special exception approval.

Special Exception Findings

LDC Sec. 34-88(b) sets forth the required findings and conclusions for the approval of a special exception:

- 1) Whether there exist changed or changing conditions which make approval of the request appropriate.*

The retaining wall in the EC was damaged during Hurricane Ian. Construction in the EC is likely to be damaged by storm surge in the future, but with the repairs of the existing retaining wall, further damage could be minimized.

Furthermore, the applicant is proposing repairs to a structure seaward of the 1978 Lee County Line (CCCL) that was present pre-Hurricane Ian.

- 2) *Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.*

Policy 5-D-1 states: Development (other than minor structures) shall not be allowed seaward of the 1978 Coastal Construction Control Line. Development seaward of the 1991 Coastal Construction Control Line may be permitted provided it complies with this comprehensive plan and all state and local permitting requirements.

The proposed work scope for this special exemption is to repair the retaining wall cap “like for like”. This constitutes maintenance for this type of structure. The retaining wall itself will not be removed, replaced or altered in any fashion. Only the retaining wall cap is to be repaired. The proposed work scope is in harmony with the Fort Myers Beach Comprehensive Plan.

LDC Sec. 34-652(e)(3) states that a special exception may be approved for “reconstruction or renewal of any part of an existing building for the purpose of its maintenance or to correct damage to existing primary structures, which encroach into the EC district and their customary accessory uses.” The subject retaining wall existed pre-Hurricane Ian, is located partially in the EC.

- 3) *Whether the request meets or exceeds all performance and locational standards for the proposed use.*

The request will comply with local, state, and federal air, noise and water pollution standards. It will not adversely affect water quality and it will not create a nuisance to adjacent properties.

- 4) *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*

The request will maintain what was previously constructed on this property. It will not have an additional negative impact.

- 5) *Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.*

There is no anticipated negative impact or injury to surrounding properties.

- 6) *Whether a requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code.*

The EC zoning district allows only passive, movable structures, no new major structures of any kind are allowed, other than dune walkovers through a special exception. The development of minor structures are allowed in the EC through a special exception. LDC Section 26-77(d) states that, "Existing retaining walls and retaining walls along the Gulf of Mexico may be maintained but may not be rebuilt." This is in line with the Fort Myers Beach Comprehensive Plan Policy 5-D-1. The proposed work scope to repair the retaining wall cap is maintenance for a retaining wall.

III. RECOMMENDATION

Staff finds that the special exception for reconstruction of major accessory structures in the EC zoning district is in compliance with item Sec. 34-88(b)(1). Therefore, staff recommends **APPROVAL** of SEZ20240126 for the reconstruction of a partially damaged retaining wall seaward of the 1978 Lee County Line (CCCL).

If LPA recommends approval for the requests, staff has recommended conditions of approval.

IV. CONDITIONS OF APPROVAL

1. A new special exception must be applied for each time the structures are reconstructed.
2. Approval of this special exception does not give the Applicant an undeniable right to permit approval. Development of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
3. The applicant must apply for and receive all state and local permits required for the reconstruction of all proposed structures.
4. Any violation of the conditions of approval shall render the special exception null and void.
5. The applicant must obtain an approved lighting plan as outlined in LDC Sec. 34-1834. The applicant must also obtain an approved landscaping plan as outlined in LDC Sec. 10-413.

Staff Report Exhibits:

Exhibit A - Site Plan

Exhibit B – Property Owner Acknowledgement List

Exhibit C – Postcards to adjacent properties

Exhibit D- Complete Application and Survey



SHA AUTHENTICATION CODE SIGNATURE REPORT

May 21, 2024

Fort Myers Beach Building Department
2545 Estero Blvd.
Fort Myers Beach, FL 33931

c/o: Phil LeBoutillier
Stokes Marine
T: 239.215.4054
E: Phil@StokesMarine.com

Re: **SHA Authentication Code Signature Report**
Seawall Repair
The Privateer of Fort Myers Beach, Inc.
6500 Estero Boulevard
Fort Myers Beach, FL 33931

Fort Myers Beach Building Department:

I am the Professional Engineer-of-Record for the **Seawall Repair Project** at The Privateer of Fort Myers Beach, located 6500 Estero Boulevard, Florida 33931. Recently I prepared the accompanying electronically signed and sealed repair drawings detailing the required repairs for the subject Work. Specifically, this SHA Authentication Code Signature Report applies to the following:

- Drawing S-1.1 General Notes, dated 04/28/2024.
- Drawing S-1.2 Site Plan & Details, dated 04/28/2024.

The SHA Authentication Code for all of the subject documents listed above is:

- F2 88 FA BA 0C 79 E3 47 64 FB 02 52 5F 8C 4F 0B 04 85 36 31.

If there are any questions regarding this SHA Authentication Code Signature Report or the referenced electronically signed and sealed drawings, please do not hesitate to contact us.

Regards,
GeoWorld Engineering Group, Inc.

George A. Tibedo, P.E. – May 21, 2024
Florida P.E. License No. 54291

DESIGN CRITERIA & CODES

1. ALL CONSTRUCTION SHALL CONFORM TO THE 2003 FLORIDA BUILDING CODE, FDOT STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION, TOWN OF FORT MYERS BEACH, U.S. ARMY CORPS OF ENGINEERS, AND ALL OTHER APPLICABLE REGULATIONS AND ORDINANCES BY AUTHORITIES HAVING JURISDICTION.

2. DESIGN SPECIFICATIONS ARE BASED ON THE 2023 FLORIDA BUILDING CODE, ASCE/SEI 24 FLOOD RESISTANT DESIGN AND CONSTRUCTION, ASCE 7-22 MINIMUM DESIGN LOADS AND ASSOCIATED CRITERIA FOR BUILDINGS AND OTHER STRUCTURES, ACI 318 BUILDING CODE REQUIREMENTS FOR STRUCTURAL CONCRETE, AND U.S. ARMY CORPS OF ENGINEERS ENGINEERING AND DESIGN MANUAL EM 1110-2-1614 DESIGN OF COASTAL REVETMENTS, SEAWALLS, AND BULKHEADS.

3. THE CONTRACTOR SHALL BECOME FAMILIAR WITH AND COMPLY WITH ALL FEDERAL, STATE, AND LOCAL RULES AND REGULATIONS THAT CONTROL THE ACTION OR OPERATION OF THOSE ENGAGED OR EMPLOYED IN THE WORK OR THAT AFFECT MATERIAL USED.

4. THE CONTRACTOR SHALL TAKE ALL PRECAUTIONS NECESSARY FOR THE PROTECTION OF LIFE, HEALTH, AND GENERAL OCCUPATIONAL WELFARE OF ALL PERSONS, INCLUDING EMPLOYEES OF BOTH THE CONTRACTOR AND THE OWNER, UNTIL THE CONTRACTOR HAS COMPLETED THE WORK REQUIRED UNDER THE CONTRACT. COMPLY AT ALL TIMES WITH APPLICABLE FEDERAL, STATE, AND LOCAL LAWS, PROVISIONS, AND POLICIES GOVERNING SAFETY AND HEALTH, INCLUDING 29 CFR 1926, INCLUDING ALL SUBSEQUENT REVISIONS AND UPDATES.

PERMIT & LICENSES

1. PRIOR TO BEGINNING WORK, THE CONTRACTOR SHALL FILE A NOTICE OF COMMENCEMENT WITH THE AUTHORITIES HAVING JURISDICTION (AHJ), PRIOR TO OBTAINING THE BUILDING PERMIT FOR THIS WORK.

2. THE CONTRACTOR SHALL PROCURE ALL PERMITS AND LICENSES, PAY ALL CHARGES AND FEES, AND GIVE ALL NOTICES NECESSARY AND INCIDENTAL TO THE DUE AND LAWFUL PROSECUTION OF THE WORK.

3. IN CARRYING OUT THE WORK IN THE CONTRACT, WHEN UNDER THE JURISDICTION OF ANY ENVIRONMENTAL REGULATORY AGENCY, COMPLY WITH ALL REGULATIONS ISSUED BY SUCH AGENCIES AND WITH ALL GENERAL, SPECIAL, AND PARTICULAR CONDITIONS RELATING TO CONSTRUCTION ACTIVITIES OF ALL PERMITS ISSUED TO OTHER AGENCIES AS THOUGH SUCH CONDITIONS WERE ISSUED TO THE CONTRACTOR.

4. POST ALL PERMIT PLACARDS IN A PROTECTED LOCATION AT THE WORKSITE.

5. IN CASE OF A DISCREPANCY BETWEEN ANY PERMIT CONDITION AND OTHER CONTRACT DOCUMENTS, THE MORE STRINGENT CONDITION SHALL PREVAIL.

6. THE CONTRACTOR SHALL BE RESPONSIBLE TO INSTALL APPROVED TURBIDITY SCREENS INPLACE DURING ANY AND ALL CLEARING, EXCAVATING, JETTING, AND BACK FILLING OPERATIONS WHICH TOTALLY ENCLOSE THE CONSTRUCTION SITE. SCREENS ARE TO REMAIN IN PLACE 24 HOURS MINIMUM AFTER CONSTRUCTION CEASES OR UNTIL TURBIDITY LEVEL IS 20 OR LESS NTU ABOVE THE PRE-CONSTRUCTION TURBIDITY LEVEL. SCREENS MUST EXTEND FROM THE WATER SURFACES TO THE BOTTOM AND BE ADEQUATELY WEIGHTED TO KEEP THEM IN PLACE DURING ALL OPERATIONS. THERE SHALL BE ADEQUATE FLOATATION AT THE SURFACE TO PREVENT OVERFLOW. THIS FLOATATION MUST BE BRIGHTLY COLORED TO MAXIMIZE VISIBILITY.

7. ANY LOOSE DIRT OR STOCK PILES SHALL BE SURROUNDED BY SILT SCREENS AND MAINTAINED IN GOOD WORKING ORDER (AT THE EDGE OF THE TOE OF THE SLOPE) TO PREVENT RUNOFF ONTO THE BEACH OR ADJACENT PROPERTY.

8. REFER TO THE FOOT SPECIFICATION ON EROSION CONTROL FOR PROTECTION OF SLOPES.

RESPONSIBILITY FOR DAMAGES, CLAIMS, ETC.

1. THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER, ITS OFFICERS, AGENTS, ENGINEER, AND EMPLOYEES FROM LIABILITIES, DAMAGES, LOSSES AND COSTS, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEY'S FEES, TO THE EXTENT CAUSED BY THE NEGLIGENCE, RECKLESSNESS, OR INTENTIONAL WRONGFUL MISCONDUCT OF THE CONTRACTOR, AND PERSONS EMPLOYED OR UTILIZED BY THE CONTRACTOR IN THE PERFORMANCE OF THE CONSTRUCTION CONTRACT. IT IS SPECIFICALLY AGREED BETWEEN THE CONTRACTOR AND THE OWNER THAT IT IS NOT INTENDED BY ANY OF THE PROVISIONS OF ANY PART OF THE CONTRACT, OR BY ANY WORK PERFORMED UNDER THE CONTRACT, TO CREATE IN THE PUBLIC OR ANY MEMBER THEREOF, A THIRD PARTY BENEFICIARY HEREUNDER, OR TO AUTHORIZE ANYONE NOT A PARTY TO THIS CONTRACT TO MAINTAIN A SUIT FOR PERSONAL INJURIES OR PROPERTY DAMAGE PURSUANT TO THE TERMS OR PROVISIONS OF THIS CONTRACT.

2. THE CONTRACTOR GUARANTIES THE PAYMENT OF ALL JUST CLAIMS FOR MATERIALS, SUPPLIES, TOOLS, OR LABOR AND OTHER JUST CLAIMS AGAINST HIM OR ANY SUBCONTRACTOR, IN CONNECTION WITH THE CONTRACT. THE OWNER'S FINAL ACCEPTANCE AND PAYMENT DOES NOT RELEASE THE CONTRACTOR'S RESPONSIBILITY UNTIL ALL SUCH CLAIMS ARE PAID OR RELEASED.

GENERAL

1. ALL DIMENSIONS SHOWN ON THESE PLANS ARE INTENDED FOR BUDGETARY PURPOSES ONLY AND WILL BE FIELD VERIFIED BY THE BIDDER/OFFEROR PRIOR TO SUBMITTING ITS BID AND PRIOR TO THE START OF CONSTRUCTION. NO ADDITIONAL COMPENSATION OR CONSIDERATION WILL BE GIVEN FOR DIMENSIONS NOT VERIFIED. PRIOR TO THE START OF CONSTRUCTION CONTRACTOR WILL NOTIFY ENGINEER IN WRITING OF ANY CONFLICTS, DISCREPANCIES OR AMBIGUITIES EXISTING. NO EXTRA COMPENSATION WILL BE PAID TO CONTRACTOR FOR WORK WHICH HAS TO BE REDONE OR REPAIRED DUE TO DIMENSIONS SHOWN INCORRECTLY ON THESE PLANS PRIOR TO CONTRACTOR GIVING ENGINEER WRITTEN NOTIFICATION OF SAME AND ENGINEER, THEREAFTER, PROVIDING CONTRACTOR WITH WRITTEN AUTHORIZATION TO PROCEED WITH SUCH ADDITIONAL WORK.

2. PRIOR TO BEGINNING THE WORK, THE CONTRACTOR SHALL NOTIFY THE ENGINEER OF ANY DISCREPANCIES NOTED BETWEEN THE CONTRACT DOCUMENTS AND EXISTING IN SITU CONDITIONS.

3. PRESERVE FROM DAMAGE ALL EXISTING PROPERTY WITHIN THE PROJECT LIMITS OF OR IN ANY WAY AFFECTED BY THE WORK. THE REMOVAL OR DESTRUCTION OF WHICH IS NOT SPECIFIED IN THE PLANS. THIS APPLIES TO, BUT IS NOT LIMITED TO, PUBLIC AND PRIVATE PROPERTY, PUBLIC AND PRIVATE UTILITIES, TREES, SHRUBS, CROPS, SOD, SIGNS, MONUMENTS, FENCES, GUARDRAIL, PIPE AND UNDERGROUND STRUCTURES, TRAFFIC CONTROL SIGNALS AND DEVICES, LIGHTING, ROADWAYS, AND PARKING LOTS. IT IS THE CONTRACTOR'S RESPONSIBILITY TO HAVE LOCATED ALL UNDERGROUND FACILITIES THROUGH NOTIFICATION TO "SUNSHINE 811".

4. WHENEVER THE CONTRACTOR'S ACTIVITIES DAMAGE SUCH EXISTING PROPERTY, IT SHALL BE IMMEDIATELY RESTORED TO A CONDITION EQUAL TO OR BETTER THAN THAT EXISTING AT THE TIME SUCH DAMAGE OCCURRED, AT NO EXPENSE TO THE OWNER.

5. FINISHED TOP ELEVATION OF NEW SEAWALL CAP SHALL MATCH EXISTING CAP ELEVATION. FINISHED VERTICAL FACE OF NEW SEAWALL CAP SHALL NOT EXTEND SEAWARD (WESTWARD) BEYOND EXISTING HORIZONTAL POSITION OF CAP.

254

SHORING AND BRACING

1. PROVIDE ENGINEERING SERVICES FOR THE DESIGN AND IMPLEMENTATION OF TEMPORARY SHORING AND BRACING AS MAY BE REQUIRED. CONTRACTOR'S ENGINEER SHALL REVIEW REQUIRED DEMOLITION AND IDENTIFY AND DESIGN ALL VERTICAL AND LATERAL SHORING AND BRACING REQUIRED FOR THE PROTECTION OF THE EXISTING STRUCTURES WHETHER NOTED ON THE DRAWINGS OR NOT. CALCULATIONS SHALL INCLUDE CONFIRMATION THAT STRUCTURAL ELEMENTS ARE STRUCTURALLY SOUND DUE TO ADDED JACKING LOADS.

2. PROVIDE MATERIAL, LABOR AND SERVICES NECESSARY TO INSTALL TEMPORARY SHORING AND BRACING WHERE REQUIRED FOR THE DEMOLITION OF EXISTING ELEMENTS AND THE PROTECTION OF THE EXISTING SEAWALL, AND IN ACCORDANCE WITH THE APPROVED DRAWINGS PREPARED BY THE CONTRACTOR'S ENGINEER.

3. PROVIDE PROTECTION OF EXISTING SURFACES AND FINISHES.

GEOTECHNICAL & FOUNDATIONS

1. SOIL ASSUMED AS LOOSE FINE SAND.

FASTENERS

1. PROVIDE FASTENER TYPES, SIZES AND NUMBERS AS SPECIFIED HEREIN, UNLESS PLANS DEFER TO MANUFACTURERS' RECOMMENDATIONS OR STANDARDS.

2. ALL FASTENERS SHALL BE CORROSION RESISTANT SPECIFICALLY INTENDED FOR USE IN HUMID SUBTROPICAL CLIMATES.

REINFORCED CONCRETE

1. ALL CONCRETE DESIGN AND PLACEMENT SHALL BE IN STRICT ACCORDANCE WITH ACI 318-15, "BUILDING CODE REQUIREMENTS FOR REINFORCED CONCRETE".

2. STRUCTURAL CONCRETE SHALL CONFORM TO ACI 301 SPECIFICATIONS, AND SHALL DEVELOP THE FOLLOWING MINIMUM COMPRESSIVE STRENGTHS AT 28 DAYS, AS WELL AS OTHER PROPERTIES SPECIFIED IN THESE DOCUMENTS. SEE SPECIFICATIONS FOR ADDITIONAL DESIGN MIX REQUIREMENTS.

SEAWALL CAP & DEAD MAN ANCHORS:5,000 PSI

3. CONCRETE SHALL BE READY-MIX, REGULAR WEIGHT FOR ALL STRUCTURAL USES, WITH MINIMUM DRY DENSITY OF 145 LBS. PER CUBIC FOOT.

4. ALL EXPOSED SURFACES SHALL HAVE A CLASS 3 FINISH IN ACCORDANCE WITH FDOT SPECIFICATION FINISHING CONCRETE. ALL UNEXPOSED SURFACES ARE TO BE FREE OF HONEYCOMBING AND MAJOR IMPERFECTIONS

5. CHAMFER ALL EXPOSED CONCRETE EDGES, 3/4" - UNLESS NOTED OTHERWISE.

6. REINFORCING STEEL SHALL BE DETAILED, FABRICATED AND INSTALLED IN ACCORDANCE WITH ACI 318-95 AND ACI DETAILING MANUAL, ACI 315.

7. REINFORCING STEEL SHALL BE NEW, DEFORMED BARS, FREE OF RUST, SCALE AND OIL, CONFORMING TO ASTM A-615, GRADE 60 WITH A MINIMUM YIELD STRENGTH = 60,000 PSI, UNLESS OTHERWISE SHOWN.

8. PROVIDE CONTINUOUS REINFORCEMENT WITH ACI CLASS "B" LAP SPLICES, OR AS NOTED OTHERWISE. IN BEAMS, LAP CONTINUOUS BOTTOM STEEL OVER SUPPORTS AND CONTINUOUS TOP STEEL AT MID SPAN, UNLESS NOTED OTHERWISE.

9. TERMINATE ALL DISCONTINUOUS ENDS OF TOP BARS WITH STANDARDS ACI HOOKS. TURN HOOKS UP OR DOWN INTO SUPPORTING STRUCTURE. CORNER BARS SHALL BE SUPPLIED AND PLACED IN ADDITION TO HOOKED ENDS, PER THE DETAILS IN THESE DOCUMENTS.

10. PROVIDE THE FOLLOWING MINIMUM CONCRETE COVERAGE OVER REINFORCING UNLESS NOTED OTHERWISE:

SEAWALL CAP & DEAD MAN ANCHORS:3"

11. ALL PENETRATIONS THROUGH SEAWALL CAP & DEAD MAN ANCHORS SHALL BE SLEEVED INDIVIDUALLY. CORE DRILLING OF EXISTING CONCRETE MEMBERS WILL NOT BE PERMITTED, UNLESS NOTED ON PLANS. SUBMIT LOCATIONS AND SIZES OF ALL SLEEVES FOR ARCHITECT/ENGINEER APPROVAL PRIOR TO CASTING.

12. NO REINFORCING BARS SHALL BE CUT OR OTHERWISE MODIFIED IN THE FIELD. REINFORCING BARS SHALL NOT BE DISPLACED PRIOR TO OR DURING CASTING TO ACCOMMODATE ANCHORS, EMBEDS OR OTHER ITEMS.

13. WHERE WALLS, BEAMS AND FOOTINGS CHANGE DIRECTION, PROVIDE CORNER BARS OF SAME SIZE AND QUANTITY AS THE SPECIFIED LONGITUDINAL STEEL.

14. ALL EMBEDDED ITEMS SHALL BE SECURELY FIXED AND MAINTAINED IN POSITION PRIOR TO AND DURING CONCRETE PLACEMENT.

15. PROVIDE REINFORCEMENT SPLICES AS INDICATED BELOW IN CONFORMANCE WITH AN ACI CLASS B TENSION SPLICE. (ACI CODE 318-19(22)). NO REDUCTION SHALL BE PERMITTED DUE TO BAR SPACING.

16. SPECIFIC CONCRETE MIX DESIGN PARAMETERS FOR THIS PROJECT SHALL BE SUBMITTED TO THE ARCHITECT AND ENGINEER FOR REVIEW AND APPROVAL PRIOR TO PLACEMENT. MIXES FOR SPECIFIC USES AND LOCATIONS SHALL PROVIDE FOR THE FOLLOWING MINIMUM/MAXIMUM VALUES:

SEAWALL CAP & DEAD MAN ANCHORS:

COMPRESSIVE STRENGTH:5,000 PSI TYPE II CEMENT, CLASS III CONCRETE
WATER/CEMENT RATIO (MAX.):0.40

254

TIE RODS & DEAD MAN ANCHORS

1. TIE RODS SHALL BE WILLIAMS GRADE 75 ALL-THREAD REBAR, MINIMUM NO. 8, WITH TURNBUCKLES AS REQUIRED TO REMOVE SLACK DURING INSTALLATION, OR AS APPROVED BY THE ENGINEER.

2. THE REINFORCING USING PLASTIC, POLYMER, OR NYLON COATED PLIABLE STEEL WIRE THAT READILY BENDS AND TWISTS WITHOUT BREAKING.

3. BACK FILL BELOW TIE-RODS SHALL BE HAND-COMPACTED TO PROVIDE FULL SUPPORT OF THE TIE-RODS TO PREVENT BENDING OR FRACTURING DURING COMPACTION. BACK FILL IS TO BE COMPACTED TO A STABLE DENSITY SUCH THAT NO APPRECIABLE SETTLEMENT OCCURS AFTER COMPLETION OF WALLS.

4. DEAD MAN ANCHORS ARE SHALL BE CONSTRUCTED BY PLACING CONCRETE INTO THE SPECIFIED SIZE HOLE EXCAVATED IN UNDISTURBED GROUND. ALTERNATIVELY, DEAD MAN ANCHORS MAY BE PRECAST AND SET INTO GROUND PROVIDED ALL DISTURBED SOIL IS COMPACTED TO A STABLE DENSITY SUCH THAT NO APPRECIABLE SETTLEMENT OR MOVEMENT OCCURS AFTER COMPLETION OF DEAD MAN.

5. APPLY TWO (2) COATS OF CARBOLINE BITUMASTIC 300M COAL TAR EPOXY TO ALL EXPOSED AREAS OF STEEL TIERODS, PLATES, NUTS AND WASHERS, 16.0 MIL DRY FILM THICKNESS EACH COAT. SURFACES TO BE COATED SHALL BE CLEAN AND DRY. EMPLOY ADEQUATE METHODS TO REMOVE DIRT, DUST, OIL AND ALL OTHER CONTAMINANTS THAT COULD INTERFERE WITH ADHESION OF THE COATING.

CONCRETE REHABILITATION

1. THE FOLLOWING CONCRETE REPAIR NOTES, NOS. 2 THROUGH 9, ARE INTENDED AS A SUMMARY ONLY. THE CONTRACTOR WILL FAMILIARIZE ITSELF FULLY WITH THE COMPLETE REQUIREMENTS LISTED IN TECHNICAL SPECIFICATION 050100 CONCRETE REHABILITATION, AND THE SPECIFIED ACI AND ICRI PUBLICATIONS/GUIDELINES.

2. DETERIORATED AND DELAMINATED CONCRETE SHALL BE LOCATED AND MARKED PRIOR TO STARTING THE REMOVAL PROCESS. DELAMINATED CONCRETE CAN BE LOCATED USING SOUNDING OR OTHER SUITABLE TECHNIQUES. THE REPAIR AREA SHALL EXTEND A MINIMUM OF 6 INCHES BEYOND THE ACTUAL DELAMINATED CONCRETE. REPAIR CONFIGURATIONS SHALL BE KEPT AS SIMPLE AS POSSIBLE, PREFERABLY SQUARE OR RECTANGULAR WITH SQUARE CORNERS. THIS MAY RESULT IN THE REMOVAL OF SOUND CONCRETE. REENTRANT CORNERS SHALL BE MINIMIZED OR AVOIDED AS THEY ARE SUSCEPTIBLE TO CRACKING.

3. REMOVE CONCRETE FROM MARKED AREAS AND UNDERCUT EXPOSED REINFORCING STEEL USING IMPACT BREAKERS, HYDRODEMOLITION, OR ANOTHER SUITABLE METHOD. PROVIDE MINIMUM 0.75" CLEARANCE BETWEEN EXPOSED REINFORCING STEEL AND SURROUNDING CONCRETE OR 0.25 IN. LARGER THAN THE COARSE AGGREGATE IN THE REPAIR MATERIAL, WHICHEVER IS GREATER. CONCRETE REMOVAL SHALL EXTEND ALONG THE REINFORCING STEEL UNTIL THERE IS NO FURTHER DELAMINATION, CRACKING, OR SIGNIFICANT CORROSION AND THE REINFORCING STEEL IS WELL BONDED TO THE SURROUNDING CONCRETE. REMOVE ALL DETERIORATED CONCRETE AND ADDITIONAL CONCRETE AS REQUIRED TO PROVIDE THE PROPER CONFIGURATION AND/OR THE MINIMUM REQUIRED THICKNESS OF REPAIR MATERIAL AS REQUIRED BY THE MANUFACTURER OF THE REPAIR MATERIAL AND/OR THE PROJECT SPECIFICATIONS.

4. THE PERIMETER OF THE REPAIR AREA SHALL BE SAW CUT 0.75" DEEP TO PROVIDE A VERTICAL EDGE (SEE DETAIL 5/54) FOR THE REPAIR MATERIAL AND AVOID FEATHEREDGING OF THE REPAIR MATERIAL. DEPENDING ON THE REPAIR MATERIAL SELECTED, THE DEPTH OF THE EXISTING REINFORCING AND THE MANUFACTURER'S RECOMMENDATIONS, A SAW CUT DEPTH LESS THAN 0.75 IN. DEEP MAY BE SUFFICIENT. CARE SHOULD BE TAKEN TO AVOID CUTTING THE EXISTING REINFORCING STEEL.

5. ALL CONCRETE, CORROSION PRODUCTS, AND SCALE SHALL BE REMOVED FROM THE REINFORCING STEEL BY OIL-FREE ABRASIVE BLASTING OR HIGH-PRESSURE WATER BLASTING. VERIFY THAT THE REINFORCING STEEL AND CONCRETE SURFACE ARE FREE FROM DIRT, OIL, CEMENT FINES (SLURRY), OR ANY MATERIAL THAT MAY INTERFERE WITH THE BOND OF THE REPAIR MATERIAL. INSPECT THE REPAIR CAVITY TO VERIFY THAT ALL DELAMINATIONS AND DETERIORATION HAVE BEEN REMOVED. FOLLOW ZINC-RICH EPOXY PROTECTIVE COATING MANUFACTURER'S RECOMMENDATIONS FOR STEEL SURFACE PREPARATION.

6. IF REINFORCING STEEL HAS LOST CROSS-SECTIONAL AREA, THE ENGINEER SHALL BE CONSULTED. REINFORCING STEEL SHALL BE REPAIRED BY EITHER REPLACING THE DAMAGED/DETERIORATED STEEL OR PLACING SUPPLEMENTAL REINFORCING STEEL IN THE AFFECTED SECTION. SUPPLEMENTAL REINFORCING STEEL MAY BE LAP-SPLICED OR MECHANICALLY SPLICED TO EXISTING REINFORCING STEEL. THE SUPPLEMENTAL REINFORCING STEEL SHALL EXTEND (LAP LENGTH) BEYOND THE DAMAGED/DETERIORATED AREA IN ACCORDANCE WITH ACI 318, "BUILDING CODE REQUIREMENTS FOR STRUCTURAL CONCRETE."

7. APPLY TWO COATS ZINC-RICH EPOXY PRIMER IN STRICT ACCORDANCE WITH MANUFACTURER'S RECOMMENDATIONS. APPLY FIRST COAT ENSURING THE BACK OF EXPOSED REINFORCING BARS ARE COMPLETELY COATED. APPLY SECOND COAT FOR COMPLETE COVERAGE OF SURFACE. ALLOW FIRST COAT TO COMPLETELY DRY BEFORE APPLYING SECOND COAT.

8. IMMEDIATELY PRIOR TO PLACING REPAIR MATERIAL, INSPECT REPAIR CAVITY TO VERIFY ALL BOND-INHIBITING MATERIALS (DIRT, CONCRETE SLURRY, LOOSELY BONDED AGGREGATES, OR ANY MATERIAL THAT MAY INTERFERE WITH THE BOND OF THE REPAIR MATERIAL TO THE EXISTING CONCRETE) HAVE BEEN REMOVED. IF BOND-INHIBITING MATERIALS ARE PRESENT, THE REPAIR CAVITY SHALL BE RECLEANED AS PREVIOUSLY DESCRIBED.

9. APPLY POLYMER MODIFIED CEMENTITIOUS REPAIR MORTAR IN STRICT ACCORDANCE WITH MANUFACTURER'S RECOMMENDATIONS.

254

SEAWALL REPAIR

THE PRIVATEER ON FORT MYERS BEACH
6500 ESTERO BOULEVARD
FORT MYERS BEACH, FLORIDA 33931

GENERAL NOTES

5

4

3

2

1

Rev.

Description

Status: ISSUE FOR CONSTRUCTION

Designed By:

Drawn By: O.Q.

Checked By: G.A.T.

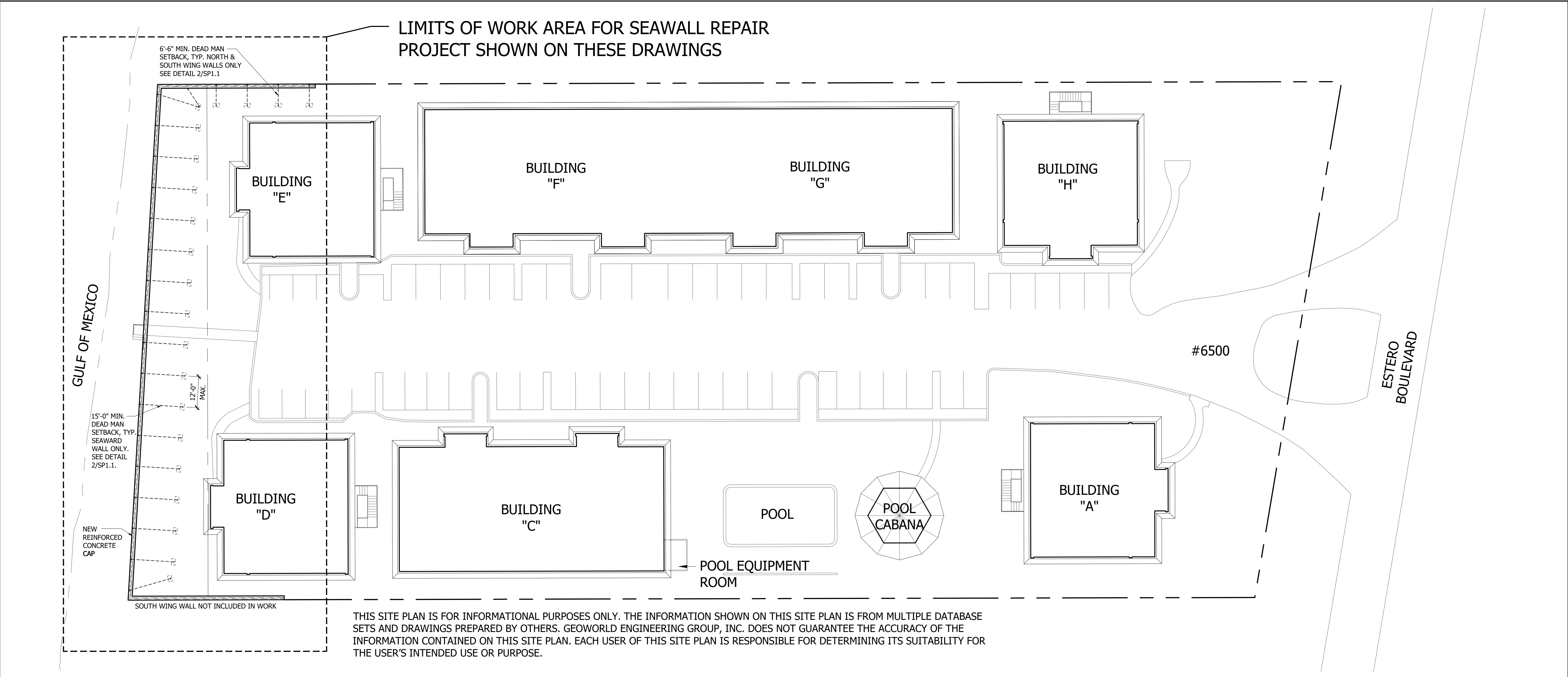
Date: 04-28-2024

George A. Tibedo, P.E.
FL P.E. Lic. #54291

Job No: 22-136
Sheet No:

S1.1

Page 36 of 673



SITE PLAN 1

SCALE: 1"= 20'-0"

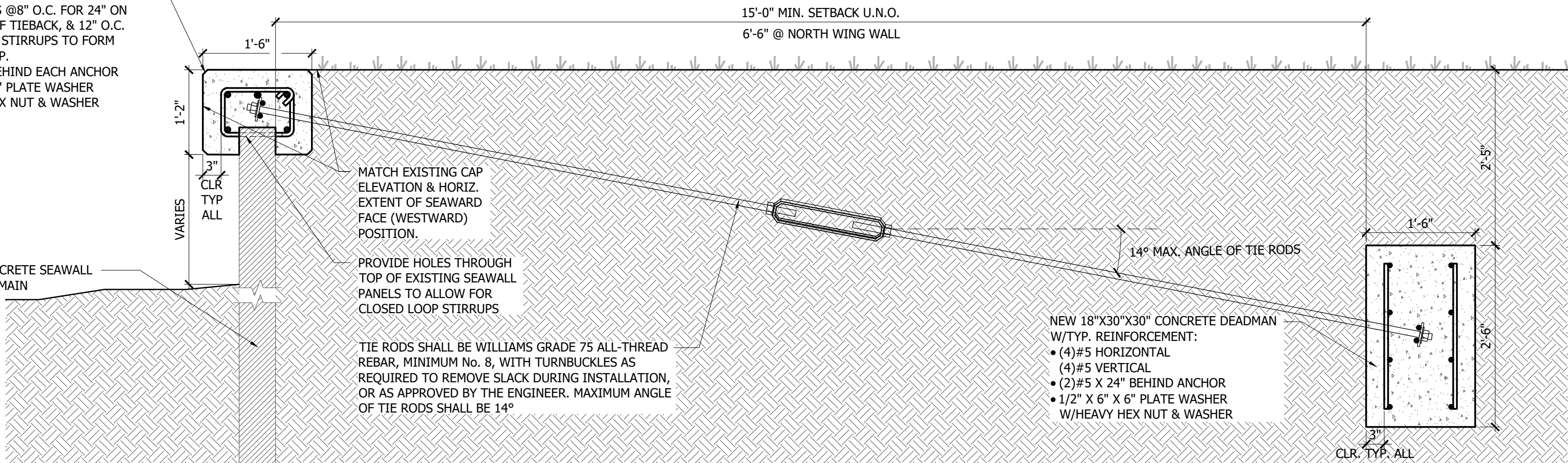
GENERAL NOTES:

- THIS PROJECT INVOLVES REPAIR OF AN EXISTING REINFORCED CONCRETE SEAWALL. THE ENGINEER HAS INSPECTED THE EXISTING CONCRETE SEAWALL PANELS TO REMAIN AND CERTIFIES THAT TO THE BEST OF ITS KNOWLEDGE THE PANELS ARE STRUCTURALLY SOUND AND MAY REMAIN. THUS THE NEW WORK SHOWN ON THESE DRAWINGS IS LIMITED TO THE NEW REINFORCED CONCRETE SEAWALL CAP, TIE RODS AND CONCRETE DEAD MAN ANCHORS.
- SEAWALL LENGTHS:
 - 200 FT ALONG WEST BOUNDARY
 - 61 FT ALONG NORTH BOUNDARY (AT BLDG E).
 - 60 FT. ALONG SOUTH BOUNDARY (AT BLDG D) (NOT INCLUDED IN WORK.)
- THE CONTRACTOR IS RESPONSIBLE FOR ENSURING THE STRUCTURAL INTEGRITY OF THE EXISTING CONCRETE SEAWALL PANELS, RELATED COMPONENTS, AND ALL OTHER STRUCTURES ONSITE TO REMAIN DURING ALL DEMOLISHION ACTIVITIES.
- EXISTING CONCRETE SEAWALL CAP SHALL BE DEMOLISHED IN ITS ENTIRETY, AND LEGALLY DISPOSED OF OFF SITE, WITH EXTREME CARE TO NOT CAUSE DAMAGE TO EXISTING CONCRETE SEAWALL PANELS TO REMAIN. SAWCUTTING SHALL BE DONE IN SUCH A MANNER SO AS TO AVOID CUTTING INTO THE EXISTING CONCRETE SEAWALL PANELS TO REMAIN.
- EXISTING STEEL TIE RODS AND CONCRETE DEAD MAN SHALL BE DEMOLISHED AND LEGALLY DISPOSED OF OFF SITE.
- ALL STEEL NOT EMBEDDED IN CONCRETE SHALL BE HOT DIPPED GALVANIZED.
- CONCRETE SHALL HAVE A MINIMUM COMPRESSIVE STRENGTH OF 5,000 PSI. AND MAXIMUM WATER/CEMENT RATIO OF 0.40.
- CONCRETE SHALL BE VIBRATED DURING PLACEMENT TO PREVENT HONEYCOMBS.
- STEEL TIE RODS SHALL BE WILLIAMS GRADE 75 ALL - THREAD No. 8 MIN. REBAR, AND HAVE A MINIMUM CLEAR CONCRETE COVER OF NO LESS THAN 3 INCHES.
- EXCAVATED BACKFILL SHALL BE STORED ONSITE AND REUSED, CLEAN AND FREE OF DEBRIS AND ALL OTHER DELETERIOUS MATERIALS, COMPACTED TO A MINIMUM OF 95% PER ASTM D-698.

NEW REINFORCED CONCRETE CAP:

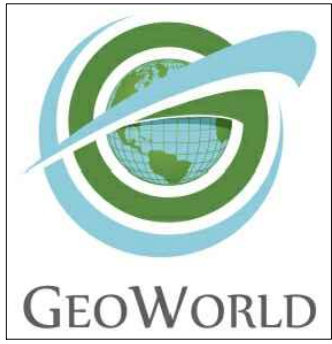
- (5)#6 CONTINUOUS
- #5 STIRRUPS @8" O.C. FOR 24" ON EACH SIDE OF TIEBACK, & 12" O.C. ELSEWHERE. STIRRUPS TO FORM CLOSED LOOP.
- (2)#5X24" BEHIND EACH ANCHOR
- 1/2" X 6" X 6" PLATE WASHER W/HEAVY HEX NUT & WASHER

EXISTING CONCRETE SEAWALL PANELS TO REMAIN



SEAWALL REPAIR DETAIL 2

SCALE: 3/4"= 1'-0"



GEOWORLD ENGINEERING GROUP, INC.

Engineering - Restoration
Planning - Recreation
Construction Administration
GeoWorld Project Assessment™(GPA)

227 McCoy Drive
Lake Placid, FL 33852

T: 863-699-0900
W: GeoWorldTeam.com

Florida Registry #32094

SEAWALL REPAIR
THE PRIVATEER ON FORT MYERS BEACH
6500 ESTERO BOULEVARD
FORT MYERS BEACH, FLORIDA 33931
SITE PLAN & DETAILS

Rev.	Description	Date
5		
4		
3		
2		
1		
Status: ISSUE FOR CONSTRUCTION		

Designed By:
Drawn By: O.Q.
Checked By: G.A.T.
Date: 04-28-2024

George A. Tibedo, P.E.
FL P.E. Lic. #54291

Job No: 22-136
Sheet No:

S-1.2

FAMILY UNIT	% OWNERSHIP	Owner Name	Strap #
A101	1.83	FELDMANN GARY	33-46-24-W3-0200A.1010
A103	1.83	LUCAS MORRIS D & MISTY	33-46-24-W3-0200A.1030
A201	1.72	WIMBERLY & WIMBERLY	33-46-24-W3-0200A.2010
A203	1.72	ALLEN KARLA F TR	33-46-24-W3-0200A.2030
A301	1.83	HAWLEY BRUCE &	33-46-24-W3-0200A.3010
A303	1.83	ROWE DONN A TR	33-46-24-W3-0200A.3030
C113	2.02	BELFORD JAMES R TR	33-46-24-W3-0200C.1130
C115	2.02	LEFRANCE JANICE S TR	33-46-24-W3-0200C.1150
C117	2.02	KIENHOLZ ANDREW EDWARD +	33-46-24-W3-0200C.1170
C119	2.02	O'CONNELL JOHN & JEAN	33-46-24-W3-0200C.1190
C213	2.02	RASH BRENDA L TR	33-46-24-W3-0200C.2130
C215	2.02	BREDBERG DOUGLAS J &	33-46-24-W3-0200C.2150
C217	2.02	M&D FLORIDA LLC	33-46-24-W3-0200C.2170
C219	2.02	WALTMAN MICHAEL & JEAN	33-46-24-W3-0200C.2190
D121	2.43	TRIPLE CROWN VACATION RENTALS	33-46-24-W3-0200D.1210
D123	2.43	RUDY MARLENE Y & JOEL	33-46-24-W3-0200D.1230
D221	2.43	HOOBLE NEIL E & SHERRY T	33-46-24-W3-0200D.2210
D223	2.43	SMITH RICHARD R TR	33-46-24-W3-0200D.2230
D321	2.64	WILKERSON ALAN R & RHONDA M	33-46-24-W3-0200D.3210
D323	2.64	MARTIN JOHN D & MARY A TR	33-46-24-W3-0200D.3230
E120	2.43	JEWETT HAROLD D TR	33-46-24-W3-0200E.1200
E122	2.43	KIRSCH HAROLD A & DIANE S TR	33-46-24-W3-0200E.1220
E220	2.43	WYSKIEL JEAN & STEPHANIE L/E	33-46-24-W3-0200E.2200
E222	2.43	KRUSE STACY & NORMAN TR	33-46-24-W3-0200E.2220
E320	2.64	OSUCHOWSKI WILLIAM & SHARON	33-46-24-W3-0200E.3200
E322	2.64	BARACUTEY LLC	33-46-24-W3-0200E.3220
F112	2.02	WALSH TERRENCE A &	33-46-24-W3-0200F.1120
F114	2.02	HOLZENDOFT RUTH EVANS TR	33-46-24-W3-0200F.1140
F116	2.02	SNEDDON JOY B TR	33-46-24-W3-0200F.1160
F118	2.02	WIEN DAVID P & JANICE K	33-46-24-W3-0200F.1180
F212	2.02	HOSKINS BRIAN K & SUSAN B	33-46-24-W3-0200F.2120
F214	2.02	HENRY KATHRYN & TED	33-46-24-W3-0200F.2140
F216	2.02	3RC BUTTERCUP LLC	33-46-24-W3-0200F.2160
F218	2.02	GENZINK RETHA	33-46-24-W3-0200F.2180
G104	2.02	PELLETIER SCOTT & JUDY TR	33-46-24-W3-0200G.1040
G106	2.02	BARTLETT ROBERT M & LILA F	33-46-24-W3-0200G.1060
G108	2.02	FLORY SUSAN E TR	33-46-24-W3-0200G.1080
G110	2.02	WALLIS LISA S TR	33-46-24-W3-0200G.1100
G204	2.02	RICHARDSON JACK D & DONNA L	33-46-24-W3-0200G.2040
G206	2.02	SCHMIDT MARTIN S	33-46-24-W3-0200G.2060
G208	2.02	DELANEY GARY L & KATHRYN TR	33-46-24-W3-0200G.2080
G210	2.02	ALVES A DACOSTA & SANDRA J	33-46-24-W3-0200G.2100
H100	1.83	KNIBBE DAVID J & GAYLE E	33-46-24-W3-0200H.1000

H102	1.83 RUSSELL WILLIAM G IV &	33-46-24-W3-0200H.1020
H200	1.72 BROUGHER DOUGLAS E &	33-46-24-W3-0200H.2000
H202	1.72 GIERSEWSKI STEPHEN T TR	33-46-24-W3-0200H.2020
H300	1.72 ZDEB DIANE D TR	33-46-24-W3-0200H.3000
H302	1.83 GREIG LUCIA	33-46-24-W3-0200H.3020



Town of Fort Myers Beach
Community Development Services - Planning Division
2731 Oak St,
Fort Myers Beach, FL 33931

NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

Notice is hereby given that the Local Planning Agency/ Town Council of the Town of Fort Myers Beach will be conducting a public hearing at the Town Hall Council Chambers located at 2731 Oak St, Fort Myers Beach, Florida, 33931.

TIME: 9 AM- LPA and 6 PM-Town Council
DATE: LPA September 3rd, 2024 (9AM), Town Council September 23d, 2024 (6PM)
CASE: SEZ20240200
ADDRESS: 6500/6502 Estero Blvd
APPLICANT: Stokes Marine on behalf of Privateer of Fort Myers Beach
REQUEST: Requesting a special exception for the rebuilding of an existing retaining wall.

TOWN CONTACT: JUDITH FRANKEL jfrankel@fmbgov.com

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence. At this hearing, the **Local Planning Agency/ Town Council** will review the application materials and hear testimony to make a **recommendation/decision**. Complete records or transcripts of the proceedings are not provided by the Town.

Copies of the application and staff report are available for viewing at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you need reasonable accommodation, contact Town Hall at 239-765-0202.



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Community Development Services - Planning Division
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Town of Fort Myers Beach
2731 Oak St,
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
2731 Oak St,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

Town of Fort Myers Beach
2731 Oak St,
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
2731 Oak St,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

This is a first part of a two-part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit a complete Public Hearing application with required, supplemental information, exhibits and documents to zoningpermits@fmbgov.com. Please do not submit the instructions at the end of the application.

Site Address: 6500/6502 ESTERO BLVD FORT MYERS BEACH FL 33931

STRAP Number: 33-46-24-W3-02000.00CE

Applicant: Stokes Marine Inc. Phone: 239-215-4048

Contact Name: John Siekmann Phone: 239-215-4048

Email: permitting@stokesmarine.com Fax: na

Current Zoning District: RM

Future Land Use Map (FLUM) Category: Mixed Residential

FLUM Density Range: Unkown Platted Overlay: ☒ YES ☐ NO

ACTION REQUESTED

☒ Special Exception

☐ Variance

☐ Conventional Rezoning

☐ Planned Development ☐ Commercial ☐ Residential

☐ Master Concept Plan Extension

☐ Appeal of Administrative Action

☐ Vacation of Platted Right-of-way and Easement

☐ Other – cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

PH-A

PH-B

PH-C

PH-D

PH-E

PH-F

PH-G

attach on separate sheet

PART I – General Information

A. Applicant*: John Siekmann / Stokes Marine Inc. Phone: 239-215-4048

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.*

Please see PART III to complete the appropriate Affidavit form for the type of applicant.

Applicant Mailing Address: 15955 Pine Ridge Rd Fort Myers FL 33908

Email: permitting@stokesmarine.com Fax: na

Contact Name: John Siekmann Phone: 239-215-4048



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

- | | | |
|--|---|--|
| ☐ Owner* | ☐ Land Trust* | ☐ Partnership* |
| ☐ Corporation* | ☐ Association* | ☐ Condominium* |
| ☐ Subdivision* | ☐ Timeshare Condo* | ☐ Contract Purchaser* |
| ☒ Authorized Representative* ☐ Other* (please indicate) _____ | | |

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.
Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

C. Authorized Agent(s). Please list the name of Agent authorized to receive correspondence Agents

Name: John Siekmann Phone: 239-215-4048
Address: 15955 Pine Ridge Rd Fort Myers FL 33908
Email: permitting@stokesmarine.com Fax: na

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: _____ Phone: _____
Address: _____
Email: _____ Fax: _____

Name: _____ Phone: _____
Address: _____
Email: _____ Fax: _____

PART II – Nature of Request

Requested Action (each request requires a separate application)

- ☒ Special Exception
- ☐ Variance from LDC Section _____ - _____
- ☐ Conventional Rezoning from _____ to _____
- ☐ Planned Development
- ☐ Rezoning from _____ to ☐ Commercial PD ☐ Residential PD
- ☐ Amendment. List the project number: _____
- ☐ Extension/reinstatement of Master Concept Plan. List project number: _____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

- ☐ Appeal of Administrative Action
- ☐ Vacation ☐ Right-of-Way ☐ Easement
- ☐ Other. Please Explain: _____
- _____
- _____

PART III – Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

Code Section: _____ Description: _____

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV – Property Ownership (Single Owner)

☐ Single Owner (individual or husband and wife)

Name: _____ Phone: _____

Mailing Address: _____

Email: _____ Fax: _____

AFFIDAVIT APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, _____ swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;

All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

I have authorized the staff of the Town of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that

The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Signature

Printed Name

STATE OF _____ COUNTY OF _____

The foregoing instrument was certified and subscribed before me by means of ____ physical

presence OR ____ online notarization, this ____ day of _____, 20____, by

_____, ☐ who is personally known to me OR ☐ who has produced

_____ as identification.

(SEAL)

Notary Public Signature

PART V

Property Ownership (Multiple Owners)

☒ Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)

- ☒ Complete Disclosure of Interest Form (see below)
- ☒ Attach list of property owners as Exhibit 5-1
- ☐ Attach map showing property owners interests as Exhibit 5-2 (for multiple parcels)
- ☒ For condominiums and timeshares see Explanatory Notes Part V - Exhibit 5-3
- ☐ Letter of Opinion - Exhibit 5-4

DISCLOSURE OF OWNERSHIP INTEREST

If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address

Percentage Ownership



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address and Office

Percentage of Stock

See attached Exhibit 5-1 for list of owners and % of ownership. This also includes

a list of the legal signers for The Privateer of Fort Myers Beach Inc.

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address

Percentage of Interest

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address

Percentage of Ownership

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office

Percentage of Stock



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Date of Contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

Name	Address
na	na
_____	_____
_____	_____
_____	_____

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

_____	_____
Signature	Printed Name

AFFIDAVIT

APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.), LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE

I, Michael Waltman (name), as President (title)
of THE PRIVATEER OF FT MYERS BEACH INC (company), swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.



COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING

THE PRIVATEER OF FORT MYERS BEACH, INC.

Name of Entity (corporation, partnership, LLP, LLC, etc)

Michael Waltman
Signature

Michael Waltman

Typed or Printed Name

President

Title

Date

STATE OF FL COUNTY OF Lee

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence OR ☐ online notarization, this 12 day of July, 2024, by

Michael Waltman ☐ who is personally known to me OR ☒ who has produced

FL Drivers Lic. as identification.

ERIC WEXLER
NOTARY PUBLIC - STATE OF NEW YORK
Seal NO. 01WE6399987
QUALIFIED IN NASSAU COUNTY
COMMISSION EXPIRES NOVEMBER 4, 2027

Eric Wexler
Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 33-46-24-W3-02000.00CE

Property Address: 6500/6502 ESTERO BLVD FORT MYERS BEACH FL 33931

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee County? ☒ No. Attach a legible copy of the legal description as Exhibit 6-1.

☐ Yes. Property identified in subdivision: _____

Book: _____ Page: _____ Unit: _____ Block: _____ Lot(s): _____

B. Boundary Survey:

☒ Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 6-2.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 202 feet
Depth (please provide an average width if irregular in shape) 493 feet
Frontage on street: 202 feet. Frontage on waterbody: 202 feet
Total land area: 99,586 ☐ acres ☒ square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

Property is located 2.01 miles north of Big Carlos Pass Bridge on the East side
of Estero Blvd.

☒ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

- ☐ There are no deed restrictions and/or covenants on the subject property.
☒ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 6-4.
☒ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

- ☒ Attach a list of surrounding property owners within 500 feet as Exhibit 6-6.
☒ Attach a map showing the surrounding property owners as Exhibit 6-7.
☒ Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

- | | |
|---|--|
| ☐ Low Density | ☐ Marina |
| ☒ Mixed Residential | ☐ Recreation |
| ☐ Boulevard | ☐ Wetlands |
| ☐ Pedestrian Commercial | ☐ Platted Overlay |



Case# _____

Date Received: _____

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-A

Additional Required Information for a Special Exception Application

This is the second part of a two-part application. This part requests specific information for a special exception. Include this form with the Request for Public Hearing form.

Project Name: The Privateer of Fort Myers Beach Inc- Seawall cap repair
Authorized Applicant: John Siekmann / Stokes Marine Inc.
LEPA STRAP Number(s): 33-46-24-W3-02000.00CE

Current Property Status:
Current Zoning: RM
Future Land Use Map (FLUM) Category: Mixed Residential
Platted Overlay? ☐ yes ☒ no FLUM Density Range: Unkown

Requested Action:

☐ Use of premises in the EC (Environmentally Critical) zoning district for:
Existing seawall has been in place since the 1970s and is in place for stabilizing
sands in the uplands.
☐ Use of premises in the _____ zoning district for:



Case# _____

Date Received: _____

PART I
Narrative Statements

A. Request for: (indicate the proposed use that requires a special exception)

Please see attached page at bottom for response.

B. Reasons for request: (state how the property qualifies for a special exception and what impact granting the request could have on surrounding properties. Direct these statements toward the guidelines in LDC Section 34-88)

The property qualifies for a Special Exception because:
Please see attached page at bottom for response.



Please see attached page at bottom for response.

Page 52 of 673



STOKES MARINE, INC.
15955 Pine Ridge Road
Fort Myers FL 33908
Office: 239 489-DOCK (3625)
Website: www.STOKESMARINE.com

7/17/2024

**Supplement PH-A
Narrative Statements**

A. Request for: (indicate the proposed use that requires a special exception)

The proposed use that requires this special exception request is an existing seawall within the Environmentally Critical (EC) zoning district that is in need of maintenance after Hurricane Ian damaged the property. The existing seawall cap needs to be repaired while the existing seawall will remain in place. Based on historic aerials, this seawall has been in place since the early 1970s. This special exception request is to allow for the repair of the existing seawall cap that is located within the EC zoning district. Any type of development within the EC zoning district requires a special exemption to be approved. We applied for the construction permit for this project, and it has been assigned permit # 241515. We are concurrently applying for the required Coastal Construction Control Line (CCCL) Permit with the Department of Environmental Protection (DEP) as well for this proposed work scope.

B. Reasons for request: (state how the property qualifies for a special exception and what impact granting the request could have on surrounding properties. Direct these statements toward the guidelines in LDC Section 34-88)

This wall has been in place for approximately 50 years based on historic aerials. 1972 is the first aerial you can see the location of this existing seawall. (see aerials below.) As mentioned above, any development work inside the EC zoning district requires this special exemption to be approved. The existing wall has been in place and maintained since it was originally constructed. Hurricane Ian impacted Fort Myers Beach on September 28th 2022 and caused heavy damage the property including the existing seawall cap.

In Section 34-88 of the Land Development code, #1 in the list of considerations required for a special exemption to be approved asks “Whether there exist changed or changing conditions which make approval of the request appropriate.” The impact from Hurricane Ian addresses the changed condition to this site that requires this work scope to be performed.

#5 in the list of considerations asks, “Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.” In the Fort Myers Beach Comprehensive Plan, Policy 5-D-1 addresses shoreline protection measures. In item (ii) it states that “existing structures should be maintained.” Further below in the same policy under item (vi) it states, “Existing seawalls on the beach may be maintained or removed but not rebuilt.” The proposed work scope for this special exemption is to repair the seawall cap “like for like”. This is considered

maintenance for a seawall. The seawall itself will not be removed, replaced or altered in any fashion. Only the seawall cap is to be repaired. The proposed work scope is in harmony with the Fort Myers Beach Comprehensive Plan.

#6 in the list of considerations asks, *“Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.”* The proposed work scope we submitted with our construction permit includes signed sealed engineered plans that are based on the 2023 Florida Building Code, ASCE/SEI 24 flood resistant design and construction, ASCE 7-22 minimum design loads and associated criteria for buildings and other structures, ACI 318 building code requirements for structural concrete, and U.S. Army Corps of Engineers Engineering and Design Manual EM 1110-2-1614 design of coastal revetments, seawalls, and bulkheads. The proposed work scope is to replace the existing seawall cap “like for like” to what was existing. No changes to the location or size of the seawall are proposed. The proposed work scope meets or exceeds all performance and location standards set forth for the proposed use.

#7 in the list of considerations asks, *“Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.”* The proposed work scope to repair the existing concrete seawall cap will preserve the existing environmentally critical areas as the seawall cap is an integral part of a seawall’s stability. The seawall cap is what ties the existing seawall panels, tie rods and Deadman anchors all together into one sound structure. Not allowing the seawall cap to be repaired will leave the seawall in jeopardy of failing. If the seawall fails, the uplands sands and soils will sluff off and erode into the neighboring environmentally critical areas. The uplands of the seawall are at a higher elevation than the surrounding area. This seawall is what maintains the current elevation of this property. This is why this proposed request will help preserve and protect the environmentally critical areas at this location.

#8 in the list of considerations asks, *“Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.”* This request is compatible with the existing use and will not cause damage, hazard, nuisance or detriment to the persons or property. This seawall has been in place for 50+ years and the proposed work scope is a repair to the existing seawall cap in a “like for like” fashion where no changes to the location or size are proposed. The proposed work scope will not change or alter the existing use of the property or structure.

#9 in the list of considerations asks, *“Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.”*

As explained in the above examples, this proposed work scope meets all the required considerations to be approved for a special exception that is required for this zoning district. Pursuant to the Fort Myers Beach Land Development Code Section 26-77- Seawalls and retaining walls along natural waterbodies. (d) states that, *“Existing seawalls and retaining walls along the Gulf of Mexico may be maintained, but may not be rebuilt.”* As explained above, this is in line with the Fort Myers Beach Comprehensive Plan Policy 5-D-1. The proposed work scope to repair the seawall cap is considered maintenance for a seawall. The seawall itself is to remain in place and will not be removed, replaced or altered in any fashion. Only the seawall cap will be repaired in a “like for like” fashion.

Granting the requested Special Exception could impact surrounding properties as follows:

Granting approval of the proposed work scope to repair the seawall cap will not impact surrounding properties in any fashion. The existing seawall has been in place for 50+ years. The requested repair and

maintenance of this seawall cap is in a “like for like” fashion. No additions, alterations or enhancements are proposed to the existing seawall.

Historic South Florida Imagery Slider App



1953 Lee 1968 Lee 1972 Lee 1975 Lee 1979 Lee 1986 Lee 1990 Lee 1952 Charlotte 1977 Collier

 1945 Monroe 1955 Monroe 1971 Monroe 1973 Monroe 1981 Monroe 1985-86 Monroe 2004 Monroe



Historic South Florida Imagery Slider App



1953 Lee 1968 Lee 1972 Lee 1975 Lee 1979 Lee 1986 Lee 1990 Lee 1952 Charlotte 1977 Collier

1945 Monroe 1955 Monroe 1971 Monroe 1973 Monroe 1981 Monroe 1985-86 Monroe 2004 Monroe

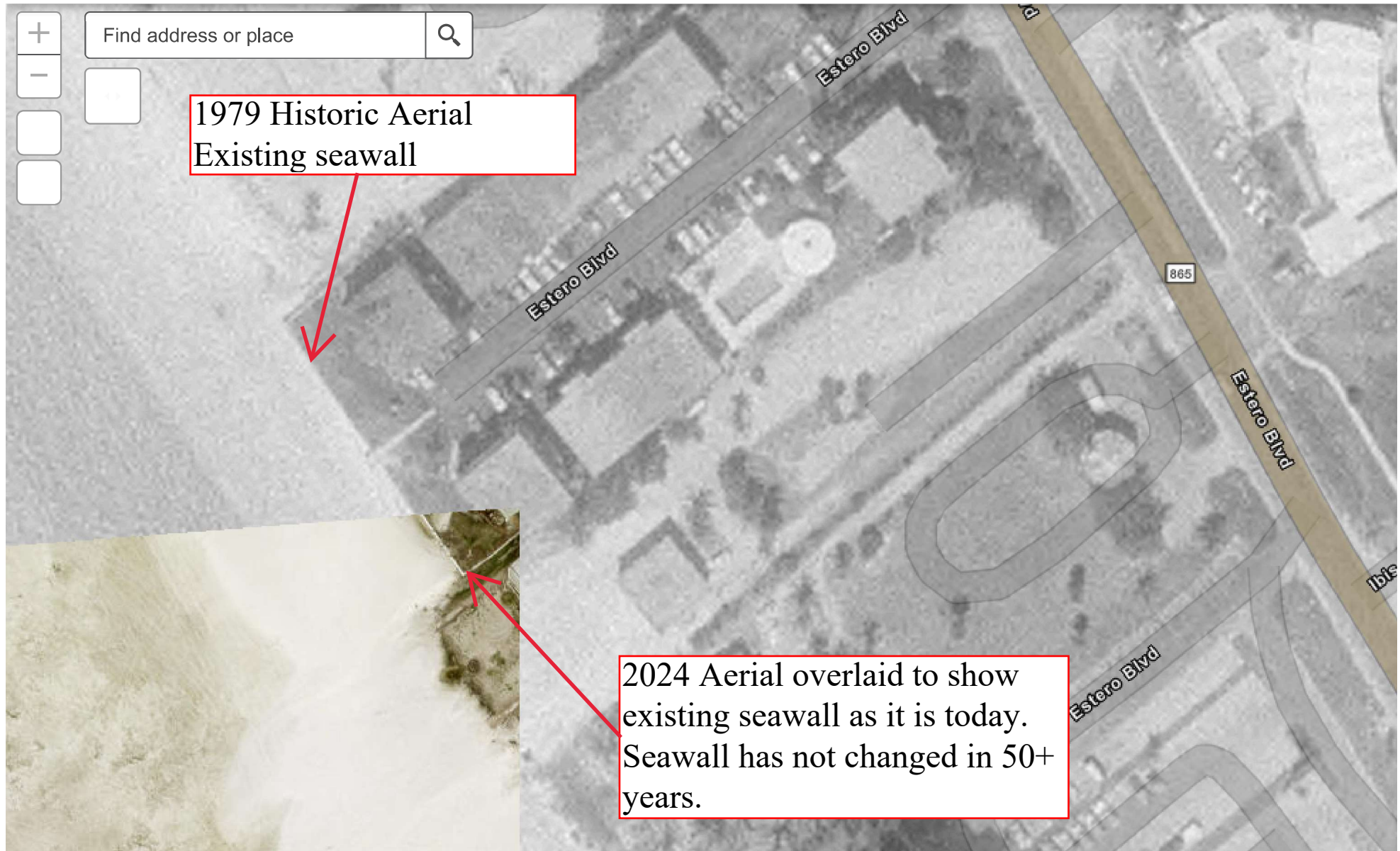


Historic South Florida Imagery Slider App



1953 Lee 1968 Lee 1972 Lee 1975 Lee 1979 Lee 1986 Lee 1990 Lee 1952 Charlotte 1977 Collier

1945 Monroe 1955 Monroe 1971 Monroe 1973 Monroe 1981 Monroe 1985-86 Monroe 2004 Monroe



No Amendment See DP 721/375

64.25

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414 PAGE 32

439049

ENABLING DECLARATION

OF

COVENANTS, RESTRICTIONS, LIMITATIONS, CONDITIONS

AND USES CREATING AND ESTABLISHING A PLAN

for

THE PRIVATEER OF FORT MYERS BEACH, INC.,

A CONDOMINIUM

THIS DECLARATION, made on the date hereinafter set forth by
AARON W. JOHNSON, INC., hereinafter referred to as "DECLARANT",

WITNESSETH:

WHEREAS, DECLARANT, a Florida corporation, owns certain real
property herein described; and,

WHEREAS, DECLARANT has improved or will improve said prop-
erty by constructing thereon six (6) multi-family structures,
known as THE PRIVATEER OF FORT MYERS BEACH, INC., said structures
having been or to be constructed basically in accordance with the
plans and specifications prepared by NELSON A. FAERBER, A.I.A.,
Architect, under Job No. 64-115, dated July 1, 1964.

WHEREAS, DECLARANT proposes to establish by this Declaration
a plan for the individual ownership of the area or space contained
in the "FAMILY UNITS" in said multi-family structures, and the co-
ownership by the individual and separate owners thereof, of all
the remaining real property which is hereinafter defined and
referred to herein as the "common areas and facilities";

NOW, THEREFORE, DECLARANT, a Florida corporation, and fee
owner of the following described land situate, lying and being
in the County of Lee and State of Florida, to-wit:

A lot or parcel of land lying between Estero
Boulevard and the Gulf of Mexico in Sections
33 and 34, Township 46 South, Range 24 East,
Estero Island, Lee County, Florida, which lot or
parcel is described as follows: Beginning at a
point on the westerly side of Estero Boulevard,
said point being 1,140 feet (measured along a
line perpendicular to the South line of Block 1,
McPHIE PARK, Unit No. 2 according to plat re-
corded in Plat Book 8 at page 59 of the public
records of Lee County, run southeasterly along
the southwesterly line of said Estero Boulevard
for 202.08 feet; thence run southwesterly parallel
with said South line of Block 1 for 490 feet more
or less to the waters of the Gulf of Mexico; thence
run northwesterly along said waters to an inter-
section with a line parallel with and 1140 feet
(measured along a line perpendicular to said Block
1) southeasterly of said Block 1, passing through
the point of beginning; thence run northeasterly
along said parallel line to said southwesterly line
of Estero Boulevard and the point of beginning,

ROBERTA WATSON,
TAYLOR AND FRISBY
ATTORNEYS AT LAW
FORT MYERS, FLORIDA

6-444-33

hereby make the following Declaration as to the division to which the above described real property and improvements thereon, consisting of six (6) multi-family structures and appurtenances, may be put, hereby specifying that Declaration shall constitute covenants to run with the land and shall be binding upon DECLARANT, its successors and assigns, and all subsequent owners of all or any part of said real property and improvements, together with their grantees, successors, heirs, executors, administrators, devisees or assigns;

I. DECLARANT, in order to establish a plan of ownership for the above described property and improvements, hereby covenants and agrees that it will and by these presents does hereby divide the said real property in forty-eight (48) separately designated, legally described freehold estates, consisting of the areas or spaces contained in and bounded by the vertical projection of the unit boundary lines and the horizontal planes of the floor and ceiling elevation, as described by the attached plot plan prepared by DUANE HALL AND ASSOCIATES, Fort Myers, Florida, and certified to by DUANE HALL, Registered Surveyor No. 1415, State of Florida, and Registered Engineer No. 7250, State of Florida, which is made a part hereof and referred to as Exhibit B. Such descriptions reflect the true boundaries of each unit, notwithstanding actual location of the walls, ceilings, and floors. The said spaces being defined are referred to herein as "FAMILY UNITS"; and hereby attaches to each "FAMILY UNIT" an undivided one-forty-eighth (1/48th) interest in an estate consisting of all the real property heretofore described, less and excepting therefrom the "FAMILY UNITS" hereinabove referred to, which estate is hereby defined and referred to herein as the "common areas and facilities", which definition shall include the multi-family structure and the property upon which it is located and specifically includes but is not limited to, the land, roof, main walls, slabs, staircases, halls, guest parking spaces, manager's apartment, community and commercial facilities, pumps, wires, conduits, plumbing and other public utility lines, which shall pass with each unit as an appurtenance thereto.

II. That portion of the "common areas and facilities" consisting of forty-eight (48) parking spaces, all of which are shown and located on survey attached hereto, are collectively defined and hereinafter referred to as the "restricted common areas and facilities".

III. This Condominium is hereby divided into forty-eight (48) "FAMILY UNITS" designated as follows:

A 101, A 103, A 201, A 203, A 301, A 303,
C 113, C 115, C 117, C 119, C 213, C 215, C 217,
C 219
D 121, D 123, D 221, D 223, D 321, D 323
E 120, E 122, E 220, E 222, E 320, E 322
F 112, F 114, F 116, F 118, F 212, F 214,
F 216, F 218
G 104, G 106, G 108, G 110, G 204, G 206, G 208,
G 210
H 100, H 102, H 200, H 202, H 300, H 302

"FAMILY UNITS" shall hereafter be identified, and for purposes of conveyance, described as:

Family Unit No. , according to the Condominium Declaration of THE PRIVATEER OF FORT MYERS BEACH, INC., a Condominium, as such Condominium Declaration

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ATTORNEYS AT LAW
FORT MYERS, FLORIDA

- 2 -

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is recorded in the Public Records of Lee County
Florida, in Official Record Book at page .

Each "FAMILY UNIT" shall be assigned one (1) particular parking space for its exclusive use at the time of the first conveyance of said "FAMILY UNIT" by DECLARANT, and thereafter the right to use such parking space shall automatically pass with such "FAMILY UNIT".

IV. The undivided one forty-eight (1/48th) interest in the "common areas and facilities" hereby established shall pass with respective "FAMILY UNITS" as set forth hereinabove, as an appurtenance thereto.

The respective undivided interest to be conveyed with the respective "FAMILY UNITS" cannot be changed, altered or amended, and the Grantor herein, for itself and its successors and assigns, covenants and agrees that the undivided interest in the "common areas and facilities", and the fee simple title to the respective "FAMILY UNITS" conveyed therewith, shall not be separated or separately conveyed, and each said undivided interest shall be deemed to be conveyed or encumbered, though the description in the instrument of conveyance or encumbrance may refer to said interest as the "FAMILY UNIT" only.

V. THE PRIVATEER OF FORT MYERS BEACH, INC., a non-profit Florida corporation, hereinafter referred to as the "CORPORATION", shall issue no shares of stock of any kind whatsoever. The owner of each "FAMILY UNIT" shall be issued a certificate of ownership and shall be entitled to one (1) vote at all meetings of the CORPORATION. If ownership is held by more than one (1) person then such ownership collectively shall be entitled to only one (1) vote, which vote may be cast by anyone of such owners as agent for all such owners.

VI. Attached hereto is Plot Plan prepared by DUANE HALL and ASSOCIATES of Fort Myers, Florida, and certified to by DUANE HALL, Registered Land Surveyor No. 1415, State of Florida, and registered Engineer No. 7250, State of Florida, which is made a part hereof and referred to as Exhibit "B". The designation and numbered parking spaces of the "restricted common areas and facilities", are located and shown on said Plot Plan.

VII. DECLARANT, a Florida corporation, its successors and assigns, and all future owners of the "FAMILY UNITS" by the acceptance of their deeds, covenant and agree as follows:

A. That the "common areas and facilities" shall remain undivided and no owner shall bring any action for partition, so long as the structures in question shall be utilized as a residential, condominium apartment building.

B. The "FAMILY UNIT" herein defined shall be occupied and used by the respective owners, other than DECLARANT, only as a private dwelling for the owner, his family, tenants and social guests, and for no other purpose. DECLARANT shall be permitted to use any "FAMILY UNIT" owned by it as an office, for storage, or for any other unoffensive purpose.

C. The owner of the respective "FAMILY UNIT" shall not be deemed to own the undecorated and/or unfinished surfaces of the perimeter walls, floors, and ceilings surrounding his respective "FAMILY UNIT", nor shall owner be deemed to own pipes, wires, conduits, or other public utility lines running through

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- 3 -

EX 414 35

said respective "FAMILY UNIT", which are utilized for, or serve more than one (1) "FAMILY UNIT", which items are by these presents hereby made a part of the "common areas and facilities". Said owner, however, shall be deemed to own the walls and partitions which are contained in said owner's respective "FAMILY UNIT" and also shall be deemed to own the inner decorated and/or finished surfaces of the perimeter walls, floors and ceilings, including paint, wallpaper, et cetera.

D. The owners of the respective "FAMILY UNITS" agree that, if any portion of the "common areas and facilities" encroaches upon the "FAMILY UNIT" or if one or more "FAMILY UNIT" encroaches upon another "FAMILY UNIT", a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist. In the event any multi-family structure is partially or totally destroyed and then rebuilt, the owners of the "FAMILY UNITS" agree that the encroachments of parts of the "common areas and facilities", or encroachment of one "FAMILY UNIT" upon another "FAMILY UNIT", due to construction shall be permitted, and that a valid easement for said encroachments and the maintenance thereof shall exist.

E. That an owner of a "FAMILY UNIT" shall automatically, upon becoming the owner of a "FAMILY UNIT" or "FAMILY UNITS", be a member of the Corporation, be issued a Certificate of Ownership therein, and remain a member of said Corporation until such time as his "FAMILY UNIT" ownership ceases for any reason, at which time his membership in said Corporation shall automatically cease.

F. That the owners of the "FAMILY UNITS" covenant and agree that the administration of the Condominium shall be in accordance with the provisions of this Enabling Declaration and the Declaration of Restrictions and By-Laws of the Corporation, which are made a part hereof and attached as Exhibit C.

G. That each owner or occupant of a "FAMILY UNIT" shall comply with the provisions of this Enabling Declaration, the Declaration of Restrictions and By-Laws, decisions and resolutions of the Corporation as lawfully amended from time to time, and failure to comply with any such provisions, decisions or resolutions shall be grounds for an action to recover sums due for damages, or for injunctive relief.

H. Except as to matters contained in the Declaration of Restrictions and the By-Laws of the Corporation, this Enabling Declaration shall not be revoked or any of the provisions herein amended unless all of the owners of the "FAMILY UNITS" and all of the mortgagees holding mortgages covering the "FAMILY UNITS" unanimously agree to such revocation or amendment by duly recorded instrument. The Declaration of Restrictions and By-Laws of the Corporation may be amended as set forth in Article X of the Declaration of Restrictions and By-Laws.

I. The owner of each "FAMILY UNIT" shall pay annual assessments to provide any insurance, maintenance, taxes, care, upkeep, utilities and all other necessary expenditures, as determined by the Condominium pursuant to the Declaration of Restrictions and By-Laws. Said payments shall be, in advance, on the first day of every calendar month. The common expenses shall be shared and the common surplus shall be owned in the proportions designated and assigned to the respective "FAMILY UNITS" in accordance with the Schedule of Family Unit Values For the Purpose Of Assessment And Valuations, which is made a part hereof and attached as Exhibit A.

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ATTORNEYS AT LAW
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FORT WORTH, TEXAS

- 4 -

414-33

1. The corporation is hereby given a lien against each "FAMILY UNIT" securing payment or payments required in the preceding paragraph, provided, however, that such liens shall be effective only upon recordation in the office of the Clerk of the Circuit Court in and for Lee County, Florida.

2. No owner of a "FAMILY UNIT" may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the "common areas and facilities", or by the abandonment of his "FAMILY UNIT".

J. In a voluntary conveyance of a "FAMILY UNIT", the grantees of the said unit shall be jointly and severally liable with the grantor for any unpaid assessments of the Corporation against the latter for his share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the Board of Directors of the Corporation setting forth the amount of the unpaid assessments against the grantor due the Corporation, and such grantee shall not be liable for, nor shall the "FAMILY UNIT" conveyed be subject to a lien for any unpaid assessments made by the Corporation against the grantor in excess of the amount therein set forth.

K. If any part or all of a building shall be damaged or destroyed, the Corporation shall, within ninety (90) days after such damage or destruction, determine:

1. To repair, reconstruct or rebuild in accordance with the By-Laws, or
2. Terminate the Condominium ownership in accordance with the provisions of Section 711.16, Florida Statutes.

If neither determination is made within the said ninety (90) day period, the building shall be promptly repaired, reconstructed or rebuilt.

L. In order to maintain a community of congenial residents who are financially responsible and thus protect the value of the "FAMILY UNITS", the transfer of "FAMILY UNITS" by any owner other than the DECLARANT shall be subject to the following provisions as long as the condominium exists and the apartment buildings in useful condition exist upon the land, which provisions each apartment owner covenants to observe:

1. Transfers subject to approval.
 - a. Sale. No apartment owner may dispose of a "FAMILY UNIT" or any interest in a "FAMILY UNIT" by sale without approval of the Corporation except to a "FAMILY UNIT" owner.
 - b. Lease. No "FAMILY UNIT" owner may dispose of a "FAMILY UNIT" or any interest in a "FAMILY UNIT" by lease without approval of the Corporation except to a "FAMILY UNIT" owner.
2. Approval by Corporation. The approval of the Corporation that is required for the transfer or ownership

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ORLANDO, FLORIDA

- 5 -

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of "FAMILY UNITS" shall be obtained in the following manner:

a. Notice to Corporation.

- (1) Sale. A "FAMILY UNIT" owner intending to make a bona fide sale of his "FAMILY UNIT" or any interest in it shall give to the Corporation notice of such intention, together with the name and address of the intended purchaser and such other information concerning the intended purchaser as the Corporation may reasonably require. Such notice at the "FAMILY UNIT" owner's option may include a demand by the "FAMILY UNIT" owner that the Corporation furnish a purchaser of the "FAMILY UNIT" if the proposed purchaser is not approved; and if such demand is made, the notice shall be accompanied by an executed copy of the proposed contract to sell, which shall set forth the sales price.
- (2) Lease. A "FAMILY UNIT" owner intending to make a bona fide lease of his "FAMILY UNIT" or any interest in it shall give to the Corporation notice of such intention, together with the name and address of the intended lessee, such other information concerning the intended lessee as the Corporation may reasonably require and an executed copy of the proposed lease.
- (3) Failure to give notice. If the above-required notice to the Corporation is not given, then at any time after receiving knowledge of a transaction or event transferring ownership or possession of a "FAMILY UNIT", the Corporation at its election and without notice may approve or disapprove the transaction or ownership. If the Corporation disapproves the transaction or ownership, the Corporation shall proceed as if it had received the required notice on the date of such disapproval.

b. Certificate of approval.

- (1) Sale. If the proposed transaction is a sale, then within thirty (30) days after receipt of such notice and information the Corporation must either approve or disapprove the proposed transaction. If approved, the approval shall be stated in a certificate executed by the president and secretary of the Corporation.
- (2) Lease. If the proposed transaction is a lease, then within thirty (30) days after receipt of such notice and information the Corporation must either

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414 33

approve or disapprove the proposed transaction. If approved, the approval shall be stated in a certificate executed by the president and secretary of the Corporation which, shall be delivered to the lessee.

3. Disapproval by Corporation. If the Corporation shall disapprove a transfer or ownership of a "FAMILY UNIT", the matter shall be disposed of in the following manner:

a. Sale. If the proposed transaction is a sale and if the notice of sale given by the "FAMILY UNIT" owner shall so demand, then within thirty (30) days after receipt of such notice and information the Corporation shall deliver or mail by registered mail to the "FAMILY UNIT" owner an agreement to purchase the "FAMILY UNIT" by a purchaser approved by the Corporation who will purchase and to whom the "FAMILY UNIT" owner must sell the "FAMILY UNIT" upon the following terms:

- (1) The price to be paid shall be that stated in the disapproved proposed contract to sell, referred to in paragraph L, 2, a, (1).
- (2) The purchase price shall be paid in cash.
- (3) The sale shall be closed within thirty (30) days after the delivery or mailing of the agreement to purchase by the Corporation.

b. If the Corporation shall fail to provide a purchaser upon the demand of the "FAMILY UNIT" owner in the manner provided, or if a purchaser furnished by the Corporation shall default in his agreement to purchase, then notwithstanding the disapproval the proposed transaction shall be deemed to have been approved and the Corporation shall furnish a certificate of approval as elsewhere provided.

c. Lease. If the proposed transaction is a lease, the "FAMILY UNIT" owner shall be advised of the disapproval in writing, and the lease shall not be made.

4. Exceptions. The foregoing provisions of this Section L shall not apply to a transfer to or purchase by a bank, life insurance company or savings and loan association that acquires its title as the result of owning a mortgage upon the "FAMILY UNIT" concerned, and this shall be so whether the title is acquired by deed from the mortgagor, his successors or assigns, or through foreclosure proceedings; nor shall such provisions apply to a transfer, sale or lease by a bank, life insurance company or savings and loan association that so acquires its title. Neither shall such provisions require the approval of a purchaser who acquires

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- 7 -

414-33

the title to a "FAMILY UNIT" at a duly advertised public sale with open bidding provided by law, such as but not limited to execution sale, foreclosure sale, judicial sale, or tax sale.

5. Unauthorized transactions. Any sale or lease not authorized pursuant to the terms of this Declaration shall be void unless subsequently approved by the Corporation.

M. Upon a termination of the Condominium ownership, the property and all interests thereof shall be owned in common by the apartment owners in the same proportions as shown in Exhibit A, attached hereto.

N. The owner shall maintain and keep in repair the interior of his own "FAMILY UNIT", including the fixtures thereof.

O. The owner shall not, without the written consent of the Corporation make any structural alteration in the building or in the water, gas, electrical conduits, plumbing or other fixtures connected therewith, or remove any additions or improvements or fixtures from the building, or do any act that will impair the structural soundness of the building.

P. No signs shall be displayed in, or upon any portion of said building by any occupant thereof.

Q. The parking space assigned to each "FAMILY UNIT" shall be maintained by the respective "FAMILY UNIT" owner, pursuant to rules and regulations to be established by the Board of Directors.

R. Any owner of a "FAMILY UNIT" who mortgages his unit shall notify the Corporation, providing the name and address of his mortgagee, and the Corporation shall maintain such information in a book entitled "Mortgagees of Units". The Corporation shall, at the request of the mortgagee of the unit, report any unpaid assessments due from the owner of such unit. The owner of a "FAMILY UNIT" shall at all times have the right to obtain such conventional mortgages on his "FAMILY UNIT" as he may desire. The encumbrance of said "FAMILY UNIT" by a mortgage insured by an agency of the Federal Government under the Federal Housing Act, and/or the Veterans Administration, is, however, expressly prohibited.

S. The Corporation shall at all times maintain casualty insurance protecting the common elements from loss by fire or windstorm, with usual extended coverage; and shall maintain separate coverage by rider or otherwise upon each "FAMILY UNIT", the cost of such coverage on each "FAMILY UNIT" to be borne by its owner and same to constitute a separate contract of insurance between the insurer and the apartment owner. All such insurance shall be for full insurable value as may be determined from year to year. In the event of a loss insurance proceeds shall be paid to the order of the Condominium for the portion of such loss affecting the "common areas and facilities", and to the order of the owner of an individual "FAMILY UNIT", and/or the holder or holders of mortgages upon same, to the extent that such loss affects the said unit, provided that if the damage is repaired such insurance shall first be used to pay for such repairs.

T. The Corporation is, and shall continue to be a non-profit corporation.

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CORPORATE
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- 8 -

U. Declarant, its successors and assigns, and all future owners of the "FAMILY UNITS", by the acceptance of their Deeds, mutually covenant and agree that all owners shall have the joint use of the "common areas and facilities", and that a joint and mutual easement to and for that purpose is hereby created.

V. Any and all determinations lawfully made by the Corporation in accordance with the voting percentages established in this Declaration, or in the By-Laws, shall be deemed to be binding on all owners of "FAMILY UNITS", their successors and assigns.

W. Invalidation of any of the covenants, conditions, limitations or provisions of this Enabling Declaration, by Judgment or Court Order, shall in no wise affect any of the remaining part of parts hereof, which are unaffected by said Judgment or Court Order, and the same shall continue in full force and effect.

IN WITNESS WHEREOF, AARON W. JOHNSON, INC., has caused this instrument to be executed by its proper officers and its corporate seal affixed this 27th day of June, 1967.

Witnessed in the presence of:

AARON W. JOHNSON, INC., a Florida corporation

James K. Jewell
Secretary-Treasurer

Aaron W. Johnson
President

Attest:

James K. Jewell
Secretary-Treasurer

(SEAL)

STATE OF FLORIDA)
COUNTY OF LEE)

Before me, personally appeared and to me well known, and known to me to be the individuals described in and who executed the foregoing instrument as President and Secretary-Treasurer of the above named AARON W. JOHNSON, INC., a Florida corporation; and severally acknowledged before me that they executed such instrument as such President and Secretary-Treasurer, respectively, of said Corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said Corporation and that it was affixed to said instrument by due and regular corporate authority, and that said instrument is the free act and deed of said Corporation.

WITNESS my hand and official seal this 27th day of June, 1967.

James P. Luby
Notary Public, State of Florida
at Large

My Commission Expires:

October 31, 1969

(SEAL)

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FORT MYERS, FLORIDA

EXHIBIT A

SCHEDULE OF FAMILY UNIT VALUES FOR THE PURPOSES OF
ASSESSMENT AND VALUATION

This Exhibit is a part of the Enabling Declaration for
THE PRIVATEER OF FORT MYERS BEACH, INC., A CONDOMINIUM

FAMILY UNIT	PERCENTAGE OF TOTAL VALUE OF THE PRIVATEER OF FORT MYERS BEACH, INC., A CONDOMINIUM
-------------	---

A101	1.83
A103	1.83
A201	1.72
A203	1.72
A301	1.83
A303	1.83
C113	2.02
C115	2.02
C117	2.02
C119	2.02
C213	2.02
C215	2.02
C217	2.02
C219	2.02
D121	2.43
D123	2.43
D221	2.43
D223	2.43
D321	2.64
D323	2.64
E120	2.43
E122	2.43
E220	2.43
E222	2.43
E320	2.64
E322	2.64
F112	2.02
F114	2.02
F116	2.02
F118	2.02
F212	2.02
F214	2.02
F216	2.02
F218	2.02
G104	2.02
G106	2.02
G108	2.02
G110	2.02
G204	2.02
G206	2.02
G208	2.02
G210	2.02
H100	1.83
H102	1.83
H200	1.72
H202	1.72
H300	1.83
H302	1.83

100%

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DRAWN BY:
FORT MYERS, FLORIDA

DE 414 PAGE 42

EXHIBIT C

DECLARATION OF RESTRICTIONS AND BY-LAWS
OF
THE PRIVATEER OF FORT MYERS BEACH, INC.,
A CONDOMINIUM
A Non-Profit Florida Corporation

ARTICLE I.

Section 1. THE NAME: The name of the corporation shall be THE PRIVATEER OF FORT MYERS BEACH, INC., a Condominium.

Section 2. PRINCIPAL OFFICE: The principal office of the Corporation shall be at 6500 Estero Boulevard, Fort Myers Beach, Florida, or at such other place as may be subsequently designated by the Board of Directors.

Section 3. DEFINITION: As used herein, the words "Improvements on the property", "real property", "property", or "building", shall mean the condominium apartment building or buildings located at 6500 Estero Boulevard, Fort Myers Beach, Florida. The words "owners" or "owner" shall mean the owners of condominium apartments in the building or buildings. The words "personal property" shall mean the personal property owned in common by the owners and used in connection with the buildings.

ARTICLE II
DIRECTORS

Section 1. NUMBER AND TERM: The number of directors which shall constitute the whole board shall not be less than three (3) nor more than seven (7). Until succeeded by directors elected at the first annual meeting of members, during March of 1969, Directors need not be members; thereafter, all directors shall be members. Within the limits above specified, the number of directors shall be determined by the members at the annual meeting. The directors shall be elected at the annual meeting of the members, and each director shall be elected to serve for the term of one (1) year or until his successor shall be elected and shall qualify.

Section 2. VACANCY and REPLACEMENT: If the office of any director or directors becomes vacant by reasons of death, resignation, retirement, disqualification, removal from office or otherwise, a majority of the remaining directors though less than a quorum at a special meeting of directors duly called for this purpose shall choose a successor or successors, who shall hold office for the unexpired term in respect to which such vacancy occurred.

Section 3. REMOVAL: Directors may be removed for cause by an affirmative vote of a majority of the members. No director shall continue to serve on the board if, during his term of office, his Certificate of Ownership shall be terminated for any reason whatsoever.

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Section 4. FIRST BOARD OF DIRECTORS: The first Board of Directors shall consist of AARON W. JOHNSON, CLAUDE T. TAYLOR and JAMES R. JESSELL who shall hold office and exercise all powers of the Board of Directors until the FIRST membership meeting, anything herein to the contrary notwithstanding; provided any or all of said directors shall be subject to replacement in the event of resignation or death as above provided.

Section 5. POWERS:

A. The property and business of the corporation shall be managed by its Board of Directors, which may exercise all such powers of the corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation, the Enabling Declaration or by these Restrictions and By-Laws directed or required to be exercised or done by the members. These powers shall specifically include, but not be limited to the following items:

(1) To levy monthly assessments payable in advance. By majority vote, the Board of Directors may increase the monthly assessments or vote a special assessment in excess of that amount if required to meet any necessary additional expenses, but said increase can only be made in the proportion established in Article VII, Section 3, of these Restrictions and By-Laws;

(2) To use and expend the assessments collected to maintain, care for and preserve the family units and building, grounds, and improvements (other than the interior of the family units and the equipment therein) which are to be maintained, cared for and preserved by the individual family unit owners;

(3) To pay for such equipment and tools, supplies and other personal property purchased for use in the maintenance, care and preservation of the condominium apartment buildings located at 6500 Estero Boulevard, Fort Myers Beach, Lee County, Florida, and to expend such other sums as may be necessary in the maintenance, care and preservation of such property;

(4) To enter into and upon the family units when necessary and at as little inconvenience to the owner as possible in connection with such maintenance, care and preservation;

(5) To repair and replace common facilities, machinery and equipment;

(6) To insure and keep insured the said building and improvements on the property and the owners against loss from fire, and/or other casualty and the owners against public liability and such other insurance as the Board of Directors may deem advisable;

(7) To collect delinquent assessments by suit or otherwise, to abate nuisances and to enjoin or seek damage from the owners of the property for violations of the rules hereinafter referred to;

(8) To employ, if deemed desirable, an apartment house manager who shall manage the buildings on such terms and conditions as the Board of Directors shall deem appropriate, and to delegate to such manager such powers as may be necessary in connection with the operation of the building. To employ workmen, janitors and gardeners and to purchase supplies and equipment, enter into contracts, and generally to have the powers of an

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- 2 -

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of an apartment house manager in connection with the matters hereinbefore set forth;

(9) a. To make reasonable rules and to amend the same from time to time and such rules and amendments shall be binding upon the owners when the Board has approved them in writing. A copy of such rules and all amendments shall be delivered to each family unit.

b. The Board of Directors may, by resolution or resolutions passed by a majority of the whole Board, designate one or more committees, such committee to consist of at least three (3) directors or members of the Corporation, one of whom shall be a director, which, to the extent provided in said resolution or resolutions, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Corporation and may have power to authorize the seal of the Corporation to be affixed to all papers which may be required, provided the said resolutions shall specifically so provide. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors. Committees established by resolution of the Board of Directors shall keep regular minutes of their proceedings and shall report the same to the Board as required.

Section 6. COMPENSATION: Directors and officers, as such, shall receive no salary for their services.

Section 7. MEETINGS:

A. The first meeting of each Board newly elected by the members shall be held immediately upon adjournment of the meeting at which they were elected, provided a quorum shall then be present, or as soon thereafter as may be practicable. The annual meeting of the Board of Directors shall be held at the same place as the general members meeting, and immediately after the adjournment of same.

B. Regular meetings of the Board may be held monthly without notice.

C. Special meetings of the Board may be called by the President on three (3) days notice to each director, either personally or by mail or telegram. Special meetings shall be called by the President or Secretary in a like manner and on like notice on the written request of three (3) directors.

D. At all meetings of the Board, a majority of the directors shall be necessary and sufficient to constitute a quorum for the transaction of business, and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute or by the Certificate of Incorporation or by these By-Laws. If a quorum shall not be present in any meeting of directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement of the meeting, until a quorum shall be present.

Section 8. ANNUAL STATEMENT: The Board shall present semi-annually (at the annual meeting and six (6) months thereafter) and, when called for by a vote of the members at any special meeting of the members, a full and clear statement of the business and condition of the corporation.

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RE 614 PAGE 45

ARTICLE III
OFFICERS

Section 1. ELECTIVE OFFICES: The officers of the Corporation shall be chosen by the directors and shall be a President, Vice President, and Secretary-Treasurer. The Board of Directors may also choose one or more assistant secretaries and assistant treasurers. Two (2) or more offices may not be held by the same person.

Section 2. ELECTION: The Board of Directors at its first meeting after each annual meeting of general members shall elect a President, Vice-President, and Secretary-Treasurer, none of whom, excepting the President, need be a member of the Board.

Section 3. APPOINTIVE OFFICES: The Board may appoint such other officers and agents as it shall deem necessary, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

Section 4. TERM: The officers of the corporation shall hold office until their successors are chosen and qualify in their stead. Any officer elected or appointed by the Board of Directors may be removed, for cause, at any time by the affirmative vote of a majority of the whole Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the Board of Directors.

Section 5. THE PRESIDENT:

A. The President shall be the chief executive officer of the corporation; he shall preside at all meetings of the members and directors, shall be ex-officio member of all standing committees, shall have general and active management of the business of the corporation, and shall see that all orders and resolutions of the Board are carried into effect.

B. He shall execute bonds, mortgages and other contracts requiring a seal, under the seal by the corporation, except where the same are required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board of Directors to other officer or agent of the corporation.

Section 6. THE VICE PRESIDENT:

A. During the absence or inability of the President to render and perform his duties or exercise his powers, as set forth in these By-Laws or in the acts under which this Corporation is organized, the same shall be performed and exercised by the Vice President; and when so acting, he shall have all the powers and be subject to all the responsibilities hereby given to or imposed upon such President.

Section 7. THE SECRETARY-TREASURER:

A. The Secretary-Treasurer shall attend all sessions of the Board and all meetings of the members and record all votes and the minutes of all proceedings in a book to be kept for that purpose and shall perform like duties for the standing committees when required. He shall give, or cause to be given, notice of all meetings of the members and special meetings of the Board of Directors, and shall perform such other duties as may be pre-

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- 4 -

RE 414 MC 45

scribed by the Board of Directors or the President, under whose supervision he shall be. He shall keep in safe custody the seal of the corporation, and when authorized by the Board, affix the same to any instrument requiring it and, when so affixed, it shall be attested by his signature.

B. He shall have the custody of the corporation funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation, and shall deposit all monies and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the Board of Directors.

C. He shall disburse the funds of the Corporation as may be ordered by the Board, making proper vouchers for such disbursements, and shall render to the President and Directors, at the regular meeting of the Board or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Corporation.

ARTICLE IV. MEMBERSHIP

Section 1. DEFINITION: Membership in the Corporation shall be limited to the owners of the Certificates of Ownership issued by the Corporation. A separate Certificate of Ownership shall be issued for each family unit and each certificate shall constitute a separate membership.

Section 2. VOTING RIGHTS: Each owner of a Certificate of Ownership shall be entitled to one (1) vote at meetings of the Corporation. If ownership is held by more than one (1) person then such ownership collectively shall be entitled to only one (1) vote, which vote may be cast by any one (1) of such owners as agent for all such owners.

Section 3. TRANSFER OF MEMBERSHIP: Membership in the Corporation may be transferred only as an incident to the transfer of a "FAMILY UNIT". Unless otherwise provided herein, such transfer shall only be accomplished with the approval of the Corporation which shall not be unreasonably withheld. The method for transfer of a "FAMILY UNIT" is more fully described in Paragraph L of the Enabling Declaration.

ARTICLE V. MEETINGS OF MEMBERSHIP

Section 1. PLACE: All meetings of the Corporation membership shall be held at the office of the Corporation, or may be held at such place and time as shall be stated in the notice thereof.

Section 2. ANNUAL MEETINGS:

A. The first annual meeting of members shall be held on the 2nd Monday of March, 1969, if not a legal holiday, and, if a legal holiday, then on the next secular day following.

B. Regular annual meetings, subsequent to 1969, shall be held on the 2nd Tuesday of March in each year if not a legal holiday, and, if a legal holiday, then on the next secular day following.

C. All annual meetings shall be held at the hour of 2:00 P.M.

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- 5 -

RE 414 MC 47

D. At the annual meeting, the members shall elect, by a plurality vote (cumulative voting prohibited) a Board of Directors, and transact such other business as may properly be brought before the meeting.

E. Written notice of the annual meeting shall be served upon or mailed to each member entitled to vote thereat, at such address as appears on the books of the Corporation at least ten (10) days prior to the meeting.

Section 3. MEMBERSHIP LIST: At least ten (10) days before every election of directors, a complete list of the members entitled to vote at said election, arranged numerically by apartment units, with the residence of each, shall be prepared by the Secretary-Treasurer. Such list shall be produced and kept for said ten (10) days and throughout the election at the office of the Corporation at 6500 Estero Boulevard, Fort Myers Beach, Lee County, Florida, and shall be open to examination by any member throughout such time.

Section 4. SPECIAL MEETINGS:

A. Special Meetings of the members, for any purpose or purposes, unless otherwise prescribed by statute or by the Certificate of Incorporation, may be called by the President, and shall be called by the President or Secretary-Treasurer at the request in writing of a majority of the members. Such request shall state the purpose or purposes of the proposed meeting.

B. Written notice of a special meeting of the members, stating the time, place and object thereof, shall be served upon or mailed to each member entitled to vote thereat, at such address as appears on the books of the Corporation, at least five (5) days before such meeting.

C. Business transacted at all special meetings shall be confined to the objects stated in the notice thereof.

Section 5. QUORUM: Fifty-one per cent (51%) of the total number of members of the Corporation, present in person or represented by written proxy, shall be requisite to and shall constitute a quorum at all meetings of the members for the transaction of business, except as otherwise provided by statute, by the Certificate of Incorporation or by these By-Laws. If, however, such quorum shall not be present or represented at any meeting of the members, the members entitled to vote thereat, present in person or represented by written proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement of the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting originally called.

Section 6. VOTE REQUIRED TO TRANSACT BUSINESS: When a quorum is present at any meeting, the vote of a majority of the members present in person or represented by written proxy shall decide any question brought before such meeting, unless the question is one upon which, by express provision of the statutes or of the Certificate of Incorporation or of these By-Laws, a different vote is required, in which case such express provision shall govern and control the decision of such question.

Section 7. RIGHT TO VOTE: At any meeting of the members, every member having the right to vote shall be entitled to vote

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- 6 -

414 43

in person or by proxy. Such proxy shall only be valid for such meeting or subsequent adjourned meetings thereof.

Section 8. WAIVER AND CONSENT: Whenever the vote of members at a meeting is required or permitted by any provision of the statutes or the Certificate of Incorporation or of these By-Laws to be taken in connection with any action of the corporation, the meeting and vote of members may be dispensed with if all the members who would have been entitled to vote upon the action if such meeting were held shall consent in writing to such action being taken.

ARTICLE VI. NOTICES

Section 1. DEFINITION: Whenever under the provisions of the statutes or of the Certificate of Incorporation or of these By-Laws, notice is required to be given to any director or member, it shall not be construed to mean personal notice; but such notice may be given in writing by mail, by depositing the same in a post office or letter box, in a postpaid, sealed wrapper, addressed as appears on the books of the Corporation.

Section 2. SERVICE OF NOTICE - WAIVER: Whenever any notice is required to be given under the provisions of the statutes or of the Certificate of Incorporation, or of these By-Laws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent thereof.

ARTICLE VII. FINANCES

Section 1. FISCAL YEAR: The fiscal year shall begin the first day of January, in each year.

Section 2. CHECKS: All checks or demands for money and notes of the Corporation shall be signed by any two (2) of the following officers: President, Vice President, Secretary-Treasurer, or by such officer or officers or such person or persons as the Board of Directors may from time to time designate.

Section 3. ASSESSMENTS: The Board of Directors of the Corporation shall, from time to time, fix and determine the sum or sums necessary and adequate for the continued operation of the buildings. They shall determine the total amount required, including operational items and operational expenses. The total annual requirements shall be assessed as a single sum against all family units and prorated in accordance with the Schedule of "FAMILY UNIT" values shown as Exhibit A attached to the Enabling Declaration. Said assessments shall be payable monthly in advance as ordered by the Board of Directors. Special Assessments, should such be required, shall be levied and paid in the same manner as hereinbefore provided by regular assessments. The owner agrees promptly to pay when due the monthly and all special assessments assessed against his own family unit. No member shall be personally liable for any debts of the Corporation whatsoever. Each owner shall pay his proportionate share of the assessment in accordance with the provisions of the Enabling Declaration and any common surplus shall be distributed as the Board of Directors may from time to time direct.

Section 4. OPERATING ACCOUNT: There shall be established and maintained a checking account in a bank located in Lee County, Florida, into which shall be deposited all monies received by the

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- 7 -

RE 414 PAGE 49

Corporation. All disbursements by the Corporation shall be paid out of said checking account and disbursements shall be made only for proper corporate purposes.

ARTICLE VIII. SEAL

Section 1. The seal of the Corporation shall have inscribed thereon the name of the Corporation. Said seal may be used by causing it or a facsimile thereof to be impressed, affixed, reproduced or otherwise.

ARTICLE IX. CERTIFICATES OF OWNERSHIP AND LIMITATIONS APPLICABLE THERETO

Section 1. FORM: The first Board of Directors shall adopt a standard form of "Certificate of Ownership" to be issued by the Corporation to its members and, after its adoption, such form shall not thereafter be changed, altered or amended.

Section 2. TRANSFER: The primary object of the Corporation is to operate and maintain the real property on a mutual and cooperative basis for the housing needs of its members. Therefore, the Certificate of Ownership shall automatically pass with the title to each of the family units. The method of transfer of family units is fully described in the Enabling Declaration.

Section 3. HOUSE RULES: In addition to the other provisions of these By-Laws, the following house rules and regulations, together with such additional rules and regulations as may hereafter be adopted by the Board of Directors, shall govern the use of the "FAMILY UNITS" located in the property and the conduct of all residents.

A. The family units shall be used only for residential purposes.

B. Owners shall not use or permit the use of their premises in any manner which would be disturbing or be a nuisance to other owners, or in such a way as to be injurious to the reputation of the property.

C. The use of the family units shall be consistent with existing law, these Restrictions and the Enabling Declaration and such use shall not in any way constitute a nuisance.

D. Family units may not be used for business use or for any commercial use whatsoever.

E. Common walks and common areas shall not be obstructed, littered, defaced or mis-used in any manner.

F. No structural changes or alterations shall be made in any family unit, except upon approval of the Board of Directors.

Section 4. DEFAULT:

A. In the event an owner of a family unit does not pay any sums, charges or assessments required to be paid to the Corporation within thirty (30) days from the due date, the Corporation, acting on its own behalf or through its Board of Directors or manager acting on behalf of the Corporation, may foreclose the lien encumbering the family unit created by non-payment of the re-

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- 8 -

414 NZ 50

quired monies in the same fashion as mortgage liens are foreclosed. The Corporation shall be entitled to the appointment of a Receiver, if it so requests. The Corporation shall have the right to bid-in the family unit at a foreclosure sale and to acquire, hold, mortgage and convey the same. In any such foreclosure action the lien of the Corporation shall be subordinate and inferior to any mortgage liens of record encumbering such family unit at the time of the commencement of the foreclosure action by the Corporation. In lieu of foreclosing its lien, the Corporation may, through its Board of Directors or manager acting in behalf of the Corporation, or in its own behalf, bring suit to recover a money judgment for any sums, charges or assessments required to be paid to the Corporation, without waiving its lien or to recover a money judgment, brought by or on behalf of the Corporation against a family unit owner, the losing defendants shall pay the cost thereof together with a reasonable attorney's fee.

If an action of foreclosure is brought against the owner of a family unit for the non-payment of monies due the Corporation and, as a result thereof, the interest of the said owner in and to the family unit is sold, then at the time of such sale, the family unit owner's Certificate of Ownership shall be cancelled and a new Certificate of Ownership shall be issued to the purchaser at the foreclosure sale.

If the Corporation becomes the owner of a family unit by reason of foreclosure, it shall offer said unit for sale and at such time as a sale is consummated it shall deduct from such proceeds all sums of money due it for monthly assessments and charges, all costs incurred in the bringing of the foreclosure suit, including reasonable attorney's fees, and any and all expenses incurred in the re-sale of the family unit, which shall include but not be limited to advertising expenses, real estate brokerage fees and expenses necessary for the repairing and refurbishing of the family unit in question. All monies remaining after deducting the foregoing items of expense shall be returned to the former owner of the family unit in question.

B. In the event of violation of the provisions of the Enabling Declaration, corporate charter or Restrictions and By-Laws, as the same are now or may hereafter be constituted, the Corporation, on its own behalf or by and through its Board of Directors or apartment manager, may bring appropriate action to enjoin such violation or to enforce the provisions of the documents just hereinabove enumerated, or sue for damages or take all such courses of action at the same time, or for such other legal remedy as it or they may deem appropriate.

In the event of such legal action brought against a family unit owner, the losing defendant shall pay the Plaintiff's reasonable attorney's fee and court costs.

Each owner of a family unit, for himself, his heirs, successors and assigns, agrees to the foregoing provisions

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- 9 -

OF 614 PAGE 51

relating to default and abatement of nuisance, regardless of the harshness of the remedy available to the Corporation and regardless of the availability of the other equally adequate legal procedures. It is the intent of all owners of family units to give to the Corporation a method and procedure which will enable it at all times to operate on a business-like basis, to collect those monies due and owing it from owners of family units and to preserve each family unit owner's right to enjoy his family unit free from unreasonable restraint and nuisance.

Section 5. SURRENDER OF FAMILY UNIT: In the event of the legal termination of a Certificate of Ownership and of the occupancy rights thereunder, the member or any other person or persons in possession by or through the right of the member, shall promptly quit and surrender the owned family unit to the Corporation in good repair, ordinary wear and tear and damage by fire or other casualty excepted, and the Corporation shall have the right to re-enter and to repossess the owned family unit. The member, for himself and any successor in interest, by operation of law or otherwise, hereby waives any and all notice and demand for possession if such be required by the laws of Lee County, State of Florida, or the United States of America.

Section 6. JOINT OWNERSHIP: Any Certificate of Ownership may be owned by more than one owner, provided that title to such Certificate shall be held in the same manner as title to the family unit. In the event ownership of the Certificate is in more than one (1) person, all of the owners of such Certificate of Ownership shall be entitled collectively to only one (1) voice or ballot in the management of the affairs of the Corporation, and the vote of such Certificate may not be divided between plural owners of a single Certificate of Ownership. If the owners of any such Certificate of Ownership are unable to agree upon their ballot upon any subject at any meeting, they shall lose their right to vote on such subject but if all of the owners of any such Certificate of Ownership shall not be present at the meeting, either in person or by proxy, the one or ones so present shall cast the vote of all such owners.

ARTICLE X. AMENDMENT

Section 1. These Restrictions and By-Laws may only be altered, amended or added to at any duly called meeting of the members, provided, (1) that the notice of meeting shall contain a full statement of the proposed amendments, and (2) that the quorum requirement for such purpose shall be three-fourths (3/4's) of the members. In addition, it shall be necessary to secure a three-fourths (3/4's) vote of all the members present at said meeting, in order to amend these Restrictions and By-Laws.

ARTICLE XI. CONSTRUCTION

Section 1. Wherever the masculine singular form of the pronoun is used in this Declaration of Restrictions and By-Laws, it shall be construed to mean the masculine, feminine, or neuter; singular or plural, whenever the context so requires.

ARTICLE XII MISCELLANEOUS

Section 1. The property shall at all times be restricted in

ROBERTS, WATSON,
TAYLOR AND FRIDAY
ATTORNEYS AT LAW
SUITE 200
FORT MYERS, FLORIDA

RECALL

use to the housing and related needs of the Corporation members and their guests.

Section 2. Should any of the covenants herein imposed be void or be or become unenforceable at law or in equity, the remaining provisions of this instrument shall, nevertheless, be and remain in full force and effect.

Section 3. It is contemplated as of the time of preparing these Restrictions and By-Laws, that some of the family units in question are to be paid for by the placing of a mortgage upon them.

Whenever a mortgage has been placed upon an apartment unit, the Corporation agrees that it shall be obligated to send the mortgagee a copy of the default notice prior to the bringing or instituting of any action for the cancellation of the Certificate. The sending of this notice to the mortgagee shall be a condition precedent to the beginning of any legal action by the Corporation against the owner of a family unit encumbered by a mortgage.

Section 4. The breach of any of the foregoing provisions, conditions, restrictions or covenants, shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value as to any portion of said property, but said provisions, conditions, restrictions and covenants shall be binding upon and effective against any such mortgagee or trustee or owner thereof, whose title thereto or whose grantor's title thereto is or was acquired by foreclosure, trustee's sale or otherwise.

Adopted this 24 day of June, 1967.

Carol D. [Signature]
Charles S. Taylor
James K. Jessell

ROBERTS, WATSON,
 TAYLOR AND FRISAY
 ATTORNEYS AT LAW
 ORLANDO, FLORIDA

- 11 -

OFF.
REC. 414 PAGE 53

State of Florida

Secretary of State



I, Tom Adams, Secretary of State of the State of Florida,
Do Hereby Certify That the following is a true and correct copy of

Certificate of Incorporation
of

THE PRIVATEER OF FORT MYERS BEACH, INC., A CONDOMINIUM

a corporation not for profit organized and existing under the Laws of the
State of Florida, filed on the 8th day of June,
A.D., 1967, as shown by the records of this office.

Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital,
this the 8th day of June,
A.D. 1967.



Tom Adams
Secretary of State

corp.24
3-66

RE 014 no 31

CERTIFICATE OF INCORPORATION
OF
THE PRIVATEER OF FORT MYERS BEACH, INC.,
A CONDOMINIUM

We, the undersigned, hereby associate ourselves together for the purpose of forming a non-profit corporation under the laws of the State of Florida, pursuant to Florida Statutes 617, and certify as follows:

ARTICLE I

The name of this Corporation shall be THE PRIVATEER OF FORT MYERS BEACH, INC., A CONDOMINIUM.

ARTICLE II

The general purpose of this non-profit corporation shall be as follows:

A. To buy, sell, lease and sublease, to accept and hold leasehold or fee title perpetually, or otherwise deal with the following described real estate, to-wit:

A lot or parcel of land lying between Estero Boulevard and the Gulf of Mexico in Sections 33 and 34, Township 46 South, Range 24 East, Estero Island, Lee County, Florida, which lot or parcel is described as follows: beginning at a point on the westerly side of Estero Boulevard, said point being 1,140 feet (measure along a line perpendicular to the south line of Block 1, McPhie Park, Unit No. 2 according to plat recorded in Plat Book 8 at page 59 of the Public Records of Lee County), run southeasterly along the southwesterly line of said Estero Boulevard for 202.08 feet, thence run southwesterly parallel with said south line of block 1 for 490 feet more or less to the waters of the Gulf of Mexico; thence run northwesterly along said waters to an intersection with a line parallel with and 1140 feet (measure along a line perpendicular to said block 1) southeasterly of said block 1, passing through the point of beginning; thence run northeasterly along said parallel line to said southwesterly line of Estero Boulevard and the point of beginning.

to acquire, maintain and operate certain condominium buildings located on said real estate which shall be known as THE PRIVATEER OF FORT MYERS BEACH, INC., A CONDOMINIUM, to make such improvements, additions, alterations, and to erect such additional buildings and structures on said real estate as the Corporation deems best, and to transact all business being not for profit, and proceeds of all operations of the Corporation to remain with the Corporation and the payment of all indebtedness that may be incurred by the Corporation.

B. To exercise complete and exclusive control and management of said THE PRIVATEER OF FORT MYERS BEACH, INC., A CONDOMINIUM, and the ownership and transfer of apartment units located therein, and to make all such rules and regulations as may be necessary to carry out said purposes; to maintain the above described real property and all improvements located thereon, to make payment of taxes, insurance, repairs, and any other expenses necessary to the maintenance of said property as a condominium and to pay operating expenses of every kind and character whatsoever, and any other expenses necessary therefor.

or to beautify and make other desirable improvements from time to time as this Corporation shall deem best.

C. To hold title to the above described property and to maintain and operate said THE PRIVATEER OF FORT MYERS BEACH, INC., A CONDOMINIUM, all for the mutual benefit of all the owners of apartment units located therein, who shall be members herein, and to assess the owners of apartment units for their pro-rata share and amounts of costs and expenses incurred by the Enabling Declaration and Declaration of Restrictions and By-Laws of the Corporation.

ARTICLE III

This Corporation shall issue no shares of stock of any kind or nature whatsoever, in accordance with the Enabling Declaration and the Declaration of Restrictions and By-Laws. There shall not be more than forty-eight (48) members of the Corporation, which members shall be approved and accepted by the Board of Directors as provided for in the Enabling Declaration and the Declaration of Restrictions and By-Laws for the Corporation. The voting rights of Resident members and absentee members are fully set forth in the Enabling Declaration and the Declaration of Restrictions and By-Laws of the Corporation. Each member shall be issued a Certificate of Ownership to the individual apartment he may be acquiring. Such said Certificate of Ownership shall be in the form and contain the provisions as is more fully set forth in the Enabling Declaration and Declaration of Restrictions and By-Laws of the Corporation. Persons owning a single apartment within the Condominium shall collectively be considered a single member.

ARTICLE IV

This Corporation shall have perpetual existence.

ARTICLE V.

The principal office of the Corporation shall be located at 6500 Estero Boulevard, Fort Myers Beach, Florida.

ARTICLE VI.

The names and addresses of the subscribers of these Articles of Incorporation are as follows:

AARON W. JOHNSON, 384 Estero Boulevard, Fort Myers Beach,
Florida
CLAUDE E. TAYLOR, 3402 West Riverside Drive, Fort Myers,
Florida
JAMES R. JESSILL, 1500 Grace Avenue, Fort Myers, Florida

ARTICLE VII

The officers who shall manage the affairs of this Corporation shall be as follows:

President
Vice President
Secretary-Treasurer

or such other officers as may be elected from time to time, as is more fully set forth in the Declaration of Restrictions and By-Laws of the Corporation.

E 414 me 53

ARTICLE VIII

The names and post office addresses of the officers who are to serve until the first election, pursuant to the terms of the Declaration of Restrictions and By-Laws are as follows:

AARON W. JOHNSON	President	384 Estero Boulevard Fort Myers Beach, Florida
CLAUDE E. TAYLOR	Vice President	Post Office Drawer X Fort Myers, Florida
JAMES R. JESSELL	Secretary- Treasurer	Post Office Drawer X Fort Myers, Florida

ARTICLE IX

The business of the Corporation shall be conducted by a Board of Directors of not less than three (3) nor more than seven (7) members, all as more fully set forth in the Declaration of Restrictions and By-Laws of the Corporation. The first Board of Directors shall serve until the first election, as set forth in the Declaration of Restrictions and By-Laws of the Corporation, and are as follows:

AARON W. JOHNSON	CHAIRMAN
CLAUDE E. TAYLOR	DIRECTOR
JAMES R. JESSELL	DIRECTOR

ARTICLE X

The Declaration of Restrictions and By-Laws are to be made, altered, amended, or added to at any July called meeting of the members, provided, (1) that the notice of meeting shall contain a full statement of the proposed amendments, and (2) that the quorum requirement for such purpose shall be three-fourths (3/4's) of the members. In addition, it shall be necessary to secure a three-fourths (3/4's) vote of all the members present at said meeting in order to amend the Declaration of Restrictions and By-Laws. These Articles of Incorporation may be altered or rescinded by a two-thirds (2/3's) vote of the members of the Corporation.

ARTICLE XI

The Corporation shall have all of the powers as set forth in Florida Statutes 617.021 laws of 1961.

ARTICLE XII

There shall be no dividends paid to any of the members, nor shall any part of the income of the Corporation be distributed to its Board of Directors or officers. The Corporation may pay compensation in a reasonable amount to its members, directors and officers for services rendered, and may confer benefits upon its members in conformity with its purposes and, upon dissolution or final liquidation, may make distribution to its members as permitted by the courts having jurisdiction thereof, and no such payment, benefit or distribution shall be deemed to be a dividend or a distribution of income.

ARTICLE XIII

A. The primary purpose of the Corporation is to own, operate, manage, lease, and maintain the said THE PRIVATEER OF FORT MYERS BEACH, INC., A CONDOMINIUM, and the issuance of Certificates of Ownership is incidental to the ownership and occupancy rights of purchasers of apartment units located in

RE 410-57

said condominium buildings. Said certificates of ownership and incidental ownership and occupancy rights thereby represented may be transferred only with the consent of the Board of Directors, as prescribed in the Enabling Declaration and Declaration of Restrictions and By-Laws of the Corporation.

B. This Corporation shall have a continuing lien for unpaid assessments on each apartment unit in said THE PALMATEER OF FORT MYERS BEACH, INC., A CONDOMINIUM, and on the Certificates of ownership representing ownership and occupancy rights therein, all as more fully described in the Enabling Declaration and the Declaration of Restrictions and By-Laws of the Corporation. Such claims of liens shall include only assessments which are due and payable when the claim of lien is recorded.

C. This Corporation shall assess all members only in such amounts as are necessary to meet maintenance, operational, lease and other expenses, as hereinbefore provided, and to establish reasonable reserves for such purposes, and the Corporation shall not assess any unnecessary funds and shall not issue dividends or profit in any manner.

D. Each and every Certificate of Ownership issued by the Corporation shall bear notice on its face that said ownership in and to the apartment unit thereby represented is subject to assessment, and that said Certificate of Ownership and apartment unit are transferable only with the approval of the Board of Directors of the Corporation, as aforesaid.

IN WITNESS WHEREOF, the subscribers have affixed hereto their signatures this 6th day of June, 1967.

Aaron W. Johnson
Aaron W. Johnson

Claude E. Taylor
Claude E. Taylor

James R. Jessell
James R. Jessell

STATE OF FLORIDA)

COUNTY OF LEE)

Before me, the undersigned authority, personally appeared AARON W. JOHNSON, CLAUDE E. TAYLOR and JAMES R. JESSLL, who after being duly sworn, acknowledged that they executed the foregoing Certificate of Incorporation of THE PALMATEER OF FORT MYERS BEACH, INC., A CONDOMINIUM, for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Fort Myers, Lee County, Florida, this 6th day of June, 1967.

James R. Jessell
Notary Public, State of Florida at
Large

(NOTARY SEAL)

My Commission Expires:

June 15, 1968

- 4 -

Q 914-33

THE PRIVATEER OF FORT MYERS BEACH, INC.,
A CONDOMINIUM

CERTIFICATE OF SURVEYOR

I, DUANE HALL, of Fort Myers, Lee County, Florida, hereby
certify as follows:

1. I am a registered land surveyor authorized to
practice in the State of Florida.
2. This Certificate is made as to THE PRIVATEER OF
FORT MYERS BEACH, INC., a Condominium, located
at Fort Myers Beach, Lee County, Florida, and
in compliance with Section 711.08 (1) (e)
Florida Statutes, 1963.
3. The Plot Plan attached as Exhibit B to the
Enabling Declaration of THE PRIVATEER OF FORT
MYERS BEACH, INC., a Condominium, showing the
family units described as follows:

A101, A103, A201, A203, A301, A303,
D121, D123, D221, D223, D321, D323

together with the wording of the Enabling
Declaration, constitute a correct representation
of the improvements of the Condominium as it
now exists, together with the location of future
buildings, and it can be determined from them
the identification, location, dimensions and
size of the common elements and of each unit.

Signed this 14th day of June, 1967.

Duane Hall
Duane Hall, Registered Land Surveyor
Certificate of Registration
No. 1415, State of Florida

RECORDED IN OFFICIAL
RECORDS
LEE COUNTY, FLORIDA
JUN 15 3 14 PM '67

JUN 15 3 14 PM '67

O. T. FRADEE
CLERK CIRCUIT COURT
LEE COUNTY, FLORIDA



ROBERTS, WATSON,
TAYLOR AND FRIDAY
ATTORNEYS AT LAW
FORT MYERS, FLORIDA

DESCRIPTION OF COMMON ELEMENTS OR IN RE 59

The Land encompassed by the property description.

All parts of the improvements not included in the Apartments.

Access through walls for conduits, ducts, plumbing and other facilities for the purpose of furnishing utility service to other apartments.

An easement of support in every portion of an apartment which contributes to the support of the building.

Installations for the furnishing of utility services to more than one unit or to the common elements or to a unit other than the unit containing the installation.

The property and installations in connection therewith required for the furnishing of services to more than one unit or to the common elements.

The tangible personal property required for the maintenance and operation of the condominium property.

All other portions of the property which are rationally of common use or necessary to the reasonable enjoyment and safety of the condominium and such other common elements provided by statute.

These "Surveyor Plans" may be supplemented by a final survey of property referred to as apartments in the original Declaration of Condominium shall be contained in the buildings known as THE PRIMA, said buildings being located on premises as above described.

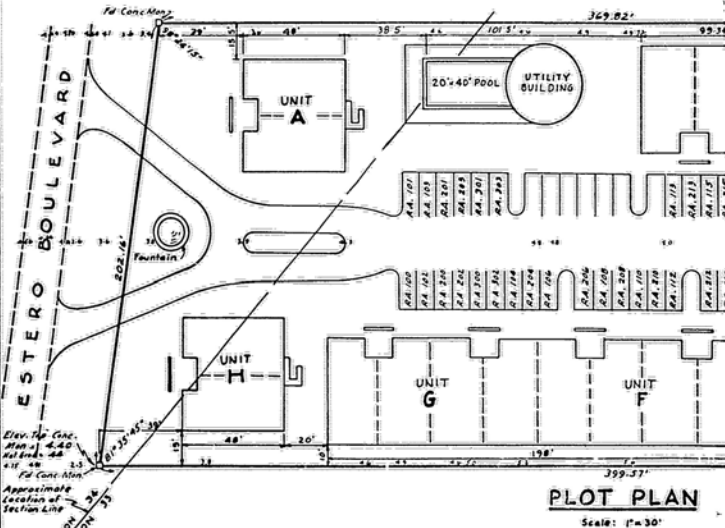
EXHIBIT
PAGE 1

THE PRIMA

OF FORT MYERS BEACH, INC.,
SECTIONS 33 & 34, TOWNSHIP 46 S
ESTERO ISLA
LEE COUNTY, FL

SCALE: 1"=30'

SHEET 1 OF 6

DUANE HALL & ASSOCIATES
SUITE 3, VILLAS PLAZA
FORT MYERS, FLORIDA

NOTES

These "Surveyor Plans" make as they pertain to structure, are compiled from plans and data prepared by others. It is intended that they may be subject to revision by final survey upon completion of building and improvements.

Dimensions shown on sheets 2 through 6 for apartment areas include terrace, balcony, carport or other portions of the building serving only the apartment being described. The entire apartment is shown if it extends beyond another apartment and not half of the apartment wall where it adjoins another apartment.

The upper boundaries of the top floor apartments shall be the plane of the under surfaces of the roof trusses. The upper boundaries of apartments on lower floors shall be the under surfaces of precast concrete floor slabs of the apartment above. The lower boundaries of all apartments shall be the under surfaces of precast concrete floor slabs.

Only apartment areas as set forth above are delineated by this preliminary plan. Other areas are shown for reference only. The dimensions shown herein are prior to actual construction and are subject to slight variations which may occur during construction.

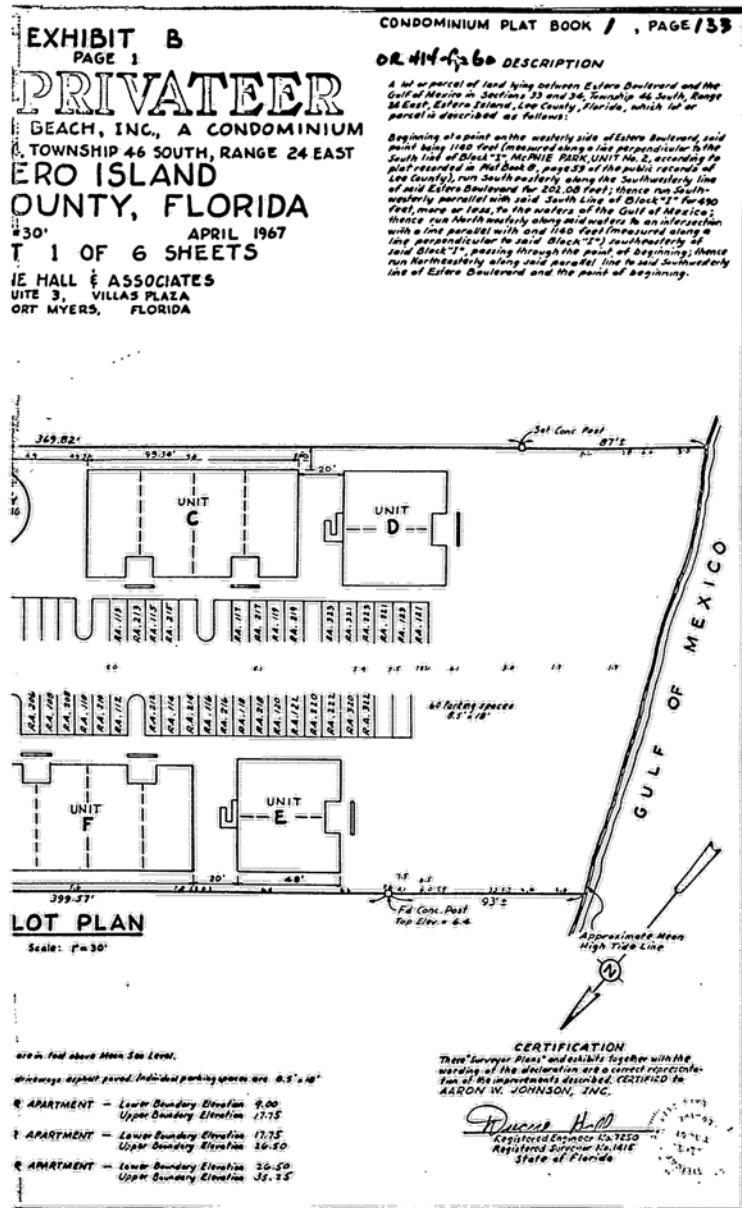
Elevations shown are in feet above Mean Sea Level.

Existing sites and structures shown for reference.

GROUND FLOOR APARTMENT - Lower Bound Upper Bound

SECOND FLOOR APARTMENT - Lower Bound Upper Bound

THIRD FLOOR APARTMENT - Lower Bound Upper Bound



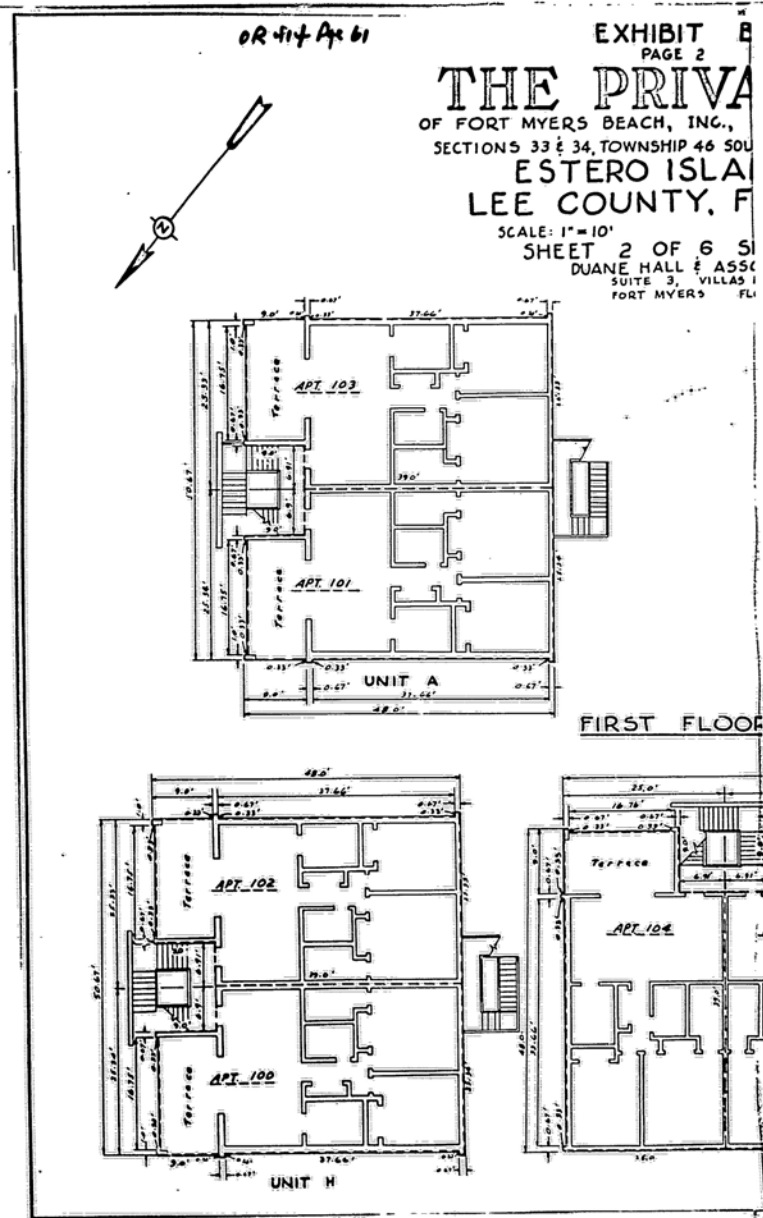
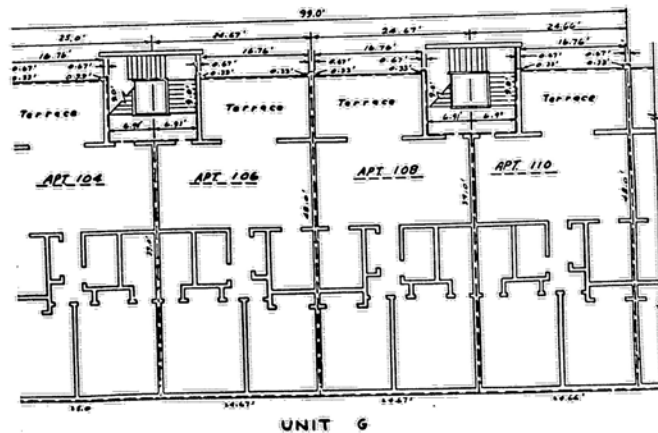


EXHIBIT B
PAGE 2
PRIVATEER
BEACH, INC., A CONDOMINIUM
TOWNSHIP 46 SOUTH, RANGE 24 EAST
ERO ISLAND
COUNTY, FLORIDA
APRIL 1967
2 OF 6 SHEETS
JANE HALL & ASSOCIATES
SUITE 3, VILLAS PLAZA
FORT MYERS FLORIDA

CONDOMINIUM PLAT BOOK 1, PAGE 150
OR 414 Pg 62



FIRST FLOOR



UNIT G

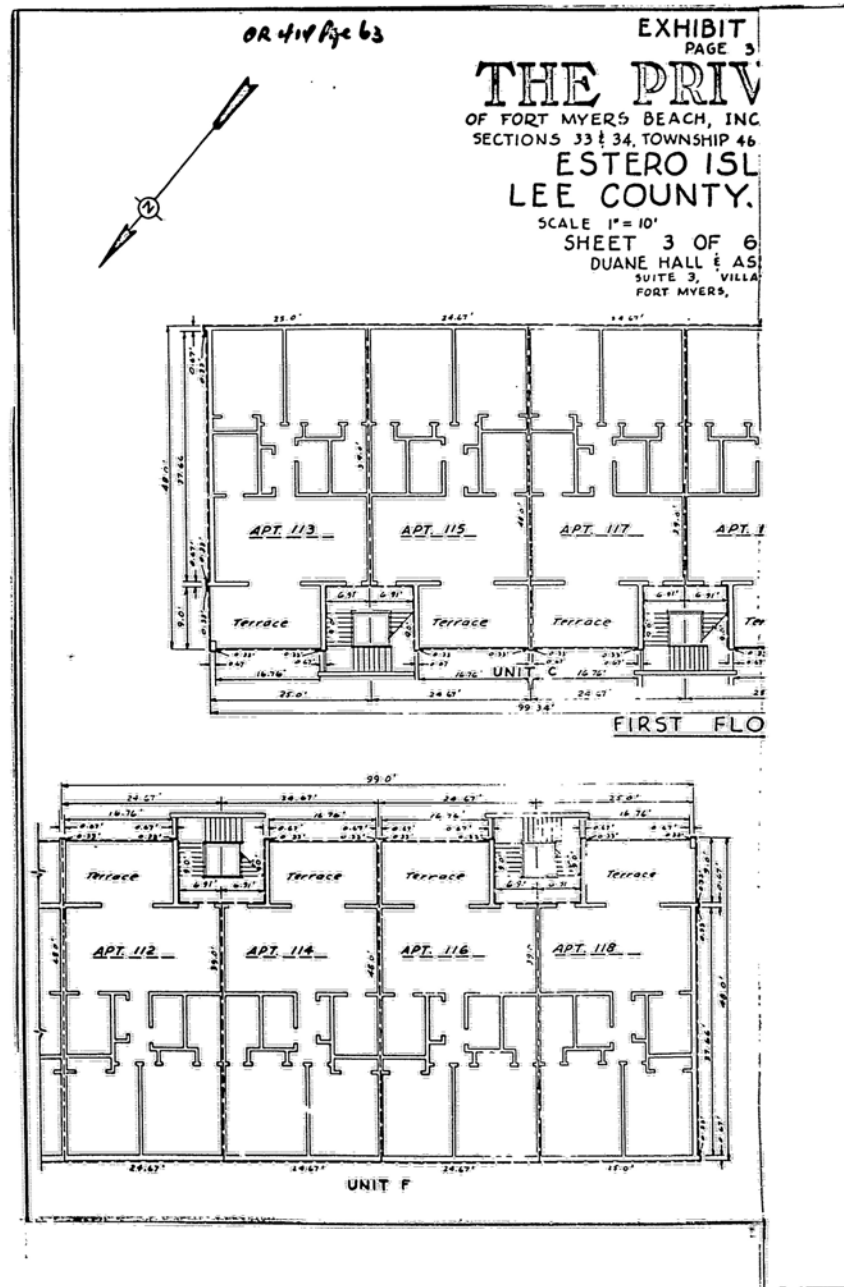
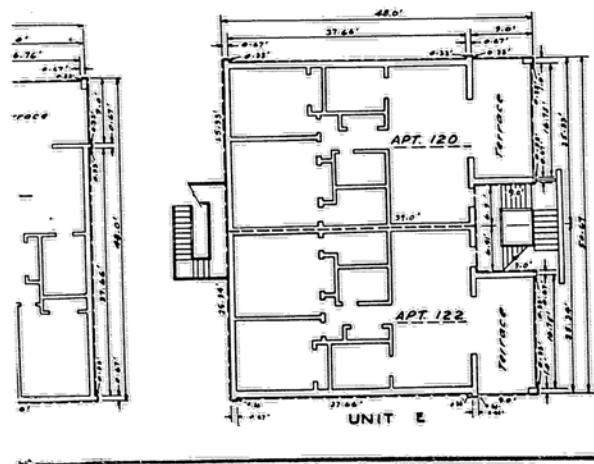
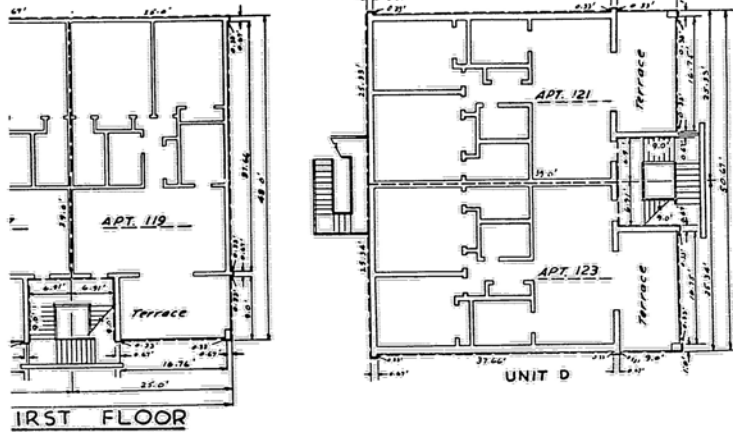
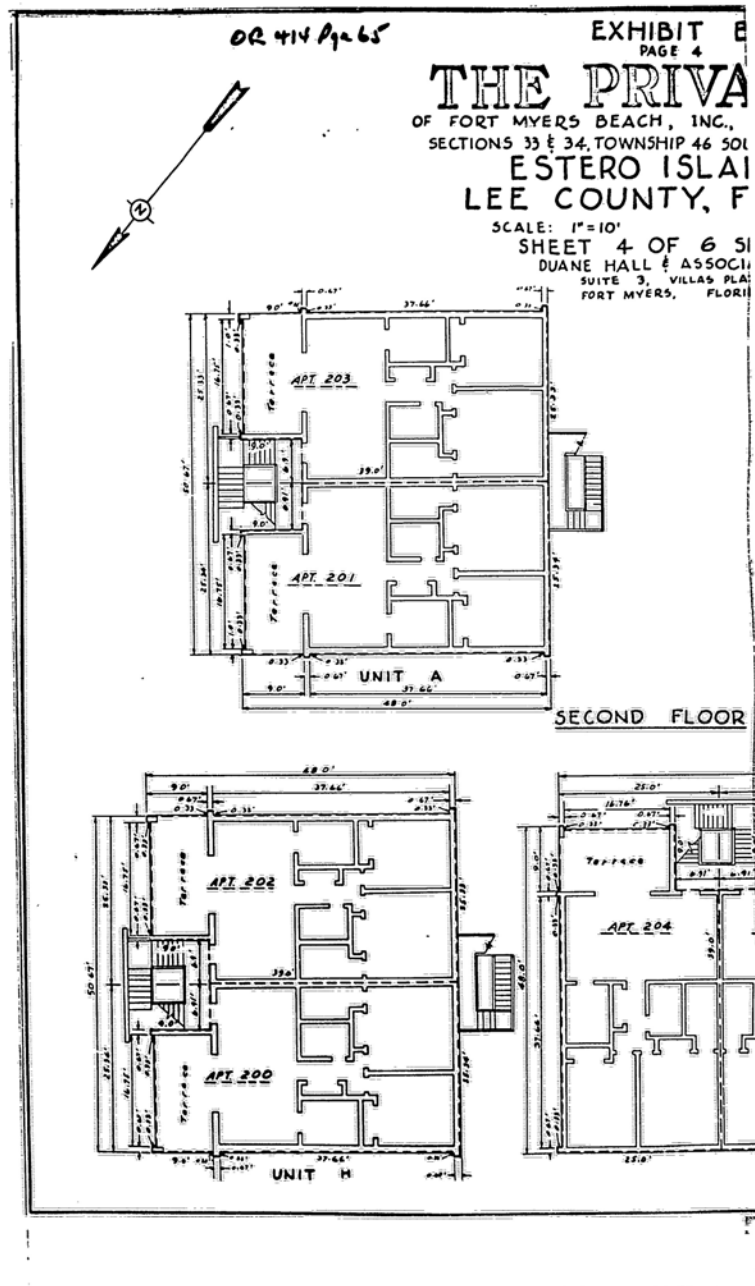


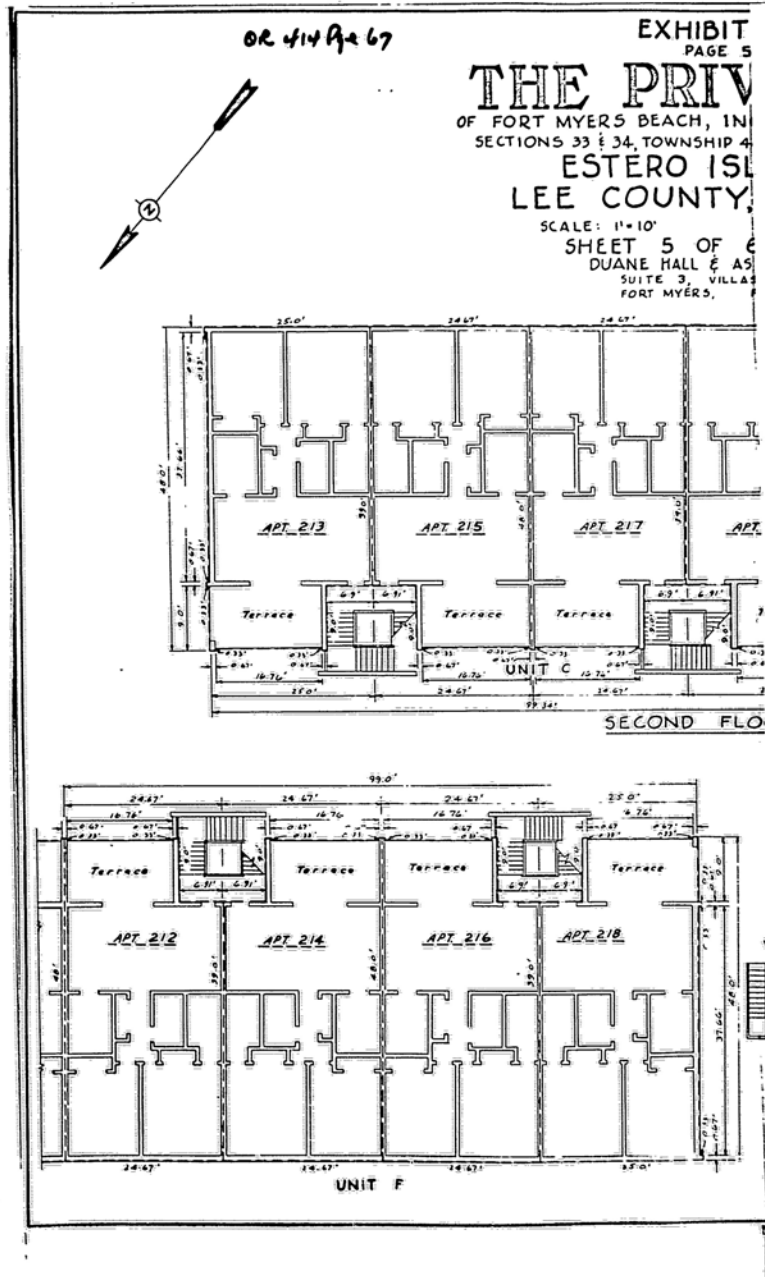
EXHIBIT B
PAGE 3

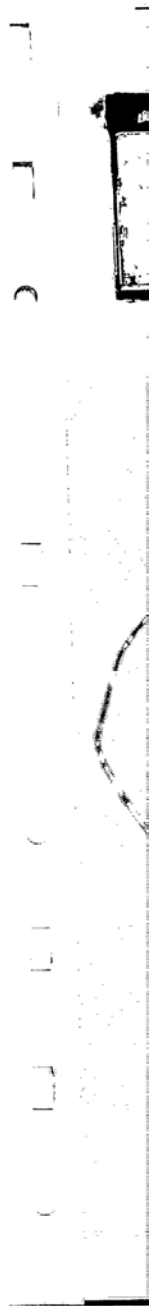
CONDOMINIUM PLAT BOOK 1, PAGE 133
OR 414 Figs 64

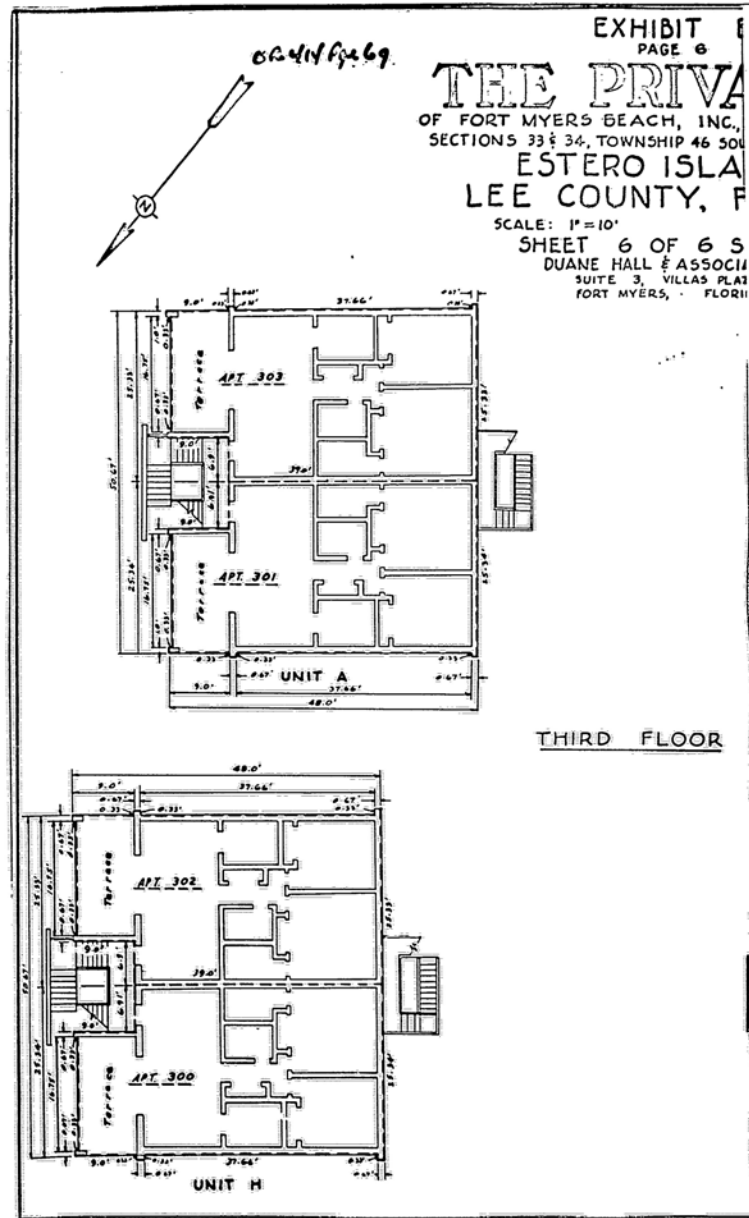
PRIVATEER
BEACH, INC., A CONDOMINIUM
TOWNSHIP 46 SOUTH, RANGE 24 EAST
ERO ISLAND
COUNTY, FLORIDA
APRIL 1967
3 OF 6 SHEETS
NE HALL & ASSOCIATES
SUITE 3, VILLAS PLAZA
FORT MYERS, FLORIDA

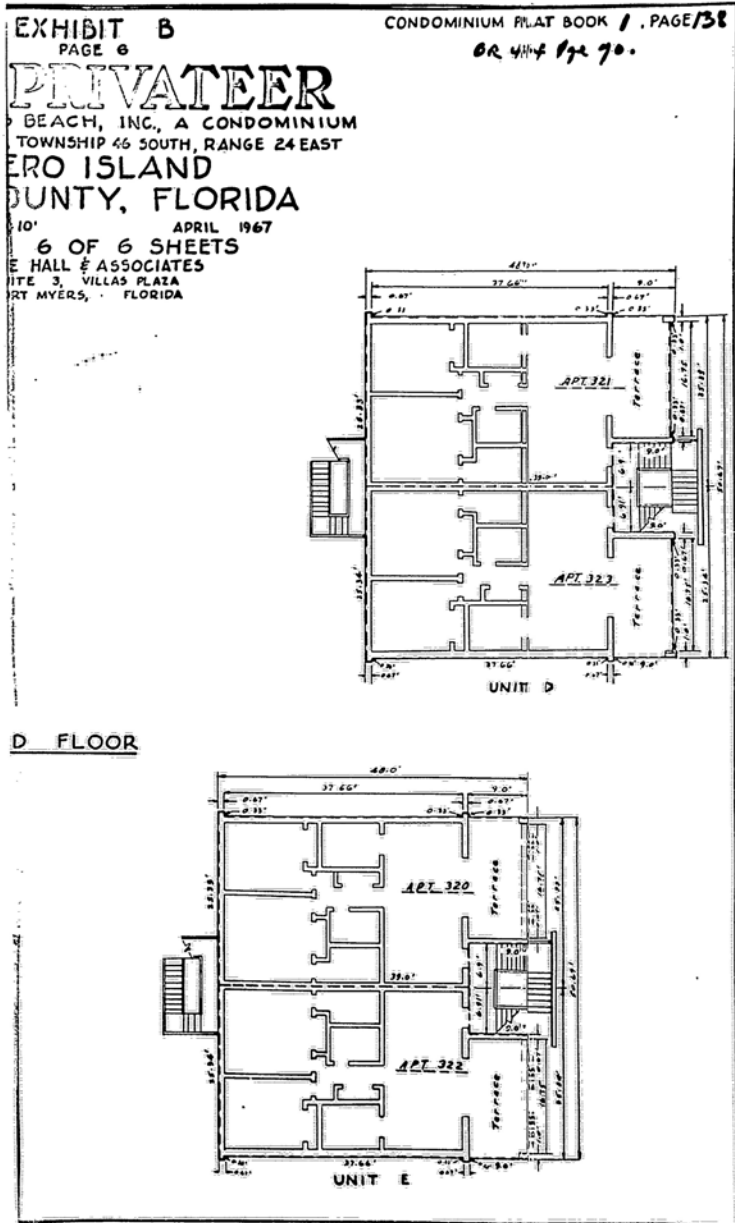


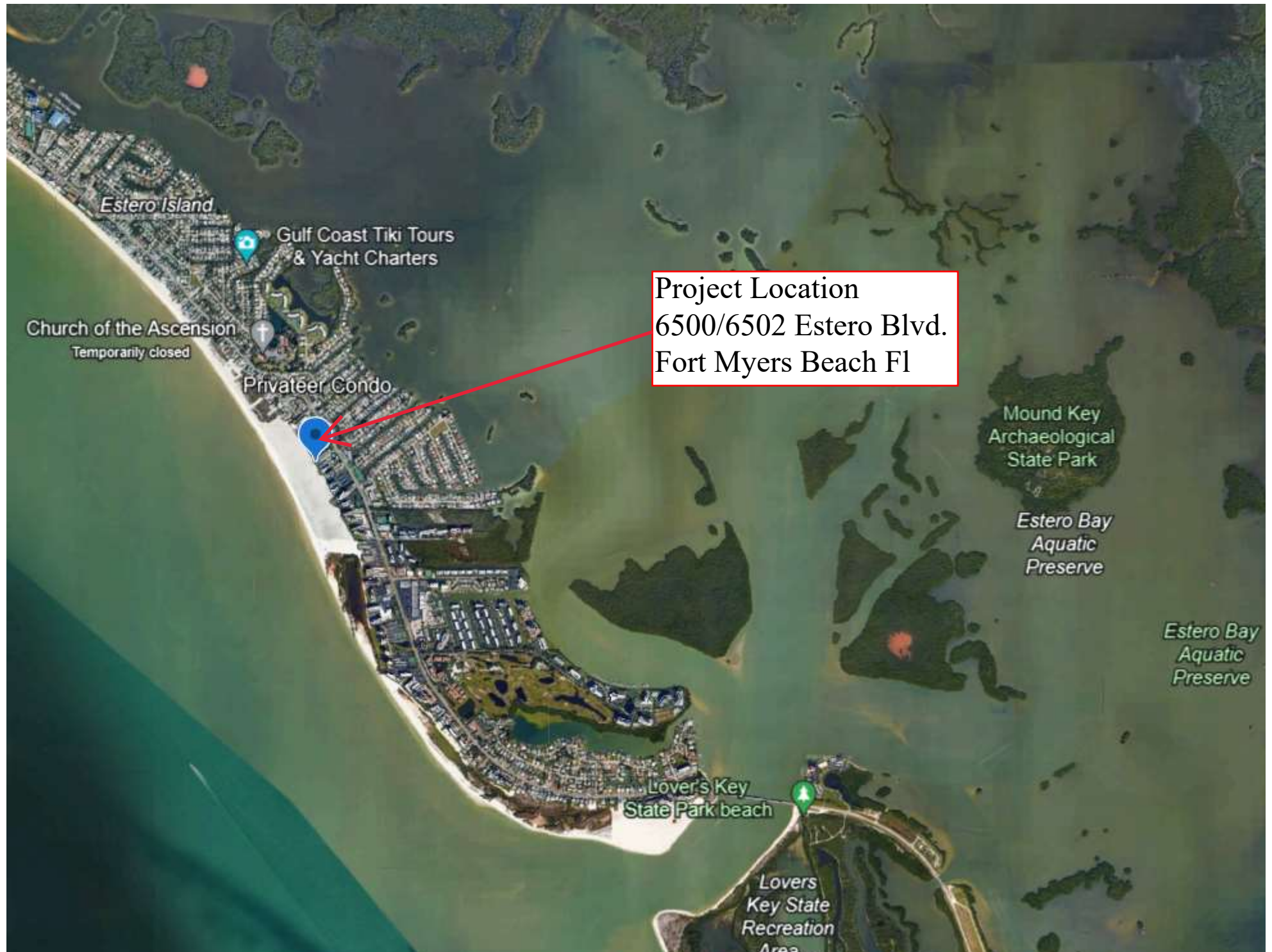


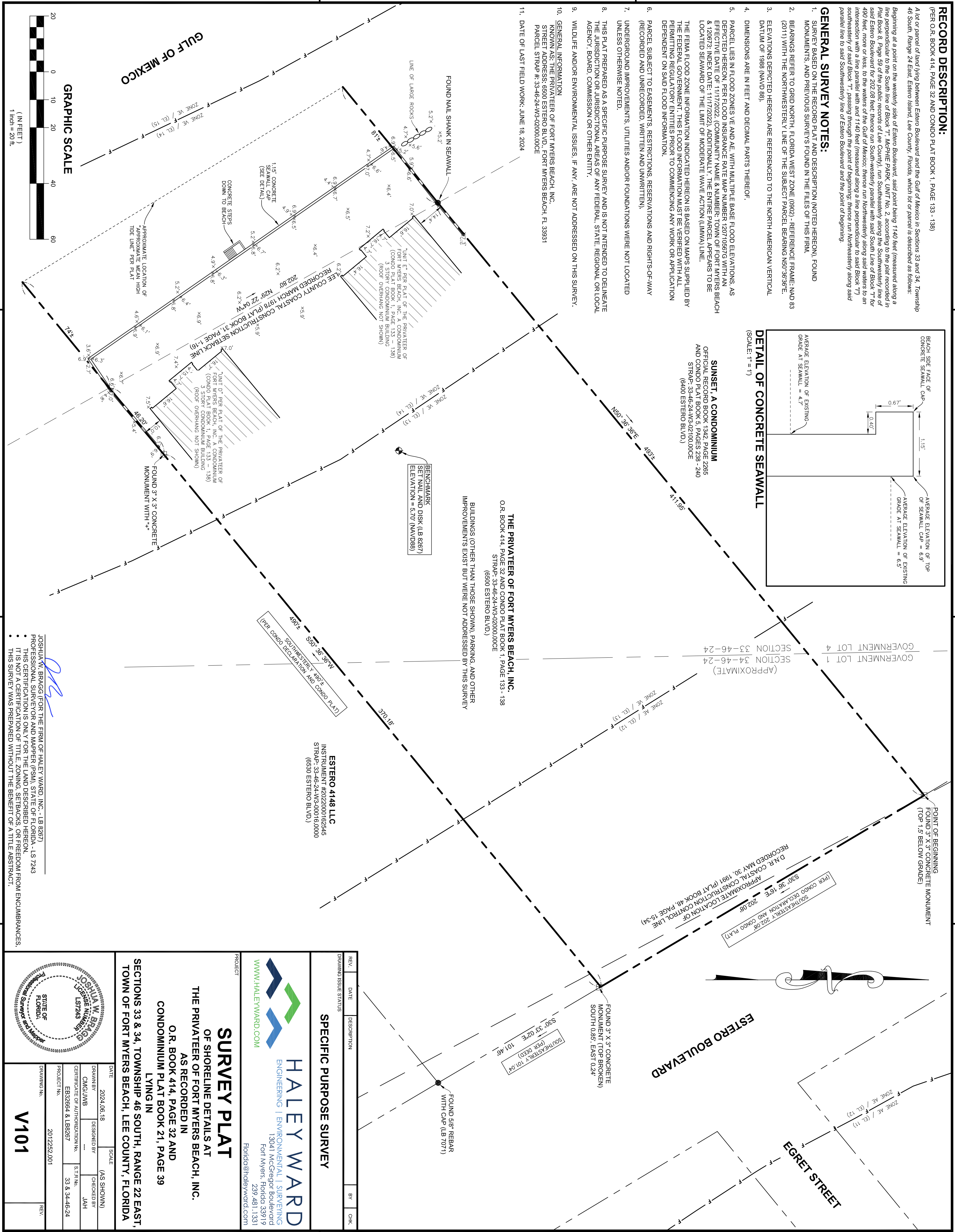












RESOLUTION NUMBER 24-163

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SE20240200 TO ALLOW REPAIRS TO A RETAINING WALL IN THE EC ZONING DISTRICT AS AUTHORIZED BY SECTION 6-366 OF THE TOWN OF FORT MYERS LAND DEVELOPMENT CODE FOR PROPERTY LOCATED AT 6500 AND 6502 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

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

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

WHEREAS, Applicant Stokes Marine Inc on behalf of The Privateer of Fort Lauderdale is requesting a special exception to repair an accessory structure in the EC zoning district per Section 6-366 of the Town of Fort Myers Land Development Code; and

WHEREAS, the STRAP number for the subject property is 33-46-24-W3-02000.00CE; and

WHEREAS, the Property is located in the “Recreation” category of the Future Land Use Map of the Comprehensive Plan; and

WHEREAS, the Property is located in the “Environmentally Critical” zoning district of the Official Zoning Map of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on September 3, 2024, and at the hearing the LPA gave full and complete consideration to the request of the Applicant recommendations of staff, the documents in the record, and the testimony of all interested persons, as required by Section 34-88 of the LDC. The LPA found that the request is/ is not consistent with the comprehensive plan and the requirements of the LDC and voted 7 to 0 recommending approval with conditions of the Special Exception; and

WHEREAS, on September 23, 2024 the Town Council held a duly noticed public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by Section 34-88 of the LDC; and

WHEREAS, the Town Council determined it is/ is not in the best interest of the Town to approve/approve with conditions/deny the request for a Special Exception.

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

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

Section 2. The Town Council determines the Applicant did/ did not meet its burden of proof that the requested Special Exception does/ does not meet the requirements of the Town Comprehensive Plan and LDC, and approving the Special Exception is/ is not in the best interest of the Town to approve. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties and public, the Town Council **APPROVES/APPROVES WITH CONDITIONS/DENIES** the Special Exception to allow reconstruction of a major accessory structure in the EC zoning district per section 6-366.

Section 3. In approving the Special Exception, the Town Council makes the following findings and conclusions in accordance with the requirements of Section 34-88 of the LDC:

- A. Changed or changing conditions which make approval of the request appropriate.
- B. The request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.
- C. The request meets all performance and locational standards for the proposed use.
- D. The request will protect, conserve, or preserve environmentally critical areas and natural resources.
- E. The request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- F. The requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code; and

In accordance with the additional regulations and considerations found in Section 6-366 of the LDC:

- A. Any repairs must comply with all relevant local and state floodplain regulations.
- B. Repairs may not damage existing dunes or dune vegetation.
- C. Repairs, other than those limited to emergency repairs to enclose a damaged structure, may not be completed during sea turtle nesting season.
- D. A new special exception must be applied for each time the structure is repaired.

Section 4. If the Town Council approves/denies the requested Special Exception and the following conditions of approval are imposed on the Applicant and the subject property:

1. A new Special Exception must be applied for each time the structure is repaired.

2. Construction shall not occur during sea turtle nesting season.
3. Any repairs must comply with all relevant local and state floodplain regulations.
4. Repairs may not damage existing dunes or dune vegetation.
5. Approval of this Special Exception does not give the Applicant an undeniable right to permit approval. Development of the subject property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
6. Failure to comply with any of the above-mentioned conditions of approval for the Special Exception will render this approval null and void.

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

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

ADOPTED this ____ day of September, 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

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

1. **Request:**

Meeting Date: September 23, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVE/ APPROVE WITH CONDITIONS/ DENY SPECIAL EXCEPTION FOR 1400 ESTERO BLVD, LANI KAI RESORT TO REBUILD PAVER DECKS, BEACH-BAR STRUCTURES, WALKWAYS, COVERED SCREENED AREAS, GAZEBO, PLANTING AREAS AND WOOD DECKING TO PRE-IAN CONDITION FULLY IN THE EC ZONING.

Why the action is necessary:

This structure is considered major accessory structure and can be replaced in the EC zoning district with approval of a special exception, per Section 34-652 (e) of the land development code. The EC zoning district starts at the 1978 Coastal Construction Control Line (CCCL) and extends seaward to the water. The attached site-plan shows the CCCL as the gray, dashed line running through the back portion of the resort property and running generally parallel to the seaward portion of the building.

What the action accomplishes:

Allow Lani Kai to rebuild their EC COP area

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Jason Smalley, Senior Planner

5. **Background:**

The applicant is proposing the replacement of paver decks, beach-bar structures, walkways, covered, screened areas, gazebo, planting areas and wood decking to pre-Ian condition within the Environmentally Critical (EC) zoning district. The decks and structures were in existence in the proposed location, prior to Hurricane Ian.

At their meeting on September 3rd, 2024, the LPA voted 6-1 to recommend that the Town Council approve this application.

Attachments:

1. 24-187_ SEZ20240024 1400 Estero Lani Kai ns edits
2. Staff Report
3. Exhibit A- Site Layout and COP area
4. Exhibit B - Applicant Narrative
5. Exhibit C - Approved DEP Permits
6. Exhibit D - Existing COP License
7. Exhibit E - Property Survey
8. Exhibit F - Lee County_Aproved LDO (2001)

Financial Impact:

N/A

6. **Alternative Action**

ADOPT WITH CONDITIONS

7. **Management Recommendations:**

N/A

8. **Recommended Approval:**

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

Created/Initiated - 9/13/2024
Approved - 9/13/2024
Approved - 9/16/2024
Approved - 9/16/2024
Final Approval - 9/16/2024

RESOLUTION NUMBER 24-187

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING / APPROVING WITH CONDITIONS / DENYING SPECIAL EXCEPTION SEZ20240116 TO ALLOW RECONSTRUCTION OF REPLACEMENT/REPAIR OF PAVER DECKS, BEACH-BAR STRUCTURES, WALKWAYS, COVERED, SCREENED AREAS, GAZEBO, PLANTING AREAS AND WOOD DECKING IN THE ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT, WITH CONDITIONS, FOR THE PROPERTY LOCATED AT 1400 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

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

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

WHEREAS, Island Winds Condominium Association is requesting a special exception for the reconstruction of major accessory structures that were destroyed during Hurricane Ian, including a pool deck, walkways, and a fence on its property, which is located in the Environmentally Critical zoning district; and

WHEREAS, the STRAP number for the subject property is 19-46-24-W4-0070D.0020; and

WHEREAS, the property is located in the “Recreation” category of the Future Land Use Map of the Comprehensive Plan and the “Environmentally Critical” zoning district of the Official Zoning Map of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on September 9, 2024, and at said hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Section 34-88 of the LDC. The LPA found that the request is/ is not consistent with the comprehensive plan and the requirements of the LDC and voted 6-1 to recommend approval with conditions of the special exception; and

WHEREAS, on September 23, 2024 the Town Council held a duly noticed public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by Section 34-88 of the LDC; and

WHEREAS, the Town Council determined it is/is not in the best interest of the Town to approve/approve with conditions/deny the request.

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

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

Section 2. The Town Council determines the Applicant **did/did not** meet its burden of proof that the requested Special Exception **does/does not** meet the requirements of the Town Comprehensive Plan and LDC, and approving the Special Exception **is/is not** in the best interest of the Town to approve. Based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties and public, the Town Council **approves/approves with conditions/denies** the Special Exception for the reconstruction of a pool deck, walkways and a fence in the Environmentally Critical zoning district.

Section 3. In approving the Special Exception, the Town Council makes the following findings and conclusions in accordance with the requirements of Section 34-88 of the LDC:

- A. Changed or changing conditions which make approval of the request appropriate.
- B. The request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.
- C. The request meets all performance and locational standards for the proposed use.
- D. The request will protect, conserve, or preserve environmentally critical areas and natural resources.
- E. The request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- F. The requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code; and

In accordance with the additional regulations and considerations found in Section 6-366 of the LDC:

- A. Any repairs must comply with all relevant local and state floodplain regulations.
- B. Repairs may not damage existing dunes or dune vegetation.
- C. Repairs, other than those limited to emergency repairs to enclose a damaged structure, may not be completed during sea turtle nesting season.
- D. A new special exception must be applied for each time the structure is repaired.

Section 4. If the Town Council approves/approves with conditions/denies the requested Special Exception and the following conditions of approval are imposed on the Applicant and the Property:

- 1) The applicant shall obtain a revised FDEP permit which includes all the structures/ pavers, including the beach bars.
- 2) Additional repairs to major structures in the EC zoning district will require a new special exception.
- 3) Approval of this Special Exception does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
- 4) The applicant must apply for and receive all state and local permits required for the reconstruction of all proposed structures.
- 5) Any violation of the conditions of approval shall render the special exception null and void.

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

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

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

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

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



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Special Exception

CASE NUMBER: SEZ20240024

CASE NAME: Special Exception for the replacement/repair of paver decks, beach-bar structures, walkways, covered, screened areas, gazebo, planting areas and wood decking to pre-Ian condition fully in the EC zoning.

TOWN COUNCIL HEARING DATE: September 23rd, 2024 at 9:00 AM

STAFF RECOMMENDATION: Approve With Conditions

**PREPARED/
SUBMITTED BY:** Jason Smalley, Senior Planner

I. APPLICATION SUMMARY

Applicant/Owner: Robert B. Burandt, Esq./ Lani Kai, LP

Requests: To return the paver decks, beach-bar structures, walkways, covered, screened areas, gazebo, planting areas and wood decking to pre-Ian condition

Physical Address: 1400 Estero Blvd.

STRAP #: 19-46-24-W4-0070D.0020

FLU: Recreation

Zoning: Environmentally Critical

Adjacent zoning and land uses:

North:	Downtown Commercial Parking Lot(s)
South:	Environmentally Critical (EC) Beach
East:	Downtown Commercial Parking Lot
West:	Mixed Use Retail and Condominiums

II. BACKGROUND AND ANALYSIS

Background:

The applicant is proposing the replacement of paver decks, beach-bar structures, walkways, covered, screened areas, gazebo, planting areas and wood decking to pre-Ian condition within the Environmentally Critical (EC) zoning district. The decks and structures were in existence in the proposed location, prior to Hurricane Ian.

This structure is considered major accessory structure and can be replaced in the EC zoning district with approval of a special exception, per Section 34-652 (e) of the land development code. The EC zoning district starts at the 1978 Coastal Construction Control Line (CCCL) and extends seaward to the water. The attached site-plan shows the CCCL as the gray, dashed line running through the back portion of the resort property and running generally parallel to the seaward portion of the building.

Analysis:

Per the applicant's submittal, the resort building was developed in 1979, while the application doesn't address when the structures in the EC were constructed staff can confirm through Lee Property Appraiser's aerials that similar structures and decks existed in 2001, the first year available with photography.

The LDC was recently updated to allow major primary and accessory structures to be repaired in the EC zoning district with the approval of a special exception. Prior to the code change, only single-family residences could be repaired in the EC zoning district.

At their meeting on September 3rd, 2024, the LPA voted 6-1 to recommend that the Town Council approve this application.

Neighborhood Compatibility:

A review of the aerials up and down the beach indicate that there are a number of primary and accessory structure that extend over the 1978 CCCL. The aerials are not precise but staff has fielded questions from condos and homeowners about the process of obtaining Special Exceptions for existing structures, indicating that there

is a non-insignificant number of lots which may be affected. These residents may request to repair the primary and accessory structure in the same location or may choose to move the structures landward of the CCCL.

Findings and Conclusions:

Section 6-366(b)(3) Regulations and Considerations

LDC Section 6-366 includes additional regulations and considerations for special exception approval of repairs in the EC zoning district:

- a. Any repairs must comply with all relevant local and state floodplain regulations.*

The applicant has been coordinating with staff, and their own contractors to ensure compliance with all floodplain and turtle-protection regulations related to rebuild of the decks and structures.

- b. Repairs may not damage existing dunes or dune vegetation.*

The repairs are proposed in conjunctions with Environmental review to ensure that no dunes or native vegetation will be impacted. Any plantings proposed will be required to be Florida Friendly, or otherwise acceptable to the Town and Florida DEP.

- c. Repairs, other than those limited to emergency repairs to enclose a damaged structure may not be completed during sea turtle nesting season.*

Sea turtle nesting season will begin May 1st, and will end on October 31st. Staff will ensure that the applicant is aware that even if provided approval to replace the structures that it must be done outside of turtle nesting season.

The resort has stated they are aware of this limitation in discussion with their contractor.

- d. A new special exception must be applied for each time the structure is repaired.*

This will be a condition of the special exception approval.

Special Exception Findings

LDC Sec. 34-88(b) sets forth the required findings and conclusions for the approval of a special exception:

- 1) Whether there exist changed or changing conditions which make approval of the request appropriate.*

The structures in the EC were severely damaged during Ian. While construction seaward of the CCCL should be limited, this request is to rebuild an existing structure that will only minimally contribute to future flooding, and which existed with few problems before the storm.

2) *Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.*

Policy 5-D-1 states: Development (other than minor structures) shall not be allowed seaward of the 1978 Coastal Construction Control Line. Development seaward of the 1991 Coastal Construction Control Line may be permitted provided it complies with this comprehensive plan and all state and local permitting requirements.

This proposed redevelopment does not create any new development or change the location from what previously existed on the site. Therefore staff believes that this proposed request does not fall within the definition of development in the Town's code of ordinance:

- The LDC defines *Development* as (1) A subdivision, as defined in this chapter; or (2) Any improvement to land, as defined in this chapter.
- The LDC defines *Improvement* to land as any change to land or to any structure on the land, and shall include any movement or grading of land, except grading which is incidental to the removal of exotic vegetation and which is not prohibited by ch. 22 of this LDC; clearing of indigenous plant communities; and the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; provided, however, that any change to a building which does not involve a change in the building floor area shall not be deemed an improvement to land.

3) *Whether the request meets or exceeds all performance and locational standards for the proposed use.*

The request will comply with local, state, and federal air, noise and water pollution standards. It will not adversely affect water quality and it will not create a nuisance to adjacent properties.

4) *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*

The request will maintain what was previously constructed on this property. It will not have an additional negative impact.

- 5) *Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.*

There is no anticipated negative impact or injury to surrounding properties.

- 6) *Whether a requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code.*

The EC zoning district allows only passive, movable structures, no new major structures of any kind are allowed, other than dune walkovers through a special exception. Prior to the recent code change, only repairs to primary structures were permitted through a special exception. The recent code amendment allows replacement of major accessory structures also.

III. RECOMMENDATION

Staff finds that the special exception for reconstruction of existing structures in the EC zoning district is in compliance with item Sec. 34-88(b)(1). Therefore, staff recommends **APPROVAL WITH CONDITIONS** of SEZ20240116 for the reconstruction of paver decks, beach-bar structures, walkways, covered, screened areas, gazebo, planting areas and wood decking to pre-lan condition

IV. CONDITIONS OF APPROVAL

- 1) The applicant shall obtain a revised FDEP permit which includes all the structures/ pavers, including the beach bars.
- 2) Additional repairs to major structures in the EC zoning district will require a new special exception.
- 3) Approval of this Special Exception does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
- 4) The applicant must apply for and receive all state and local permits required for the reconstruction of all proposed structures.
- 5) Any violation of the conditions of approval shall render the special exception null and void.

Staff Report Exhibits:

Exhibit A – Site Layout Plan with COP area

Exhibit B – Applicant Narrative

Exhibit C- Approved DEP Permits

Exhibit D- Existing COP License

Exhibit E- Property Survey
Exhibit F – Lee County Approved LDO

LIMITED DEVELOPMENT ORDER

FOR

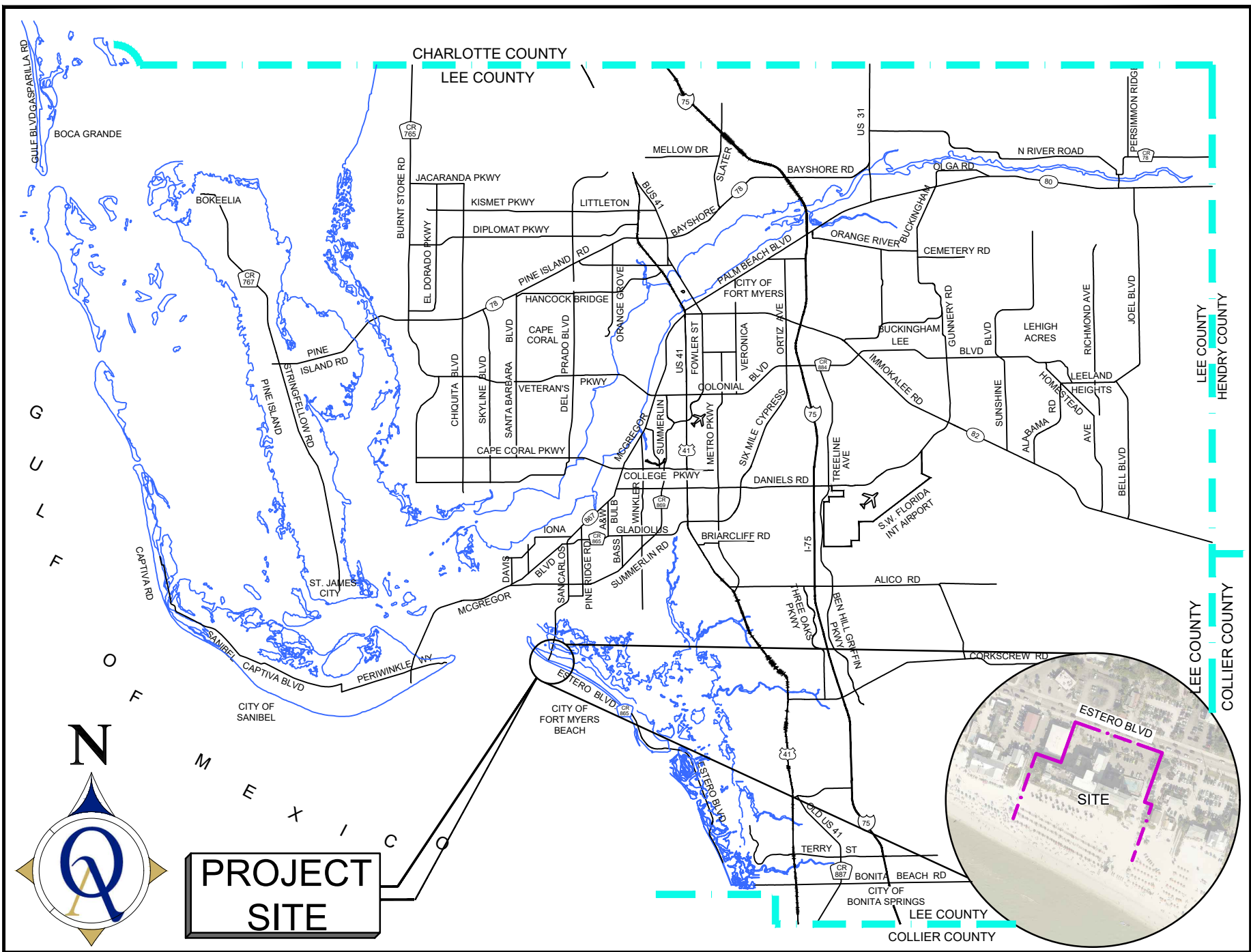
LANI KAI

1400 ESTERO BLVD
FORT MYERS BEACH, FL 33931

OWNER / DEVELOPER:

LANI KAI, LP
1400 ESTERO BLVD
FORT MYERS BEACH, FL. 33931
LEE COUNTY

SITE PERMIT REQUIREMENTS		
AGENCY	STATUS	NOTES
LEE COUNTY DEVELOPMENT ORDER	REQUIRED	
LEE COUNTY PORT AUTHORITY	NOT REQUIRED	
LEE COUNTY UTILITY	NOT REQUIRED	
S.F.W.M.D. ENVIRONMENTAL RESOURCE	REQUIRED	
S.F.W.M.D. DEWATERING PERMIT	NOT REQUIRED	
S.F.W.M.D. WATER USE	NOT REQUIRED	
DOH WATERLINE EXTENSION PERMIT	NOT REQUIRED	
FDEP WASTE WATER EXTENSION PERMIT	NOT REQUIRED	



LEE COUNTY, FLORIDA

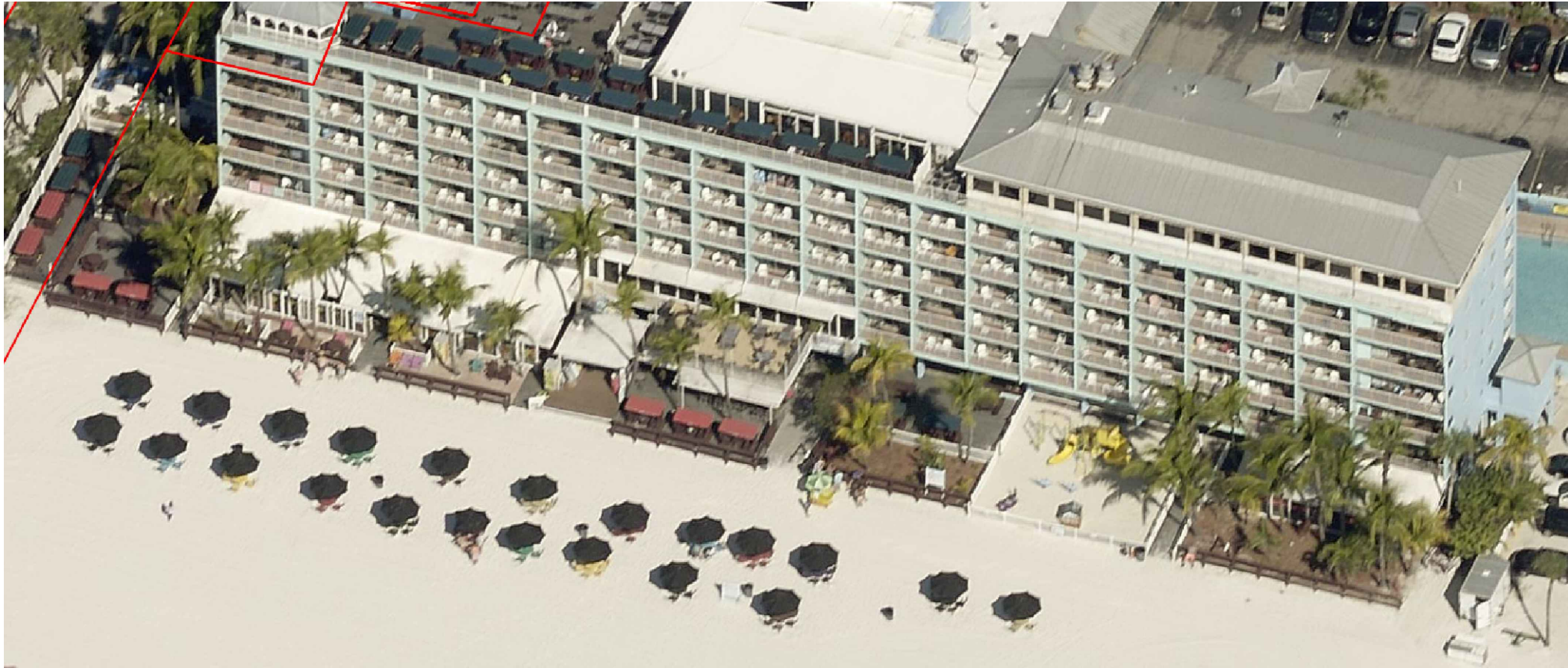
SECTION 06, TOWNSHIP 45S, RANGE 25E
STRAP # 06-45-25-00-00002.0090
230410 - A

SHEET INDEX

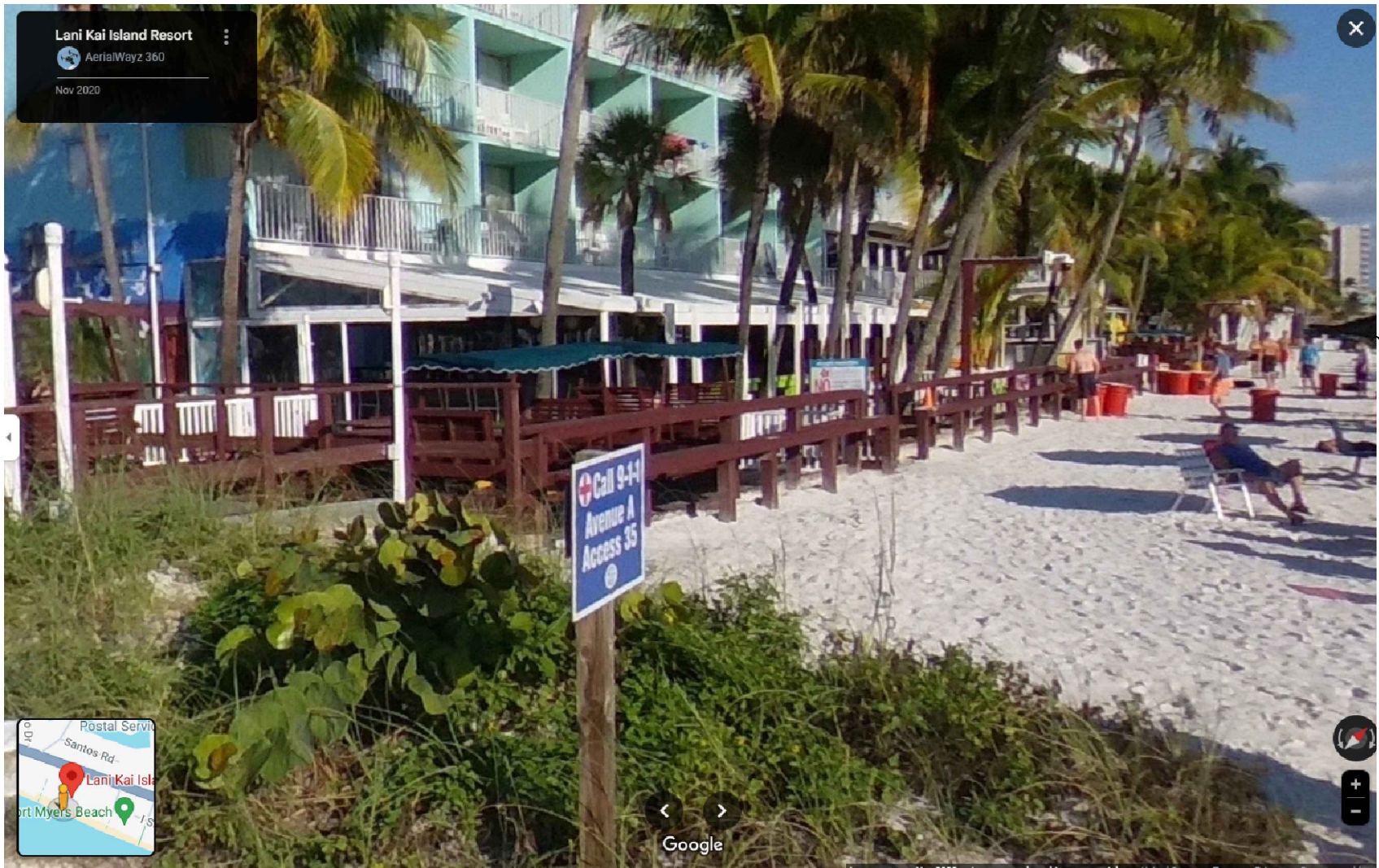
- SITE DEVELOPMENT: SD
SD-01 COVER SHEET
SD-02 MASTER SITE PLAN
EX-01 PRE HURRICANE IAN CONDITIONS (2021)
EX-02 PRE HURRICANE IAN CONDITIONS
IMAGES (2021)

CONTRACTOR STAKEOUT SHALL BE FROM THE APPROVED
CAD FILE BY QUATTRONE AND ASSOCIATES

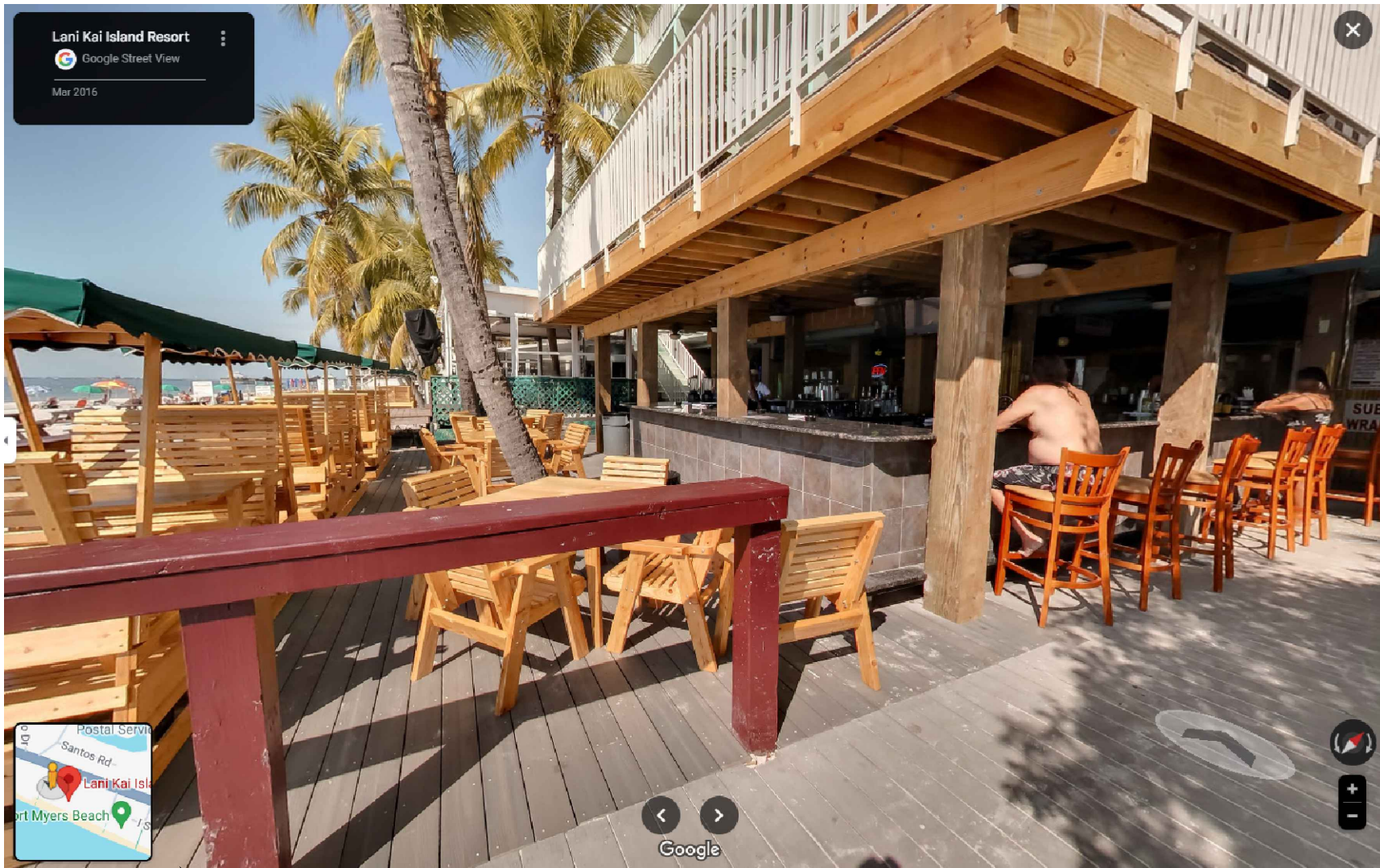
ALFRED QUATTRONE, P.E.
FL REG #52741
DATE: 8/11/2024



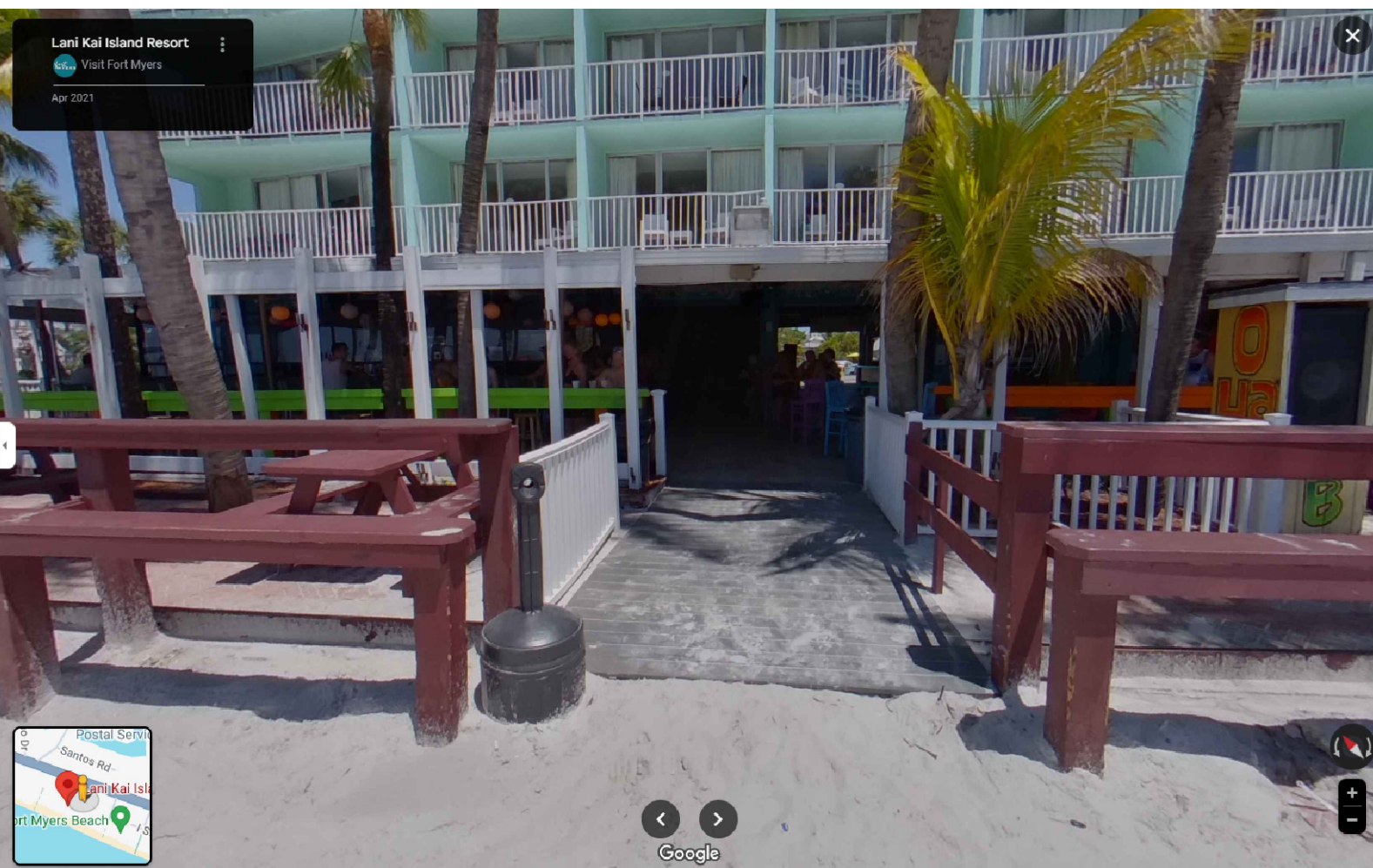
2021 EAGLE VIEW (SOURCE: LEE COUNTY PICTOMETRY AERIAL)



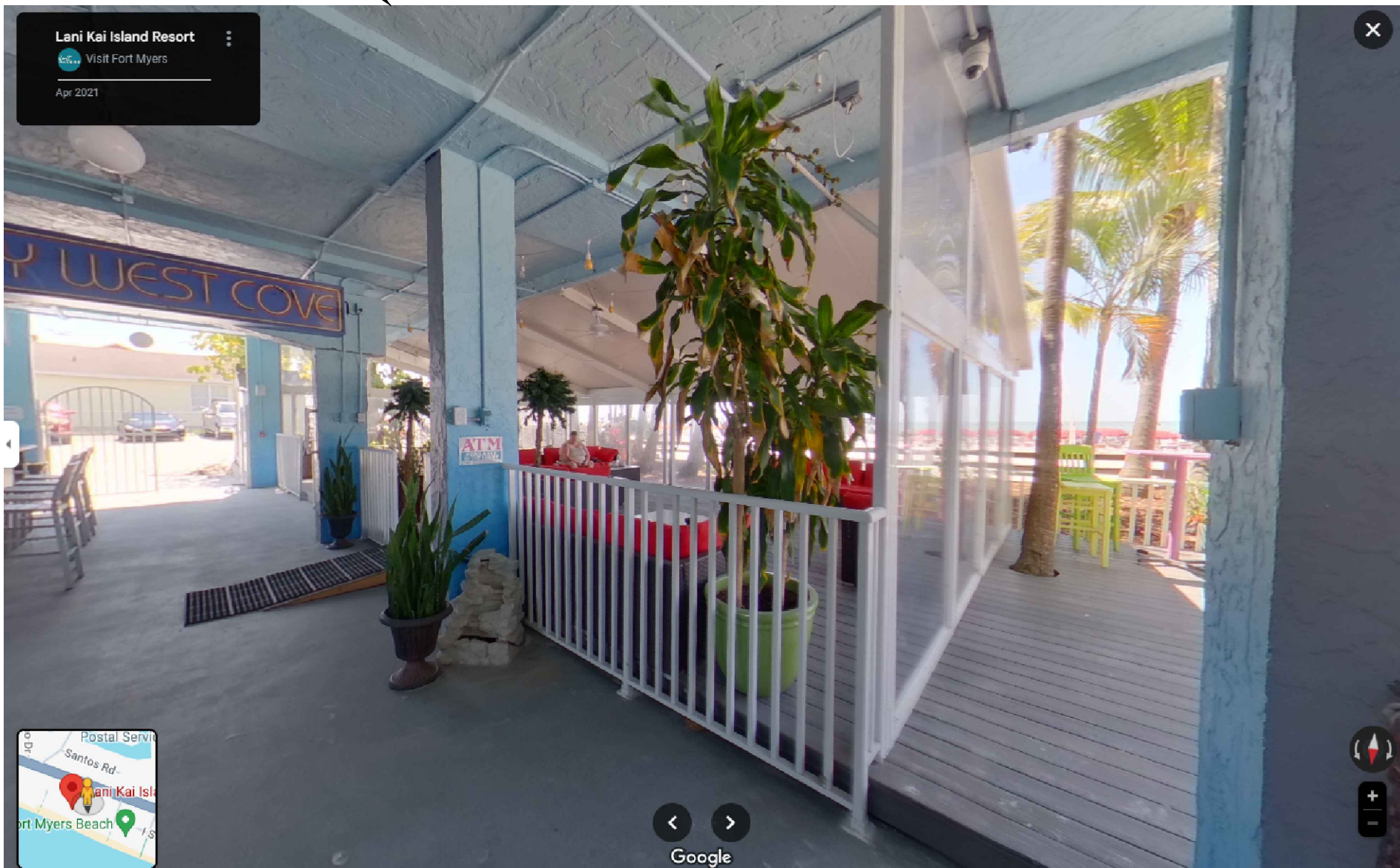
BAR SPACE AND SEATING AREA UNDER COVERED CANOPY AREA (SOURCE: GOOGLE MAPS)



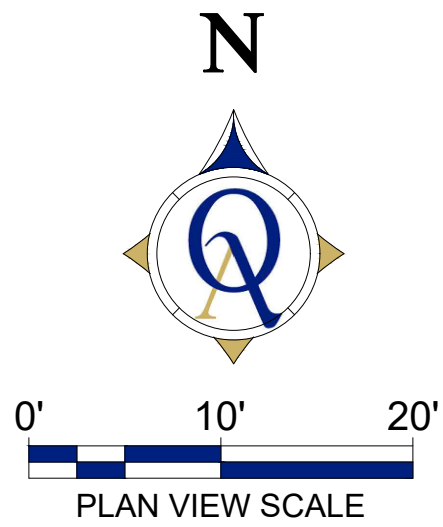
WOODEN DECK WITH BAR SPACE AND SEATING (SOURCE: GOOGLE MAPS)



BAR SPACE AND SEATING AREA UNDER COVERED CANOPY AREA (SOURCE: GOOGLE MAPS)



COVERED CANOPY WITH WOODEN DECK (SOURCE: GOOGLE MAPS)



PRE HURRICANE IAN CONDITIONS:			
	WOODEN DECK - 3,666 SF		ELEVATED WOODEN DECK - 710 SF
	COVERED ALUMINUM CANOPY AREA WITH WOODEN DECK - 2,270 SF		WOODEN GAZEBO - 265 SF
	WOODEN WALKWAY - 729 SF		
TOTAL PRE HURRICANE IMPERVIOUS AREA: 7,640 SF			
NOTE: ALL THE PRE HURRICANE AREAS ARE BASED ON 2021 AERIAL IMAGERY.			

LANI KAI
PRE HURRICANE IAN CONDITIONS IMAGES (2021)
1400 ESTERO BLVD
FORT MYERS BEACH, FL 33931

Quattrone & Associates, Inc.
Engineers, Planners & Development Consultants
4301 Veronica Shoemaker Blvd - Fort Myers, Florida 33916 - 239-936-5222
Certificate of Authorization Number: 9405

ALFRED QUATTRONE, P.E.
FL REG #52741
VALID ONLY WITH STAMPED SEAL
SAVED BY: Praneeth
SAVED ON: 8/11/24

SHEET
EX-02
02 OF 02

230410 - A

LANI KAI
SPECIAL EXCEPTION
STRAPS#: 19-46-24-W4-0070D.0020
1400 Estero Blvd.,
Fort Myers Beach, FL 33931

REQUEST:

Lani Kai requests a Special Exception in the EC Zoning district to allow for COP for outdoor seating area, with accessory structures to include landscape, deck, and pavers.

EXISTING CONDITIONS:

The subject property is zoned Downtown and is in the Pedestrian Commercial Future Land Use Map (FLUM) category, with underlying and common boundary of EC (Environmentally Critical) zoning. Lani Kai currently holds a 4-COP alcoholic beverage license, which permits consumption of beer, wine and liquor.

The property qualifies for a special exception because:

Lani Kai was originally built in 1979 and is a staple of Fort Myers Beach. The permit is for the recovery from the damage and destruction of Hurricane Ian that destroyed the existing accessory structures to include the bar, deck and pavers areas. The Lani Kai has had a 4-Cop license since 2001.

SPECIAL EXCEPTION DECISION MAKING COMPLIANCE

Whether there exist changed or changing conditions which make approval of the request appropriate.

The location of the request has been an existing hotel for ±45 years with an approved 4-COP consumption of alcoholic beverages on premises, including indoor and outdoor seating area since 2001 (COP2001-00031). The accessory of the bar, deck and pavers areas were previously approved with LDO2001-00385.

Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.

The subject property is in the Pedestrian Commercial FLUM category, near Estero Blvd. Comp Plan Policy 4-B-6 regarding the Pedestrian Commercial FLUM, states that “Commercial activities must contribute to the pedestrian-oriented public realm as described in this comprehensive plan and must meet the design concepts of this plan and the Land Development Code” The existing hotel bar area is orientated towards the beach side and heavily traveled by pedestrian beachgoers.

Furthermore, the subject property is located in what the Comprehensive Plan terms Downtown. The Comprehensive Plan describes a vision for this area that “Boast a revitalized entertainments area with tree-shaded outdoor cafes, pedestrian streets, and an ‘Old Estero Island’ character to the buildings.” The applicants request for outdoor consumption on premises fits with the vision for the area as described above.

Whether the request meets or exceeds all performance and locational standards for the proposed use.

LANI KAI
SPECIAL EXCEPTION
STRAPS#: 19-46-24-W4-0070D.0020
1400 Estero Blvd.,
Fort Myers Beach, FL 33931

LDC Sec. 34-1264(g)(1)(b) states “COP licensed premises extending seaward into the EC zoning district, shall be limited to no more than 33 percent of the land area between the landward EC zoning district boundary.” The allowable expansion for the site would be 45 feet, the applicant request is for a proposed 30 feet.

Furthermore, DEP has evaluated the request for the exception and issued a permit (included with the request.)

Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

The proposed structure on the subject parcel was originally developed decades ago and destroyed during Hurricane Ian. The proposed work does not include any previously undisturbed areas, therefore, no negative effects on the environmentally critical area or natural resources.

Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.

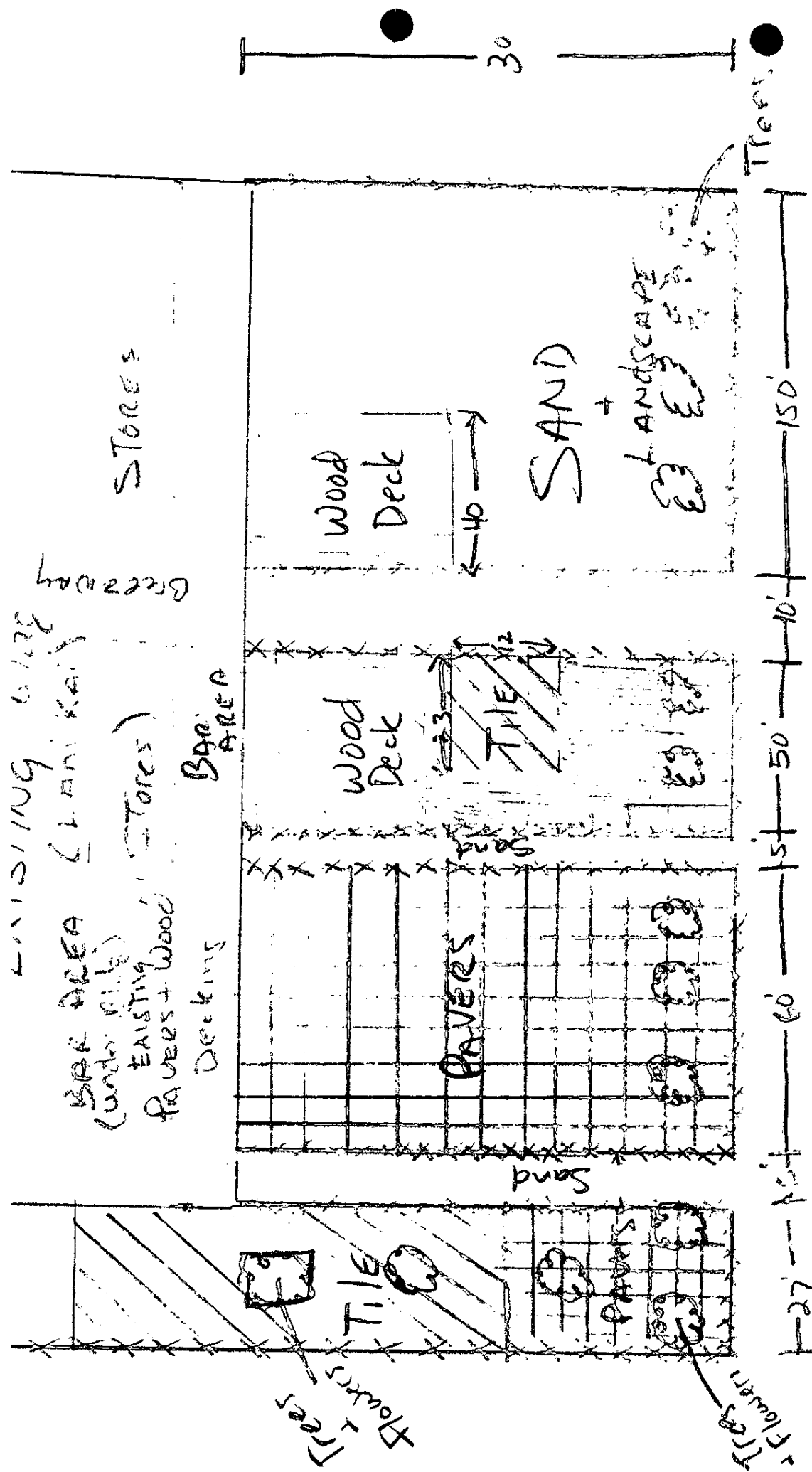
The subject property and the immediately surrounding it, is within the Pedestrian Commercial future land use category with similar and will not cause damage, hazard, nuisance, or other detriment to persons or property.

Whether a requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code

The outdoor consumption on premises of alcoholic beverages on the subject property will comply with Section 34-678 and 34-1264

Explain how this request, if granted for the subject property, could affect the surrounding properties and the existing or planned uses on those properties.

The surrounding properties currently are vacant due to Hurricane Ian.



NOT TO SCALE



Jeb Bush
Governor

Department of Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

David B. Struhs
Secretary

December 19, 2001

Robert and Grace Conidaris
Lani Kai Hotel
1400 Estero Boulevard
Fort Myers Beach, FL 33931

Dear Mr. and Mrs. Conidaris:

On October 30, 2001, a staff inspection of your property located at the above address, revealed the unauthorized construction of a wood deck, a paver-block patio area, and construction of a wood picket fence seaward of the coastal construction control line without benefit of a permit from the Department of Environmental Protection.

On December 19, 2001, the Department issued permit VLE 01-31 P that approves the above-unauthorized activities.

Due to the after-the-fact nature of the permit, the enclosed Final Order also assesses you an administrative fine pursuant to Section 161.054, Florida Statutes, in the amount of three hundred (\$300) dollars.

Payment to the Ecosystem Management and Restoration Trust Fund must be received within 21 days of your receipt of this Final Order.

In order to ensure that payment is properly credited, your check should include reference to Department file numbers VLE 01-31 and OGC #01-1936 and should be sent to: **Administrative Enforcement Section, Ecosystem Management and Restoration Trust Fund, 3900 Commonwealth Boulevard, Tallahassee, FL 32399-3000, Attention Jim Martinello.**

Pursuant to Section 161.054, Florida Statutes, failure to pay the fine imposed herein shall create a lien upon the real and personal property of the violator, enforceable by the Department as are statutory liens under Chapter 85, Florida Statutes.

All persons whose substantial interest are affected by this Final Order have a right, pursuant to Sections 120.569 and 120.57, Florida Statutes, to petition for an administrative hearing on it. The Petition must contain the information set forth below and must be filed (received) at the Department's Office of General Counsel, 3900

File Number: VLE 01-31
Robert and Grace Conidaris
Page 2

Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000, within 21 days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the Bureau of Beaches and Coastal Systems named above at the address indicated. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes.

The petition shall contain the following information:

a) The name, address, and telephone number of each petitioner; the Department's Final Order identification number and the county in which the subject matter or activity is located; (b) A statement of how and when each petitioner received notice of the Final Order; (c) A statement of how each petitioner's substantial interests are affected by the Final Order; (d) A statement of the material facts disputed by petitioner, if any; (e) A statement of facts which petitioner contends warrant reversal or modification of the Final Order; (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Final Order; (g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Final Order.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Final Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this Notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, Florida Statutes, and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 60Q-2.010, Florida Administrative Code.

Mediation as provided in Section 120.573, Florida Statutes, will not be offered in this instance.

File Number: VLE 01-31
Robert and Grace Conidaris
Page 3

Any party to this Final Order has the right to seek judicial review of this permit, pursuant to Section 120.68, Florida Statutes and Rules 9.030(b)(1)(c) and 9.110, Florida Rules of Appellate Procedure. To initiate an appeal, a Notice of Appeal must be filed with the Department of Environmental Protection, Office of General Counsel, and with the appropriate District Court of Appeal within thirty (30) days of the date the permit was rendered. The Notice filed with the District Court must be accompanied by the filing fee specified in Subsection 35.22(3), Florida Statutes.

The after-the-fact permit is conditional upon the resolution of any related violations to the satisfaction of the Department no later than sixty (60) days from the date of this Order. Failure to comply will result in automatic revocation of the permit and will require removal of all the structures authorized by the permit within thirty (30) days.

The authorized work is strictly limited to that described on the enclosed Final Order. Please direct any questions to me by letter at the letterhead address or by telephone at 850/487-4475.

Sincerely,



Jim Martinello
Environmental Manager
Office of Beaches and Coastal Systems

Enclosures

Certified Mail #: 7000 0520 0021 3386 3307

cc: Celora Jackson
Jennie Cowart
Nancy Mould, OGC
Patrick Krechowski, OGC

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DEPUTY SECRETARY/REGULATORY PROGRAMS
OFFICE OF BEACHES AND COASTAL SYSTEMS

David B. Struhs, Secretary

Jeb Bush, Governor

3900 Commonwealth Boulevard
Tallahassee, Florida 32399
Telephone #850/487-4475
FAX #850/488-5257 or
SUNCOM FAX #278-5257

FAX MESSAGE COVER PAGE

Date: 12/21/01From: Barbara WilsonTo: Michael, Robert and Grace ConidarisFAX #: 941/463-2986

RE: Here is a copy of what you will receive
in the mail... Call me if you have any
questions. 850/487-4475 x119.

Total pages (including this cover page) 5. If you have any problems
please call above # at _____.



FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
Division of Water Resource Management
Coastal Construction Control Line Program
2600 Blair Stone Road, M.S. 3522
Tallahassee, FL 32399-2400
Phone: (850) 245-8336

Permit No. 8035668 - LE
No. of Pages Attached: 9

FIELD PERMIT PURSUANT TO SECTION 161.053 OR 161.052, FLORIDA STATUTES

FINDINGS OF FACT AND CONCLUSION OF LAW: The request for a field permit was considered by the staff designee of the Department of Environmental Protection and found to be in compliance with the requirements of Chapter 62B-33, Florida Administrative Code (F.A.C.). Approval is specifically limited to the activity in the stated location and by the project description, approved plans (if any), attached standard conditions, and any special conditions stated below pursuant to Paragraph 161.053(5), Florida Statutes (F.S.). This permit may be suspended or revoked in accordance with Section 62-4.100, F.A.C.

PROJECT LOCATION:

Between approximately 172 feet SE to 445 feet SE of the Department of Environmental Protection's reference monument LE-R182 at 1400 ESTERO BLVD, FORT MYERS BEACH FL 3393

Property Owner/Agent: LANI KAI LP
c/o ROBERT G CONIDARIS
1400 ESTERO BLVD
FORT MYERS BEACH FL 33931
c/o Kara Lyn Stewart <stewart.karalyn@gmail.com>

PROJECT DESCRIPTION:

The following work was not completed under Field Permit No. 8035633-LE

- 1 - Installation of two areas of sand set paver on seaward side of existing hotel structure: 25' shore normal by 88' shore parallel and 30' shore normal by 36' shore parallel. Total of 3,280 sq. ft.
- 2 - Installation of two on grade open wood decks on seaward side of existing hotel structure: 28' shore normal by 48' shore parallel and 28' shore normal by 51' shore parallel. Total of 2,772 sq. ft.
- 3 - Installation of a 4' tall fence as shown in plan all to be located a maximum of 216 feet seaward of the control line.
- 4 - Installation of a 4.75' high picket fence surrounding the pool area.

Access: South side of property.
Staging: Entirely on subject property.

NO WORK AUTHORIZED DURING SEA TURTLE NESTING SEASON SEE STANDARD FIELD CONDITION #12.

SPECIAL PERMIT CONDITIONS: The permit is valid only after all applicable federal, state, and local permits are obtained and does not authorize contravention of local setback requirements or zoning or building codes. This permit and public notice shall be posted on the site immediately upon issuance and shall remain posted along with local approval until the completion of any activity authorized by this permit. Other special conditions of this permit include:

- 1) Read the attached Public Notice, Standard Field Conditions.
- 2) This is a one-time installation of the work authorized in the project description. No other activities other than that specifically approved by this permit and/or the attached approved plan are authorized.
- 3) No concrete will be used.
- 4) All demolition or construction debris must be disposed of in an approved upland landfill.
- 5) No new lighting is authorized.
- 6) No jetting is authorized for installation of piles. They must be hand dug or hand augered.
- 7) The permittee shall not commence any excavation, construction, or other physical activity on or encroaching on the sovereignty land of Florida seaward of the mean high water line or, if established, the erosion control line until the permittee has received from the Board of Trustees of the Internal Improvement Trust Fund the required lease, license, easement, or other form of consent authorizing the proposed use.
- 8) This permit does not authorize trespass onto other property.
- 9) If there is a conflict between the Special Permit Conditions, Standard Field Conditions, or the plans, the Special Permit Conditions shall prevail.

STANDARD PERMIT CONDITIONS: The permittee shall comply with the attached standard field permit conditions.

APPLICANT INFORMATION: I hereby certify that I am either: (1a) the owner of the subject property or (1b) I have the owner's consent to secure this permit on the owner's behalf; and that (2) I shall obtain any applicable licenses or permits which may be required by federal, state, county, or municipal law prior to commencement of the authorized work; (3) I acknowledge that the authorized work is what I requested; and (4) I accept responsibility for compliance with all permit conditions.

Applicant's Signature [Signature] Date 6/30/23 Telephone No. 239 229-6129
 Applicant's Printed Name Robert Conideris Address 1400 ESTERO Blvd. Ft. Myers Beach FL 33931

If applicant is an agent:

Printed name of property owner _____ Property owner's address _____ Property owner's telephone no. _____

DEPARTMENT FINAL ACTION AND FILING AND ACKNOWLEDGMENT: This field permit is approved on behalf of the Department of Environmental Protection by the undersigned staff designee, and filed on this date, pursuant to section 120.52, F.S., with the undersigned designated Deputy Clerk, receipt of which is hereby acknowledged.

Staff Designee/Deputy Clerk [Signature] Kelly Cramer, ESII Date 7/5/23
 Printed Name of Designee/Deputy Clerk

EXPIRATION DATE: 4/30/24

(Emergency permits issued pursuant to Section 62B-33.014, F.A.C., are valid for no more than ninety days and other field permits are valid for no more than 12 months. The staff designee may specify a shorter time limit.)

EMERGENCY PERMIT: ☐ YES ☒ NO

Approved plans are attached: ☒ YES ☐ NO

POST PERMIT AND PUBLIC NOTICE CONSPICUOUSLY ON THE SITE**PUBLIC NOTICE**

The foregoing constitutes final agency action. Any person whose substantial interests are affected by any decision made by the Department on the Field Permit has a right to request an administrative hearing in accordance with the provisions of Sections 120.569 and 120.57, F.S. The request for an administrative hearing must comply with the provisions of Rule 28-106.201, F.A.C., and must be received by the Department (at the address given below) within twenty-one (21) days from the date of this notice.

When the Department receives an adequate and timely filed request for hearing, the Department will request the assignment of an administrative law judge. Once the administrative law judge is requested, the Division of Administrative Hearings will have jurisdiction over the formal proceeding and the Department (as the referring agency) will take no further action with respect to the proceeding except as a party litigant.

Section 120.54(5)(b)4, F.S., and Rule 28-106.201(2), F.A.C., explain that the following items must be included in a petition for a formal administrative hearing

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceedings; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all issues of material fact disputed by the petitioner, or a statement that there are no disputed facts;
- (e) A concise statement of the ultimate facts alleged, including a statement of the specific facts that the petitioner contends warrant reversal or modification of the Department's action;
- (f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the Department's action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wants the Department to take with respect to its action.

A person may request an extension of time to petition for an administrative hearing. The person filing the request for extension must do so within the time limits for filing a petition described above. The request must state why an extension of time is needed. The Department will grant an extension only when good cause is shown.

If a petition or a request for time extension is filed, further order of the Department becomes necessary to effectuate this Field Permit. Accordingly, the Department's final action may be different from the position taken in this notice. Actions undertaken by any person under this permit, pending the lapse of time allowed for the filing of such a request for hearing, may be subject to modification, removal, or restoration.

Failure to petition within the allowed time frame constitutes waiver of any right that a person has to request a hearing under Section 120.57, F.S., and to participate as a party to the proceeding. If a legally sufficient petition for hearing is not timely received, this notice constitutes final agency action.

When this order becomes final and is filed with the Department Clerk, any party to the order has the right to seek judicial review under Section 120.57, F.S., and Rule 9.030(b)1(c) and 9.110, Florida Rules of Appellate Procedure. A notice of appeal must be filed within thirty (30) days with both the Department Clerk (see address below) and with the appropriate district court of appeal. The notice filed with the district court must be accompanied by the filing fee specified in Section 35.33(3), F.S. Any subsequent intervention will be only by the approval of the presiding officer on motion filed under Rules 28-5.207 or 60Q-2.010, F.A.C.

All requests for hearings are to be filed with the Department at the following address:

Florida Department of Environmental Protection
Office of General Counsel
Department Clerk
3900 Commonwealth Boulevard Mail Station 35
Tallahassee, Florida 32399-3000

STANDARD FIELD PERMIT CONDITIONS

The following conditions shall apply to **FIELD PERMITS** (unless waived by DEP or modified by special permit condition). In the event of a conflict between a field permit condition and a special permit condition, the special condition shall prevail.

- 1) The permittee shall carry out the construction or activity for which the permit was granted in accordance with the plans and specifications that were approved by DEP as part of the permit. Any deviation there from shall be grounds for suspension of the work and revocation of the permit pursuant to Section 120.60(7), F.S., and may result in assessment of civil fines or issuance of an order to alter or remove the unauthorized structure, or both. No other construction or activities shall be conducted. No modifications to project size, location, or structural design are authorized. A copy of the permit shall be conspicuously displayed at the project site.
- 2) The permittee shall conduct the construction or activity authorized under the permit using extreme care to prevent any adverse impacts to the beach and dune system, marine turtles and their nests and habitats, or adjacent property and structures.
- 3) The permittee shall allow any duly authorized member of the staff to enter upon the premises associated with the project authorized by the permit for the purpose of ascertaining compliance with the terms of the permit and with the rules of DEP, until all construction or activities authorized or required in the permit have been completed and the project accepted by DEP.
- 4) The permittee shall hold and save the State of Florida, DEP, its officers and employees, harmless from any damage (no matter how occasioned and no matter what the amount) to persons or property that might result from the construction or activity authorized under the permit and from any and all claims and judgments resulting from such damage.
- 5) The permittee shall allow DEP to use all submitted records, notes, monitoring data, and other information relating to construction or any activity under the permit for any purpose it may deem necessary or convenient, except where such use is otherwise specifically forbidden by law.
- 6) Construction traffic shall not operate and building materials shall not be stored on vegetated areas seaward of the control line, unless specifically authorized by the permit. If (in the opinion of DEP staff) this requirement is not being met, positive control measures shall be provided by the permittee at the direction of DEP staff. Such measures may include temporary fencing, designated access roads, adjustment of construction sequence, or other requirements.
- 7) The permittee shall not disturb existing beach and dune topography and vegetation except as expressly authorized in the permit. Before the project is considered complete, any disturbed topography or vegetation shall be restored (as prescribed in the permit) with suitable fill material or revegetated with appropriate beach and dune vegetation.
- 8) The fill material shall be obtained from a source landward of the control line and shall consist of sand which is similar to that already on the site in both grain size and coloration. This fill material shall be free of construction debris, rocks, or other foreign matter. A sample of the sand shall be provided to the staff representative of the Bureau of Beaches and Coastal Systems during the preconstruction conference.
- 9) If surplus sand fill results from any approved excavation seaward of the CCCL, such material shall be distributed seaward of the CCCL on the site, as directed by DEP staff (unless otherwise specifically authorized by the permit).
- 10) Any native salt-resistant vegetation destroyed during construction shall be replaced with plants of the same species or, by authorization of DEP, with other native salt-resistant vegetation suitable for beach and dune stabilization. Unless otherwise specifically authorized by the staff, all plants installed in beach and coastal areas (whether to replace vegetation displaced, damaged, or destroyed during construction or otherwise) shall be of species indigenous to Florida beaches and dunes (i.e., sea oats, sea grape, saw palmetto, panic grass, salt meadow hay cord grass, seashore salt grass, and railroad vine).
- 11) All topographic restoration and revegetation work is subject to approval and acceptance by DEP staff.
- 12) If not specifically authorized elsewhere in this permit, no operation, transportation, or storage of equipment or materials is authorized seaward of the dune crest or rigid coastal structure during the marine turtle-nesting season. The marine turtle-nesting season is May 1 through October 31 in all counties (except Brevard, Indian River, St. Lucie, Martin, Palm Beach and Broward counties where marine turtle nesting occurs during the period of March 1 through October 31).
- 13) If not specifically authorized elsewhere in this permit, no temporary lighting of the construction area is authorized at any time during the marine turtle-nesting season and no additional permanent exterior lighting is authorized.
- 14) This permit has been issued to a specified property owner and is not valid for any other person.



Property Data

STRAP: 19-46-24-W4-0070D.0020 Folio ID: 10228192

Generated on 4/4/2023 1:17 PM

Owner Of Record

[\[Change Address\]](#)

LANI KAI LP
c/o ROBERT G CONIDARIS
1400 ESTERO BLVD
FORT MYERS BEACH FL 33931

Site Address

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

1400 ESTERO BLVD
FORT MYERS BEACH FL 33931

Property Description

Do not use for legal documents!

CRESCENT BEACH PB 4 PG 45 BLKS D + E + VAC R/W DESC OR
1293 PG 1208

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



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



Current Working Values



[Tax Roll Value Letter](#)

[Tax Refund Status](#)



Just 20,591,469

Attributes

Land Units Of Measure	SF
Units	118135.00
Total Number of Buildings	1
Total Bedrooms / Bathrooms / Fixtures	10 / 100.0 / 30
Gross Building Area	66,622
1st Year Building on Tax Roll	1980
Historic Designation	No

Image of Structure



◀ Photo Date October of 2021 ▶ ☐ View other photos

Last Inspection Date: 03/17/2023

Exemptions / Classified Use (Current)

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Exemptions / Classified Use (2022 Tax Roll)

Generated on 4/4/2023 1:17 PM



Values (2022 Tax Roll)



Generated on 4/4/2023 1:17 PM

Taxing Authorities

Generated on 4/4/2023 1:17 PM

Sales / Transactions

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Building/Construction Permit Data

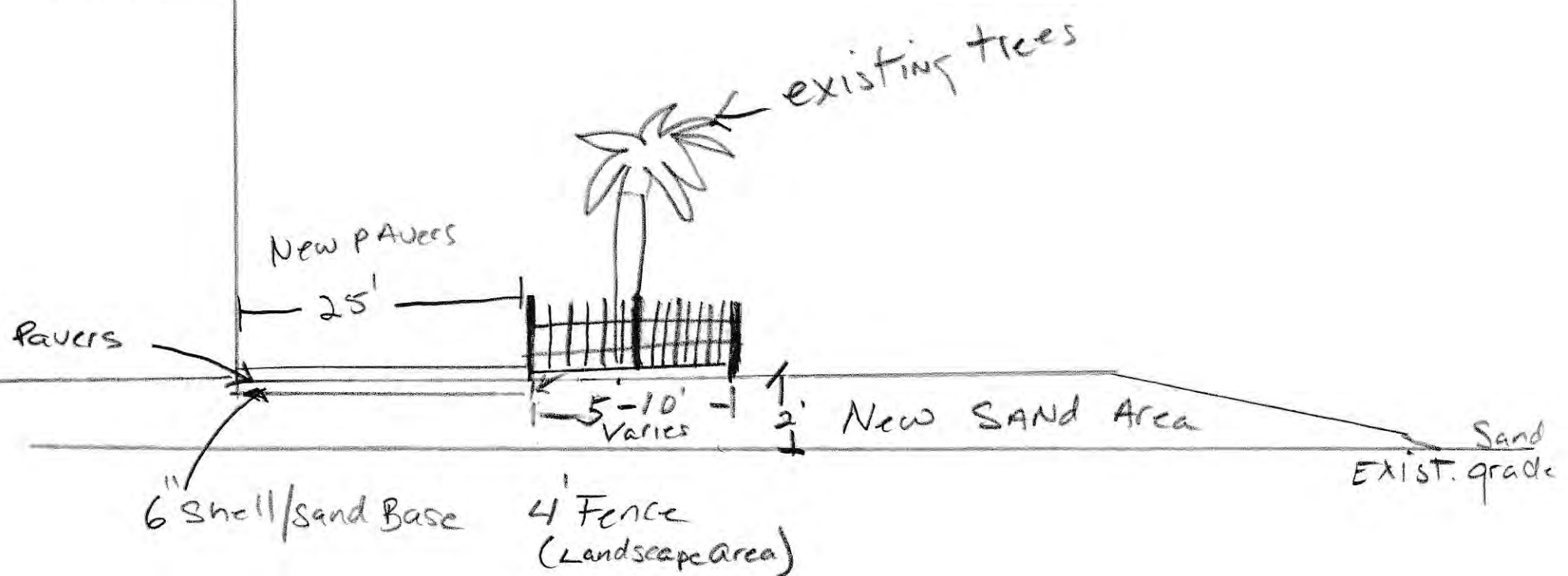
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STRAP	Folio	Owner Name	Site Address	Last Trans. Date	Last Trans. Amt	Just Value	Taxable Value
19-46-24-W4-0070D.0020	10228192	LANI KAI LP	1400 ESTERO BLVD, FORT MYERS BEA...	12-2013	\$ 10	\$ 20,591,436	\$ 16,730,132



EXIST.
Bldg

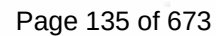


Side View

50'

Cross Section

installed breakaway walls





Ron DeSantis, Governor

Melanie S. Griffin, Secretary



STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

DIV OF ALCOHOLIC BEVERAGES & TOBACCO

THE RETAILER OF ALCOHOLIC BEVERAGES HEREIN IS LICENSED UNDER THE
PROVISIONS OF CHAPTER 561, FLORIDA STATUTES

SERIES: 4COP TYPE: S DUAL LICENSE

LANI KAI ISLAND RESORT INC

LANI KAI ISLAND RESORT
1400 ESTERO BLVD
FORT MYERS BEACH FL 33931

LICENSE NUMBER: BEV4600356

EXPIRATION DATE: MARCH 31, 2025

Always verify licenses online at MyFloridaLicense.com

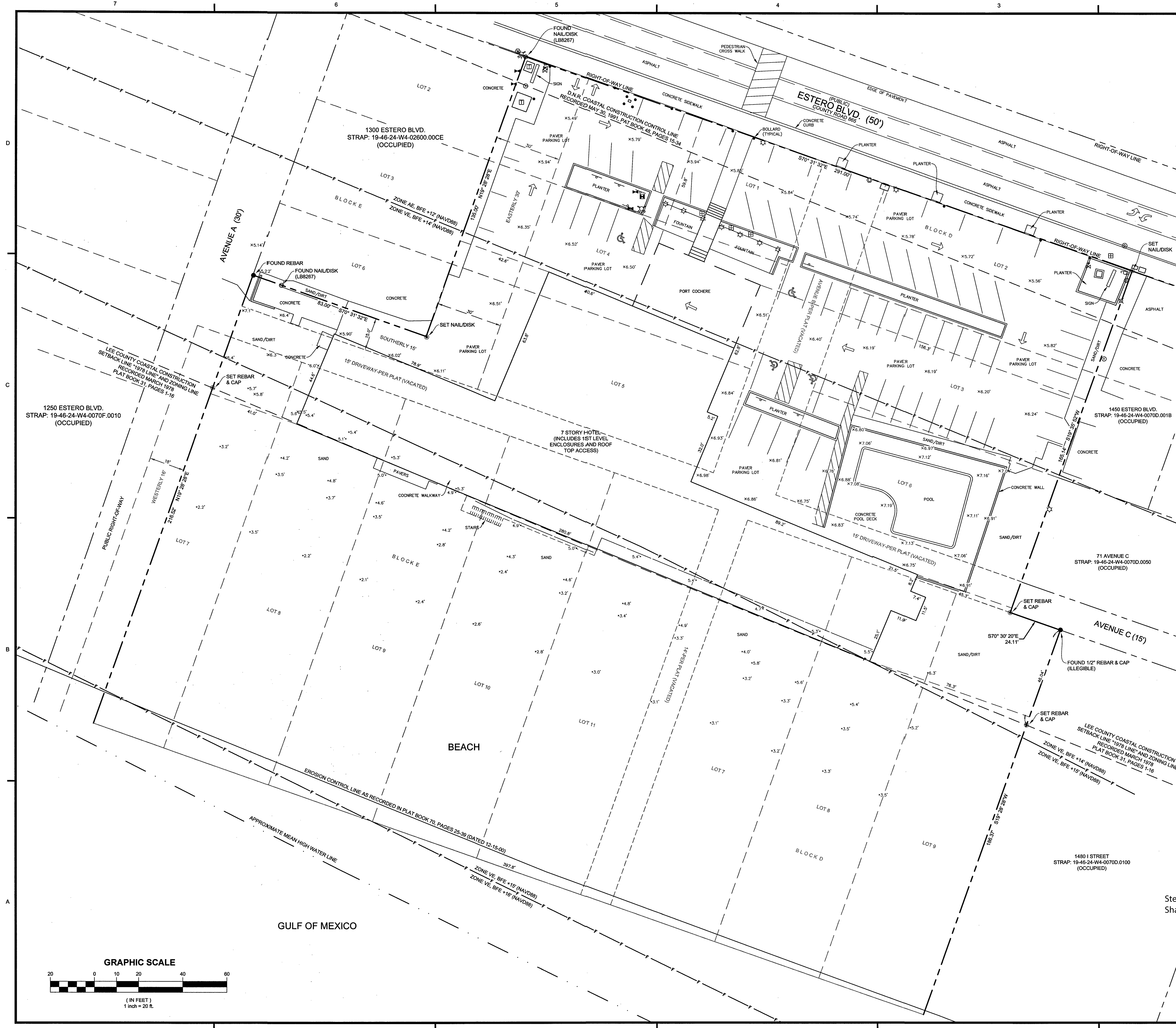
ISSUED: 02/16/2024

Do not alter this document in any form.

This is your license. It is unlawful for anyone other than the licensee to use this document.



FILE LOCATION: P:\3101014-CONDARE, BUILDERS\PLAN\K201014\04\A-BS.DWG, 2023.03.04, 3:38 PM



RECORD DESCRIPTION:
(INSTRUMENT #2013000287023)

THAT PARCEL OF LAND LYING IN BLOCK "D" AND "E" OF CRESCENT BEACH SUBDIVISION, AS PER MAP OR PLAT THEREOF RECORDED IN PLAT BOOK 4 AT PAGE 45, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, DESCRIBED AS FOLLOWS: LOTS 2, 3, 6, 7, 8 AND 9 OF BLOCK "D"; AND LOTS 1, 4, 5, 8, 9, 10 AND 11 OF BLOCK "E"; AND ALL OF LOT 7 LESS THE WESTERLY 18 FEET THEREOF IN BLOCK "E"; AND ALSO THE EASTERLY 30 FEET OF LOTS 2, 3 AND 6, AND ALL OF THE SOUTHERLY 15 FEET OF LOT 6, ALL IN BLOCK "E"; ALSO THE VACATED STREET AND ALLEY FORMERLY KNOWN AS AVENUE B LYING BETWEEN BLOCKS "D" AND "E" AND RUNNING FROM ESTERO BOULEVARD TO THE GULF OF MEXICO; ALSO THAT CERTAIN ALLEYWAY LYING BETWEEN LOTS 5 AND 6 ON THE NORTH, AND LOTS 7, 8, 9, 10 AND 11 ON THE SOUTH IN SAID BLOCK "E"; ALSO THE VACATED ALLEYWAY BETWEEN LOT 6 ON THE NORTH AND LOTS 7, 8 AND WESTERLY ONE-HALF OF LOT 9 ON THE SOUTH IN SAID BLOCK "D";

GENERAL SURVEY NOTES:

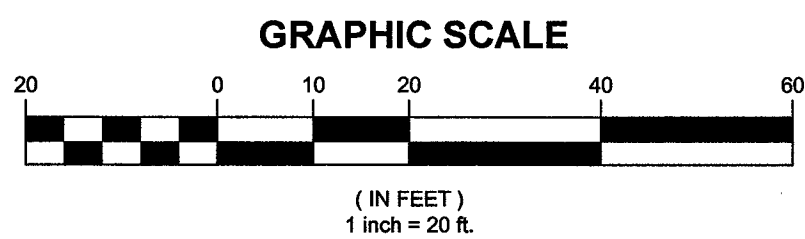
1. SURVEY BASED ON THE RECORD DESCRIPTIONS, FOUND MONUMENTS, PREVIOUS SURVEYS FOUND IN THE FILES OF THIS FIRM, AND THE PLAT OF RECORD.
2. BEARINGS REFER TO GRID NORTH, FLORIDA WEST ZONE (0902) - REFERENCE FRAME: NAD 83 (2011) WITH THE NORTHWESTERLY LINE OF THE SUBJECT PROPERTY AND THE SOUTHERLY RIGHT-OF-WAY LINE OF ESTERO BOULEVARD HAVING A BEARING OF S70°31'32"E.
3. ELEVATIONS DEPICTED HEREON ARE REFERENCED TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 88).
3. DIMENSIONS ARE IN FEET AND DECIMAL PARTS THEREOF.
4. PARCEL LIES IN FLOOD ZONE VE, WITH A BASE FLOOD ELEVATION OF 14', 15', AND 16, AND ZONE AE WITH A BASE FLOOD ELEVATION OF 12' (NAVD88) PER FLOOD INSURANCE RATE MAP NUMBER 12071C0554G WITH AN EFFECTIVE DATE OF 11/17/2022. (COMMUNITY NAME: TOWN OF FORT MYERS BEACH; COMMUNITY NUMBER: 120873; INDEX DATE: 11/17/2022).
- THE FEMA FLOOD ZONE INFORMATION INDICATED HEREON IS BASED ON MAPS SUPPLIED BY THE FEDERAL GOVERNMENT. THIS FLOOD INFORMATION MUST BE VERIFIED WITH ALL PERMITTING REGULATORY ENTITIES PRIOR TO COMMENCING ANY WORK OR APPLICATION DEPENDENT ON SAID FLOOD INFORMATION.
5. PARCEL SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).
6. UNDERGROUND IMPROVEMENTS, UTILITIES AND/OR FOUNDATIONS WERE NOT LOCATED UNLESS OTHERWISE NOTED.
7. THIS PLAT PREPARED AS A BOUNDARY SURVEY AND IS NOT INTENDED TO DELINEATE THE JURISDICTION OR JURISDICTIONAL AREAS OF ANY FEDERAL, STATE, REGIONAL OR LOCAL AGENCY, BOARD, COMMISSION OR OTHER ENTITY.
8. PARCEL CONTAINS 124,861 SQ. FT. (2.86 ACRES), MORE OR LESS, MEASURED TO THE HIGH MEAN WATER LINE.
9. GENERAL LOCATION:
STREET ADDRESS = 1400 ESTERO BLVD, FORT MYERS BEACH, FL 33931
PARCEL STRAP # = 19-46-24-W4-0070D.0020.
10. DATE OF LAST FIELD WORK: MARCH 31, 2023.

LEGEND:

DESCRIPTION	EXISTING
BACK FLOW PREVENTER	+
BENCHMARK	⊕
CATCH BASIN	⊞
CABLE TV BOX	⊞
CLEANOUT	⊞
DRAINAGE MANHOLE	⊞
ELECTRIC METER	⊞
ELECTRIC BOX	⊞
GUY	⊞
GAS MANHOLE	⊞
GAS VALVE	⊞
HYDRANT	⊞
IRRIGATION VALVE	⊞
JUNCTION BOX	⊞
LIGHT POST	⊞
MONUMENT	⊞
NAIL AND DISK FOUND	⊞
PIN OR PIPE FOUND	⊞
SET 5/8" IRON ROD WITH CAP LB 8267	⊞
SIGN	⊞
SEWER MANHOLE	⊞
SPOT ELEVATION	⊞
TRANSFORMER	⊞
TELEPHONE BOX	⊞
UTILITY POLE	⊞
WELL	⊞
WATER VALVE	⊞
WATER METER	⊞
PROPERTY LINE	---
DEED LINE / PLAT LOT LINE	---
OVERHEAD UTILITY LINE	---
EDGE OF PAVEMENT	---
EDGE OF GRAVEL	---
CENTERLINE	---
TIE / REFERENCE LINE	---

REV.	DATE	DESCRIPTION	BY	CHK.
DRAWING ISSUE STATUS				
BOUNDARY SURVEY				
HALEY WARD ENGINEERING ENVIRONMENTAL SURVEYING 13041 McGregor Boulevard Fort Myers, Florida 33919 239.481.1331 Florida@haleyward.com				
PROJECT				
BOUNDARY SURVEY OF 1400 ESTERO BOULEVARD AS RECORDED INSTRUMENT #2013000287023 LYING IN SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA				
DATE	2023.03.31	SCALE	AS NOTED	
DRAWN BY	CLR	DESIGNED BY	CHECKED BY SFS	
CERTIFICATE OF AUTHORIZATION No. EB32664 & LB8267		S.T.R. No. 19-46-24		
PROJECT No. 2010144.004		DRAWING No. REV.		
V101				

Stephen F. Shawles II, P.S.M.
Professional Surveyor & Mapper
State of Florida
This certification is only for the lands described hereon.
It is not a certification of title, zoning, setbacks, or freedom of encumbrances.
This survey was prepared without benefit of abstract of title and all matters of title should be referred to an attorney at law.





D.O. FILE FOR

CASE #: U0020001-00385

SCANNED

SCANNED

MICROFILMED

PLEASE DO NOT

ADD TO THIS FILE

CREATE A SUPPLEMENTAL

PERMIT PLAN																	
File Edit Options Window Help																	
Exit	New	Open	To Do	Get	Print	Class	Group Add	Parcel	Activity	People	Fees	Violations	Conditions	Case Notes	Type	Documents	GIS
Violations VIO2001-16908 Status REC Name: CONIDARIS ROBERT + GRACE Address: 1400 ESTERO BLVD Updated: 11/14/01 MFN Description: Master #: VIO2001-16908 Project: send notice for new wood fence w/o permits also brick pavers w/o development order																	
Staff Contact: CRABTRD Violation Address: ESTERO BLVD Code Officer: 1906 Reported By: JENNY COWART Phone #: Subdivision: Fort Myers Beach Directions: 1400 estero blvd fmb Violation Type: DO (work without) Violation: Yes Dates Received: 11/1/01 Target: Issued: Expires: Finalized:																	
Legal: CRESCENT BEACH PB 4 PG 45 BLKS D + E + VAC RWY DESC OR 1293 PG 1208																	
Legal 1 Legal 2 Land Use 1 Land Use 2 Land Use 3																	

Associated Documents

Start Nov... PER... eXcu... Micr... Tide... Lee... Nov... 2:11 PM

Document Pick Up Form

Prepared by: Sharon Mihm Date: January 22, 2002

1. Review Type: 1
- 2.

Case Number: LDO2001-00385

Project Name: Lani Kai Island Resort

Attachments: 3 sets of plans

Plan Distribution:

- | | |
|---|----------------------------------|
| 3 | Applicant |
| | Codes & Building Services |
| | Environmental Sciences |
| | Health & Rehabilitative Services |
| | T.I.S. - Mike Carroll |
| | Utilities Department |
| 1 | Zoning & Development Services |

Project Was: Approved

3. Notification Information

Attention: Robert Conidaris

Engineer:

Telephone Number: 941-463-3111

Called: Robert Time: 9²⁵ Date: 1/23/02

4. Pick Up Information

NOTE: Please check packets for
Content before signing

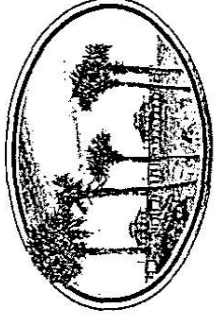
Print Name: Robert Conidaris

Signature: [Signature]

Date: 1/24/02

Additional Comment: _____

Town of Fort Myers Beach



Daniel L. Hughes
Mayor

Ray Murphy
Vice-Mayor

Terry Cain
Seat 1

Howard Ryncarson
Seat 3

Garr Reynolds
Seat 4

January 22, 2002

MICHAEL CONIDARIS
CONIDARIS BUILDERS
15645 PINE RIDGE RD
FORT MYERS, FL 33908

Writer's Direct Dial Number: 479-8375

RE: LANI KAI ISLAND RESORT
LDO2001-00385 - TYPE 01 Limited Review (imperv added)
LP1 Appl (paperwrk LDO resub)

Dear MICHAEL CONIDARIS :

Your application for a Land Development Code TYPE 01 Limited Review (imperv added) Resubmittal has been approved for a Development Order with stipulation(s) for an addition of impervious area for the following:

Approved for pavers, wood decking, and fence as indicated on the approved site plan.

Approval is subject to the following stipulation(s) and/or comment(s): Environmental Sciences Short Checklist

1) *The reviewer may be contacted for additional information regarding this project.*

Please contact Becky Sweigert at 941-479-8552 regarding landscaping comments.

2) *Miscellaneous Items.*

Approval of this limited development order review is approved with the condition that no new lighting is proposed.

This approval does not relieve the development from the responsibility to obtain all necessary Federal, State and local permits.

If you have any questions concerning this matter, please contact this office.

Sincerely,

LEE COUNTY
DEPARTMENT OF COMMUNITY DEVELOPMENT
Development Services Division
For the Town of Fort Myers Beach

Peter J. Eckenrode
Development Services Director

PJE / SAM

2523 Estero Boulevard · Post Office Box 3077 · Fort Myers Beach, Florida 33932
Telephone 941-765-0202 · Facsimile 941-765-0909 · Direct Line 941-765-0919
Website www.fmbeach.org

From: folke@ci.fort-myers-beach.fl.us
To: "Pete Eckenrode (E-mail 2)" <ECKENRPJ@leegov.com>
Date: 1/16/02 10:48AM
Subject: Lani Kai LDO

Pete,

The Lani Kai now has an approved site plan for the fence permit, I stamped and signed it, as for the pavers they must be within the fenced area.

Let me know if you have any questions.

Dan
765-0202

COASTAL
CONSTRUCTION
ZONE LINE AS
OF 10/23/80

FEMA ZONE
V-20 (17)

FEMA ZONE
A12(14)

AVENUE "A" 30' R/W

GULF OF MEXICO

Approx. Mean High Water, 02/06/94

ESTERO BOULEVARD 50' R/W

COMMUNITY DEVELOPMENT

NOV 19 2001

N

050
E. L. COLEMAN, JR.
FLORIDA REC. #22939
Dated: 11/4/92
Parcel 12S1214-070-C
and Zone A-10 (17.0)
Area Flood Zone A-12 (14.0)
Subject Property Located in

S & H LAND SURVEY COMPANY
13611 McGREGOR BLVD., SUITE 2
FT. WORTH, FLORIDA 33919

JOE: 11055
SCATE: 1-50
DATED: 1/6/96

[illegible]

1. Description as furnished by
2. M.C.A.B. 1976 data was
3. conducted by this
4. conducted by the Public
5. No search of the Public
6. Description as furnished by
7. M.C.A.B. 1976 data was
8. conducted by this
9. conducted by the Public
10. No search of the Public
11. Description as furnished by
12. M.C.A.B. 1976 data was
13. conducted by this
14. conducted by the Public
15. No search of the Public
16. Description as furnished by
17. M.C.A.B. 1976 data was
18. conducted by this
19. conducted by the Public
20. No search of the Public
21. Description as furnished by
22. M.C.A.B. 1976 data was
23. conducted by this
24. conducted by the Public
25. No search of the Public
26. Description as furnished by
27. M.C.A.B. 1976 data was
28. conducted by this
29. conducted by the Public
30. No search of the Public
31. Description as furnished by
32. M.C.A.B. 1976 data was
33. conducted by this
34. conducted by the Public
35. No search of the Public
36. Description as furnished by
37. M.C.A.B. 1976 data was
38. conducted by this
39. conducted by the Public
40. No search of the Public
41. Description as furnished by
42. M.C.A.B. 1976 data was
43. conducted by this
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45. No search of the Public
46. Description as furnished by
47. M.C.A.B. 1976 data was
48. conducted by this
49. conducted by the Public
50. No search of the Public
51. Description as furnished by
52. M.C.A.B. 1976 data was
53. conducted by this
54. conducted by the Public
55. No search of the Public
56. Description as furnished by
57. M.C.A.B. 1976 data was
58. conducted by this
59. conducted by the Public
60. No search of the Public
61. Description as furnished by
62. M.C.A.B. 1976 data was
63. conducted by this
64. conducted by the Public
65. No search of the Public
66. Description as furnished by
67. M.C.A.B. 1976 data was
68. conducted by this
69. conducted by the Public
70. No search of the Public
71. Description as furnished by
72. M.C.A.B. 1976 data was
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95. No search of the Public
96. Description as furnished by
97. M.C.A.B. 1976 data was
98. conducted by this
99. conducted by the Public
100. No search of the Public

CELESTY TO: KEVIN JUMINSKI
MAYCLOIDA, 1958, 11.5
SUCCESSORS AND/OR ASSIGNS
ATTORNEYS TITLE INSURANCE FUND, INC.

County, Florida. It being in Section 19, Twp. 46S., Rge. 30E., E31RD DISTRICT, Lm. on the north and lots 7, 8 and 9 on the south in the said Block "D" on the north and said Block "E" on the south in the said Block "D" and lots 10, 11 and 12 on the south in the said Block "E" and lots 13, 14, 15, 16, 17 and 18 on the south in the said Block "E" and lots 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825,

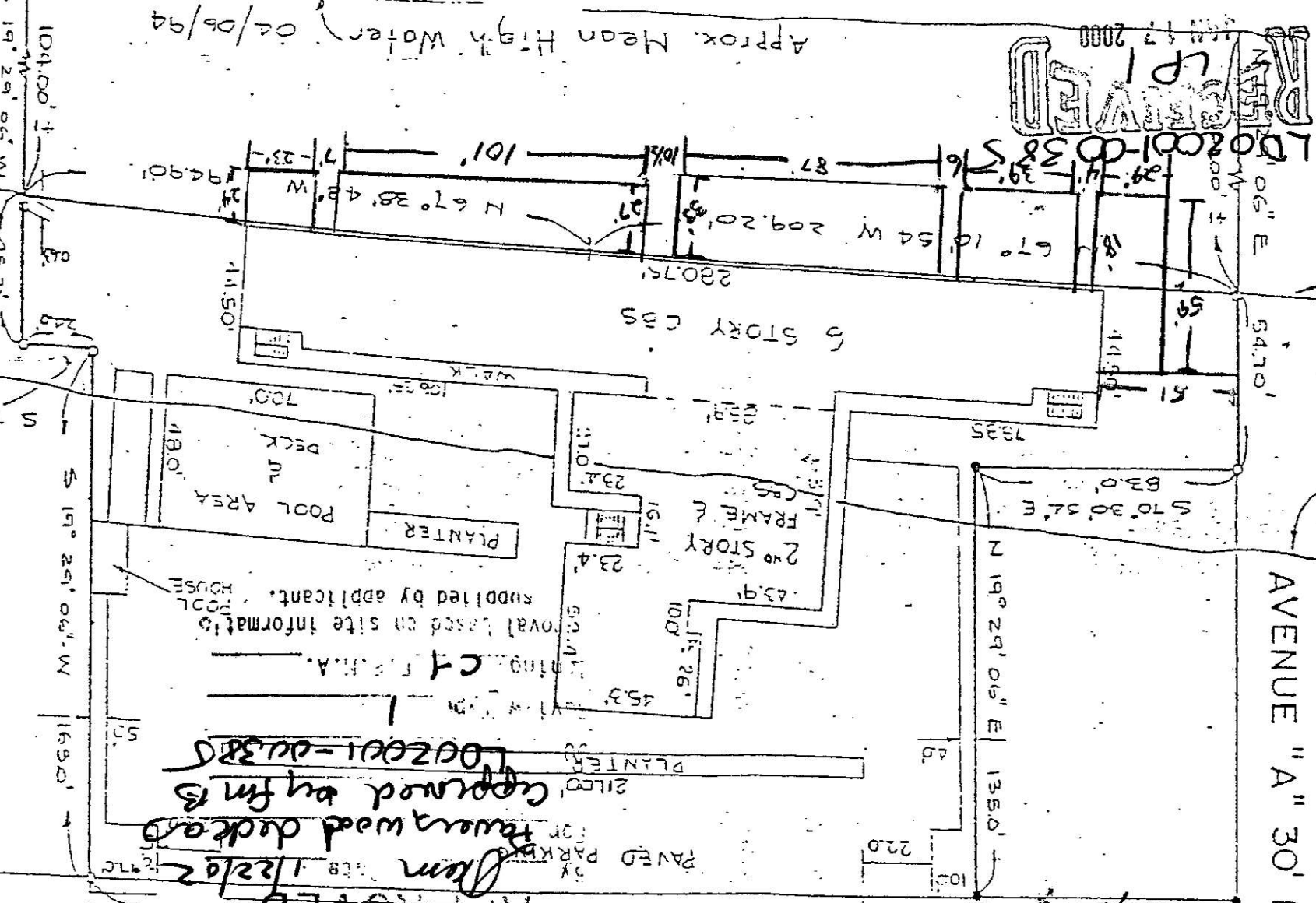
Approved Review Development Order

ESTERO BOULEVARD 50' R/W

APPROVED

Reviewed by Jim B
L002001-02385

Approval based on site information supplied by applicant.



APPROVED
L002001-02385

Approx. Mean High Water 04/06/94

Approved
Ft. Myers Beach C...

1/16/02

FEMA ZONE
AH2(14)

FEMA ZONE
V-20 (17)

COASTAL
CONSTRUCTION
ZONE LINE AS
OF 10/23/80

PERMIT COUNTRY

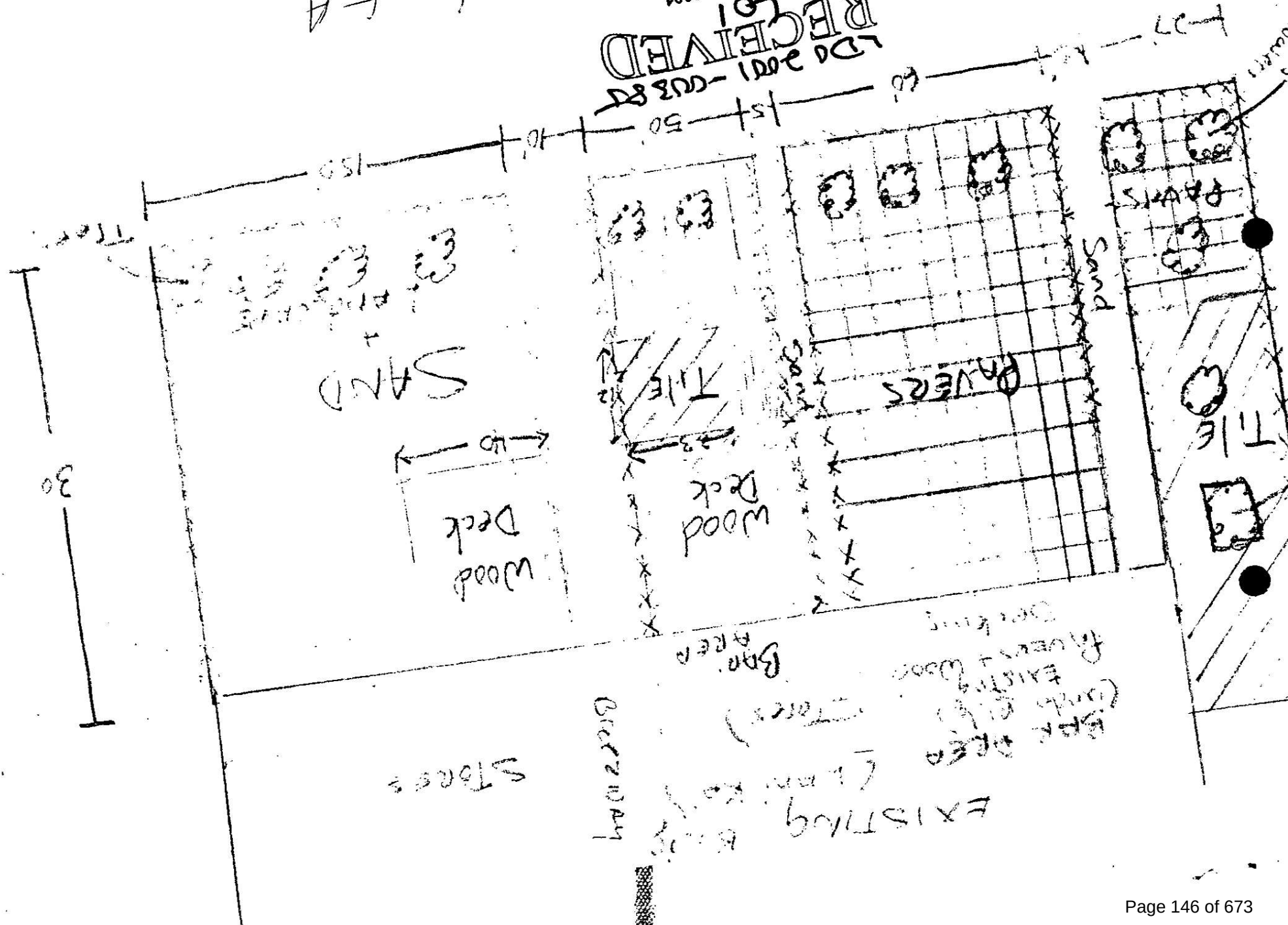
GULF OF MEXICO

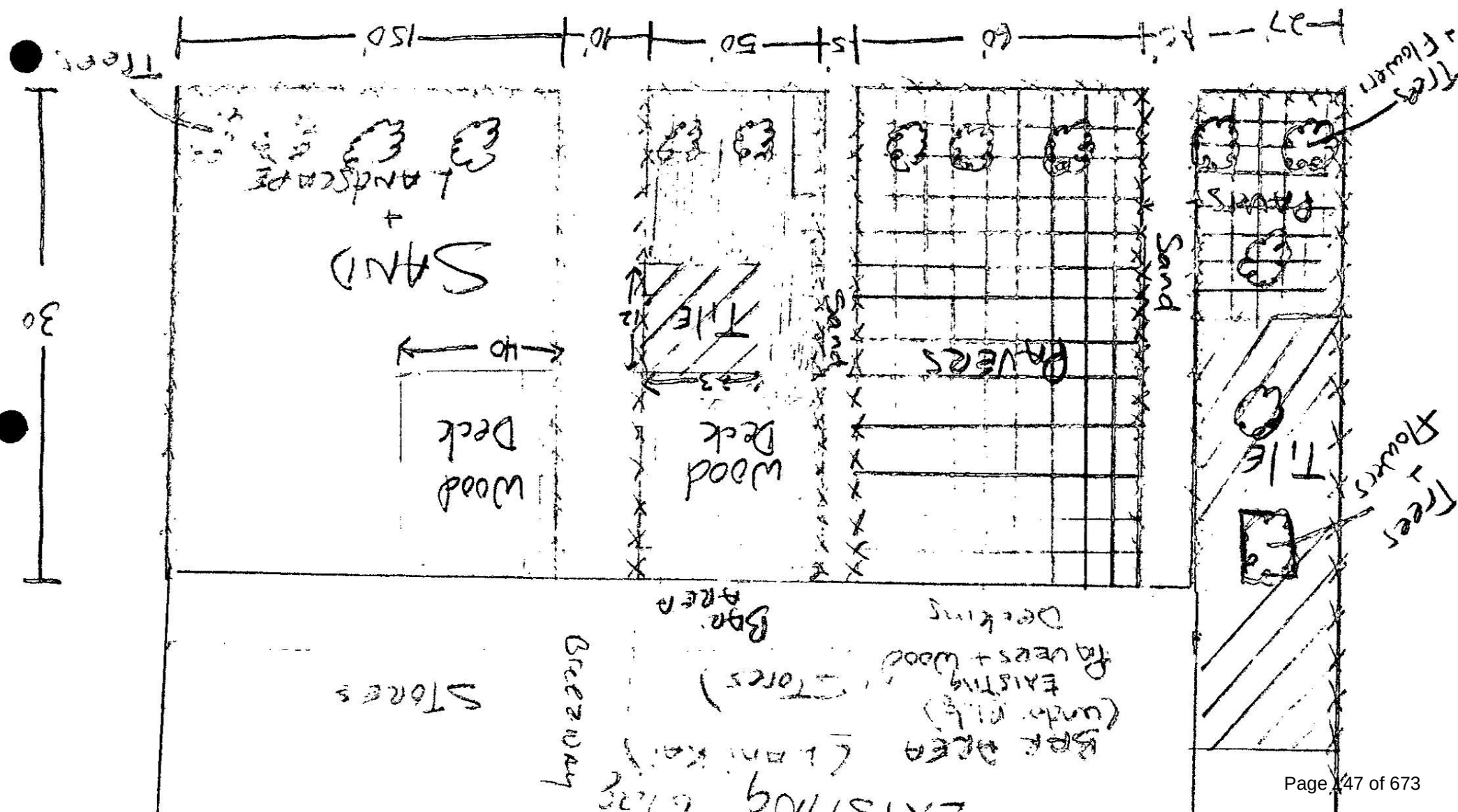
UPDATE SURVEY

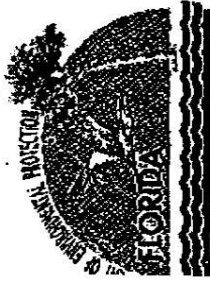
COMMUNITY DEVELOPMENT
11-28-01
NOV 19 2001

RECEIVED
NOV 19 2007

Sheet A







Department of Environmental Protection

Jeb Bush
Governor

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

David B. Scrubs
Secretary

December 19, 2001

Robert and Grace Conidaris
Lani Kai Hotel
1400 Estero Boulevard
Fort Myers Beach, FL 33931

Dear Mr. and Mrs. Conidaris:

On October 30, 2001, a staff inspection of your property located at the above address, revealed the unauthorized construction of a wood deck, a paver-block patio area, and construction of a wood picket fence seaward of the coastal construction control line without benefit of a permit from the Department of Environmental Protection.

On December 19, 2001, the Department issued permit VLE 01-31 P that approves the above-unauthorized activities.

Due to the after-the-fact nature of the permit, the enclosed Final Order also assesses you an administrative fine pursuant to Section 161.054, Florida Statutes, in the amount of three hundred (\$300) dollars.

Payment to the Ecosystem Management and Restoration Trust Fund must be received within 21 days of your receipt of this Final Order. In order to ensure that payment is properly credited, your check should include reference to Department file numbers VLE 01-31 and OGC #01-1936 and should be sent to: Administrative Enforcement Section, Ecosystem Management and Restoration Trust Fund, 3900 Commonwealth Boulevard, Tallahassee, FL 32399-3000, Attention Jim Martinello.

Pursuant to Section 161.054, Florida Statutes, failure to pay the fine imposed herein shall create a lien upon the real and personal property of the violator, enforceable by the Department as are statutory liens under Chapter 85, Florida Statutes.

All persons whose substantial interest are affected by this Final Order have a right, pursuant to Sections 120.569 and 120.57, Florida Statutes, to petition for an administrative hearing on it. The Petition must contain the information set forth below and must be filed (received) at the Department's Office of General Counsel, 3900

File Number: VLE 01-31
Robert and Grace Conidaris
Page 2

Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000, within 21 days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the Bureau of Beaches and Coastal Systems named above at the address indicated. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes.

The petition shall contain the following information:

a) The name, address, and telephone number of each petitioner; the Department's Final Order identification number and the county in which the subject matter or activity is located; (b) A statement of how and when each petitioner received notice of the Final Order; (c) A statement of how each petitioner's substantial interests are affected by the Final Order; (d) A statement of the material facts disputed by petitioner, if any; (e) A statement of facts which petitioner contends warrant reversal or modification of the Final Order; (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Final Order; (g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Final Order.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Final Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this Notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, Florida Statutes, and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 60Q-2.010, Florida Administrative Code.

Mediation as provided in Section 120.573, Florida Statutes, will not be offered in this instance.

File Number: VLE 01-31
Robert and Grace Conidaris
Page 3

Any party to this Final Order has the right to seek judicial review of this permit, pursuant to Section 120.68, Florida Statutes and Rules 9.030(b)(1)(c) and 9.110, Florida Rules of Appellate Procedure. To initiate an appeal, a Notice of Appeal must be filed with the Department of Environmental Protection, Office of General Counsel, and with the appropriate District Court of Appeal within thirty (30) days of the date the permit was rendered. The Notice filed with the District Court must be accompanied by the filing fee specified in Subsection 35.22(3), Florida Statutes.

The after-the-fact permit is conditional upon the resolution of any related violations to the satisfaction of the Department no later than sixty (60) days from the date of this Order. Failure to comply will result in automatic revocation of the permit and will require removal of all the structures authorized by the permit within thirty (30) days.

The authorized work is strictly limited to that described on the enclosed Final Order. Please direct any questions to me by letter at the letterhead address or by telephone at 850/487-4475.

Sincerely,


Jim Martinello
Environmental Manager
Office of Beaches and Coastal Systems

Enclosures

Certified Mail #: 7000 0520 0021 3386 3307

cc: Celora Jackson
Jennie Cowart
Nancy Mould, OGC
Patrick Krechowski, OGC

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DEPUTY SECRETARY/REGULATORY PROGRAMS
OFFICE OF BEACHES AND COASTAL SYSTEMS

David B. Struhs, Secretary

Jeb Bush, Governor

3900 Commonwealth Boulevard
Tallahassee, Florida 32399
Telephone #850/487-4475
FAX #850/488-5257 or
SUNCOM FAX #278-5257

FAX MESSAGE COVER PAGE

Date: 12/21/01

From: Earlene Wilson

To: Michael, Robert and Grace Conidario

FAX #: 904/463-2986

RE: Here is a copy of what you will receive
in the mail. Call me if you have any
questions. 850/487-4475 x119.

Total pages (including this cover page) 5 If you have any problems

please call above # at _____

Document Pick Up Form

Prepared by: Sharon Mihm Date: December 7, 2001

1. Review Type: LDO-1
- 2.

Case Number: LDO2001-00385

Project Name: Lani Kai Island Resort

Attachments: 3 Sets of plans

Plan Distribution:

- | | |
|---|----------------------------------|
| 3 | Applicant |
| | Codes & Building Services |
| | Environmental Sciences |
| | Health & Rehabilitative Services |
| | T.I.S. - Mike Carroll |
| | Utilities Department |
| 1 | Zoning & Development Services |

Project Was: Denied

3. Notification Information

FAX - 415 2886

Attention: Michael Conidaris

Engineer:

Telephone Number: 941-229-6129

Called: Mein Time: 9:55 Date: 12/11/01

4. Pick Up Information

NOTE: Please check packets for
Content before signing

Print Name: _____

Signature: _____

Date: _____

Additional Comment: _____

 *** TX REPORT ***

TRANSMISSION OK

TX/RX NO 3981 94152886
 CONNECTION TEL
 CONNECTION ID
 ST. TIME 12/12 15:00
 USAGE T 01 '09
 PGS. 1
 RESULT OK



BOARD OF COUNTY COMMISSIONERS

Bob Jones
 District One
 Douglas R. St. Cerny
 District Two
 Ray Judah
 District Three
 Andrew W. Coy
 District Four
 John E. Albion
 District Five
 Donald D. Stillwell
 County Manager
 James G. Yeager
 County Attorney
 Diana M. Parker
 County Hearing
 Examiner

December 7, 2001

Writer's Direct Dial Number: 479-8375

MICHAEL CONIDARIS
 CONIDARIS BUILDERS
 15845 PINE RIDGE RD
 FORT MYERS, FL 33908

RE: LANI KAI ISLAND RESORT
 LDO2001-00385 - TYPE 01 Limited Review (imprerv added)
 L01 Application (Type 1)

Dear MICHAEL CONIDARIS :

The above-referenced project plans have been reviewed and cannot be approved at this time for the following reason(s):

See attached checklist.

In accordance with Section 10-110 of the Land Development Code, you may redraft and submit the required documents (showing the corrections for specified deficiencies) to the Director of the Development Services Division within 180 days of the date hereon or the application will be deemed withdrawn, and a new application along with appropriate fees will be required; or you have thirty (30) calendar days from the date hereon to file an appeal of this decision to the Hearing Examiner's office. Applications are available from the Development Services Division.

PLEASE INDICATE THE ABOVE DEVELOPMENT ORDER NUMBER ON ANY FUTURE CORRESPONDENCE.

IF THE PLAN SETS ARE RETURNED TO YOU, PLEASE RESUBMIT 6 COMPLETE SETS OF REVISED PLANS.

If you have any questions concerning this matter, please contact this office.

Sincerely,



LEE COUNTY SOUTHWEST FLORIDA

BOARD OF COUNTY COMMISSIONERS

Bob Janes
District One

Douglas R. St. Camy
District Two

Ray Judah
District Three

Andrew W. Coy
District Four

John E. Albion
District Five

Donald D. Stilwell
County Manager

James G. Yeager
County Attorney

Diana M. Parker
County Hearing Examiner

December 7, 2001

Writer's Direct Dial Number: 479-8375

MICHAEL CONIDARIS
CONIDARIS BUILDERS
15645 PINE RIDGE RD
FORT MYERS, FL 33908

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Sincerely,

DEPARTMENT OF COMMUNITY DEVELOPMENT
Development Services Division

Peter J. Eckenrode
Development Services Director

PJE / SAM

Attachments: 3 Sets of Plans.



LEE COUNTY
SOUTHWEST FLORIDA
BOARD OF COUNTY COMMISSIONERS

Bob Jones
District One
Douglas R. St. Cemy
District Two
Ray Judah
District Three
Andrew W. Coy
District Four
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County Manager
James G. Yeager
County Attorney
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County Hearing
Examiner

December 7, 2001

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FORT MYERS, FL 33908

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If you have any questions concerning this matter, please contact this office.

Sincerely,

DEPARTMENT OF COMMUNITY DEVELOPMENT
Development Services Division

Peter J. Eckenrode
Development Services Director

PJE / SAM

Attachments: 3 Sets of Plans.

CHECKLIST for LEGAL SUFFICIENCY REVIEW of

Maintenance Covenant (Property Owner Association) Documents, including:

Stormwater Management System,
Roads, and Certain Utilities For:

Project/Plat Name: _____

DO#: _____ SFWMD Permit # _____

Plat/Case # _____ Status of SFWMD Permit _____

This Checklist Prepared by: _____
(Print Name)

Date Prepared: _____ Business Phone # _____

DIRECTIONS: To insure new development complies with applicable Land Development Code (LDC) regulations, the County Attorney's Office reviews the development's maintenance covenant (property owner association) documents (documents) pertaining to stormwater or surface water management, as well as other project maintenance provisions pertaining to roads, and certain utilities, as applicable. Generally, documents establishing the necessary maintenance and operation provisions take the form of Articles of Incorporation, and Declaration of covenants, restrictions, reservations, etc. This checklist must be completed along with a short, one-paragraph narrative describing the entity responsible for performing the promised maintenance and the manner in which the respective requirements are to be met. Developments within CDD's are encouraged to contact the County Attorney's Office for further direction prior to submission of this checklist as generally, a legally sufficient resolution from the CDD's Board of Supervisors will be required.

Shared ownership or maintenance responsibilities between entities (e.g., a master association and a neighborhood (or community) association, or CDD) requires you to note which entity is responsible for a particular requirement by referencing the relevant document and citing the pertinent provision. If more than one entity has received the same property interest (for example, a drainage easement) via the plat dedication, then the respective maintenance responsibility of each entity must be described in the narrative (discussed above).

This checklist is designed to expedite approval of your client's plat by precisely locating the pertinent provisions in the respective documents. A completed checklist must accompany all documents submitted for review. Previously approved and recorded "Master Association" documents already on file with the County Attorney's Office need not be provided. Supplements or amendments to such documents establishing required maintenance covenants or including the newly platted lands into existing documents must be provided. Checklist citations should be accurate. Failure to include a complete, accurate checklist will delay overall plat approval.

Before the approved plat is signed off for recording the approved documents must be recorded in the public records of Lee County and either a copy of same, or evidence of recording, must be provided to the Department of Community Development. For documents which can not be recorded before the final plat approval because the document(s) require(s) insertion of the Plat Book & Page numbers, recording arrangements including payment of recording fees, may be made with the Clerk of Circuit Courts Minutes Department at 941-335-2328 to have such documents recorded immediately after the plat is recorded.

Revised 10/11/00

1 of 3

CDD District Master Assoc. Stand Alone or Neighborhood Assoc. ***

ENSURE PROPER LEGAL DESCRIPTIONS ARE ATTACHED TO DOCUMENTS

_____ (full name of entity) *

_____ (full name of entity) **

_____ (full name of entity) ***

Exact location of required provision in Document (Page, Article, Section #, etc.)			Checklist of required provision which:
1.	establishes that the entity will exist in perpetuity.		
2.	provides the entity with the power and authority to:		
	a. own and convey property,		
	b. establish rules and regulations,		
	c. assess members and enforce assessments,		
	d. sue and be sued, and		
	e. contract for services necessary to operate and maintain property (tracts and easements) dedicated to the entity and any corresponding infrastructure.		
3.	indicates that membership in the entity is comprised of all homeowners, lot owners, property owners or unit owners. For plats containing a golf course(s), the owner/operator of a golf course must have membership in the entity and the respective document(s) must reflect this relationship.		
4.	establishes an initial effective period of at least 25 years, with automatic renewal periods thereafter, during which the entity is bound to perform the obligations created by the document(s).		
5.	provides that in the event the entity is dissolved, the dedicated property and corresponding infrastructure will be conveyed or dedicated to a similar non-profit organization or entity to assure continued maintenance and operation.		

SATIDFMARK DOCUMENTS\SURETIES\PODoc Checklist.wpd

6.	establishes that any property (tract(s) or easement(s)) dedicated to an entity and corresponding infrastructure listed below is, or will be, owned by the responsible entity, or is described as common elements or common property in the document pertaining to that entity.	a. the surface/storm water management system (System), including dedicated lake tracts, lake maintenance or drainage easements, and corresponding infrastructure.			
		b. tracts for rights-of-way or access easements and corresponding road/streets.			
		c. utility easements or tracts for corresponding sewer/potable water			
		7. establishes that the entity is responsible for maintenance and operation of:			
	a. the System				
	b. any roads/streets				
	c. any sewer/potable water facilities.				
	8. requires any amendment to the documents that will affect any aspect of the System, including water management portions of common areas, will receive prior approval from South Florida Water Management District.				
9.	provides a method of assessing and collecting assessments for maintenance and operation of dedicated property and corresponding infrastructure.				
10.	grants property owners and other beneficiaries of the dedicated property and corresponding infrastructure, including the System, the legal right to enforce the maintenance covenant(s) stated in the document(s) against the responsible entity.				

AVENUE "A" 30' R/W

ESTERO BOULEVARD 50' R/W

FEMA ZONE
A12(14)

FEMA ZONE
V-20 (17)

COASTAL
CONSTRUCTION
ZONE LINE AS
OF 10/23/80

UPDATE SURVEY

DATED: 4/8/94
SCALE: 1"=50'
JOB: #10556

S & S LAND SURVEY COMPANY
13611 MCKEEB RD., SUITE 2
FT. MYERS, FLORIDA 33913

BY: *[Signature]*
R.L. SCHWARTZ, R.L.S.
FLORIDA REG. #2229

Subject Property Located In
FEMA Flood Zone A-12 (14.0')
AND Zone V-20 (17.0')
Panel #125124-0420-C
Dated: 11/4/92

LEGAL DESCRIPTION:
A parcel of land lying Blocks "D" and "E" of CRESCENT BEACH, a subdivision as recorded in Plat Book 4 at Page 43, Public Records of Lee County, Florida, described as follows: Lots 2,3,6,7,8, and 9 - Block "D" and Lots 1,4,5,8,9,10, and 11 - Block "E" and Lot 7 LESS Westerly 16 feet thereof Block "E"; and also the Easterly 10 feet of Lots 2,3, and 6 and the Southerly 15 feet of Lot 6 - Block "E" together with the vacated street and alley formerly known as Avenue "B" between the said Block "D" and "E" and including those vacated alleyways between Lot 5 and 6 on the North, and Lots 7,8,9,10 and 11 on the South in said Block "E" and the vacated alleyway between Lot 6 on the North and Lots 7,8 and 9 on the South in the said Block "D". All being in Section 19, Twp. 46S., Rge. 24E., ESTERO ISLAND, Lee County, Florida.

CERTIFY TO: KEVIN JURSKI
BANCFLORIDA, AFSB, IT'S
SUCCESSORS AND/OR ASSIGNS
ATTORNEYS TITLE INSURANCE FUND, INC.

- NOTES:
1. Description as furnished by client.
 2. No search of the Public Records was conducted by this firm.
 3. Elevations as shown are based on N.C.V.D. 1928 datum unless otherwise stated.
 4. Bearings are based on plat or deed.
 5. Encroachments are based on plat.
 6. There may be other easements not shown hereon recorded in the Public Records of governing county.
 7. No Determination of Hazardous Waste Materials has been made by this firm.
 8. Signer limits liability only up to the cost of the survey.
 9. This survey is protected by copyright and all rights are reserved.

LEGEND

- 1" Iron/cup set
- 1" Iron rod found
- PK Mail set
- PK Mail found
- Concrete Monument Found
- P.U.E. = Public Utility Easement
- D.E. = Drainage Easement
- P.C. = Point of Curve
- P.T. = Point of Tangent
- P.R.C. = Point of Reverse Curve
- R/W = Right of Way
- P.O.B. = Point of Beginning
- P.O.C. = Point of Commencement
- C.B.S. = Concrete Block Structure
- N.C.V.D. = National Geodetic Vertical Datum (1929)
- P.P. = Power Pole
- T.P.D. = Telephone Pedestal
- T.H. = Fire Hydrant
- C.B. = Catch Basin
- Center Line
- D = Deed
- M = Measured
- C = Calculated
- P = Plat

Approx. Mean High Water 04/06/94
GULF OF MEXICO

→ Peter

① Lee City cannot locate a approved permit for the fence.

② 1 an Folke Ch. H. Mgr. Del
Sharon Minn contact.

Have Dan Sign off.

③



LEE COUNTY
SOUTHWEST FLORIDA

BOARD OF COUNTY COMMISSIONERS

Bob Janes
District One

Douglas R. St. Cemy
District Two

Ray Judah
District Three

Andrew W. Coy
District Four

John E. Albion
District Five

Donald D. Stilwell
County Manager

James G. Yeager
County Attorney

Diana M. Parker
County Hearing Examiner

December 7, 2001

Writer's Direct Dial Number: 479-8375

MICHAEL CONIDARIS
CONIDARIS BUILDERS
15645 PINE RIDGE RD
FORT MYERS, FL 33908

RE: LANI KAI ISLAND RESORT
LDO2001-00385 - TYPE 01 Limited Review (imperv added)
L01 Application (Type 1)

Dear MICHAEL CONIDARIS :

The above-referenced project plans have been reviewed and cannot be approved at this time for the following reason(s):

See attached checklist.

In accordance with Section 10-110 of the Land Development Code, you may redraft and submit the required documents (showing the corrections for specified deficiencies) to the Director of the Development Services Division within 180 days of the date hereon or the application will be deemed withdrawn, and a new application along with appropriate fees will be required; or you have thirty (30) calendar days from the date hereon to file an appeal of this decision to the Hearing Examiner's office. Applications are available from the Development Services Division.

PLEASE INDICATE THE ABOVE DEVELOPMENT ORDER NUMBER ON ANY FUTURE CORRESPONDENCE.

IF THE PLAN SETS ARE RETURNED TO YOU, PLEASE RESUBMIT 6 COMPLETE SETS OF REVISED PLANS.

If you have any questions concerning this matter, please contact this office.

Sincerely,

DEPARTMENT OF COMMUNITY DEVELOPMENT
Development Services Division

Peter J. Eckenrode
Development Services Director

PJE / SAM

Attachments: 3 Sets of Plans.

Environmental Sciences Short Checklist

1) *The reviewer may be contacted for additional information regarding this project.*

Please contact Becky Sweigert at 941-479-8552 regarding landscaping comments.

2) *Miscellaneous Items.*

Approval of this limited development order review is approved with the condition that no new lighting is proposed.

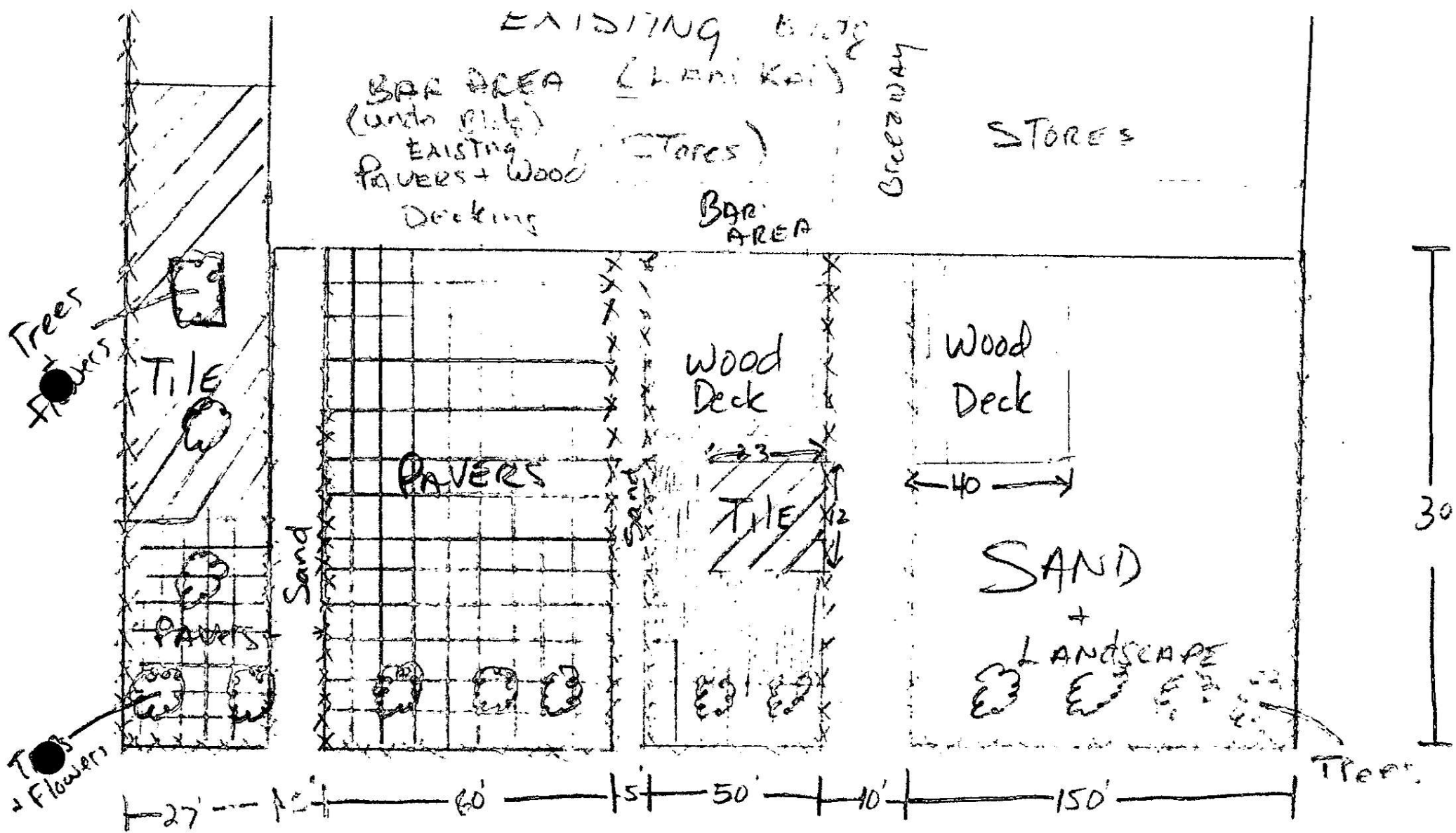
Limited Review DO Type 1-3 & 6-12 Checklist

1) *The reviewer may be contacted for additional information regarding this project.*

Please contact Sharon Mihm at 941-479-8375.

2) *Miscellaneous Items.*

Prior to approval of your Limited Review Development Order for renovations due to a storm, please obtain necessary approval of the Department of Environmental Protection and the Town of Fort Myers Beach.

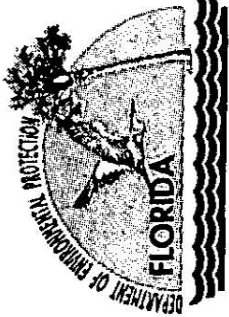


LD 2001-00385
RECEIVED
 NOV 19 2001

Due 11-28-01
 COMMUNITY DEVELOPMENT

Sheet A

NOT TO SCALE



Department of Environmental Protection

Jeb Bush
Governor

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

David B. Struhs
Secretary

November 19, 2001

Robert and Grace Conidaris
Lani Kai Resort
1400 Estero Boulevard
Fort Myers Beach, FL 33931

Dear Mr. and Mrs. Conidaris:

**SUBJECT: WARNING LETTER - POSSIBLE UNAUTHORIZED CONSTRUCTION
SEAWARD OF THE COASTAL CONSTRUCTION CONTROL LINE. VIOLATION FILE
NUMBER VLE 01-31.**

Based on an investigation by the Department of Environmental Protection, it appears that you may have again (VLE 00-17) engaged in unauthorized activities on your property located at 1400 Estero Boulevard, in Fort Myers Beach, approximately 100 feet to 400 feet south of DEP's reference monument R-182, in Lee County. The possible violation consists of construction of a wood deck and paver-block patio area and construction of a wood picket fence seaward of the coastal construction control line without benefit of a permit from the Department of Environmental Protection.

Subsection 161.053(2), Florida Statutes (F.S.), reads in part as follows:

Upon establishment, approval, and recordation of such control line or lines, no person, firm, corporation, or governmental agency shall construct any structure whatsoever seaward thereof; make any excavation, remove any beach material, or otherwise alter existing ground elevations; drive any vehicles on, over, or across any sand dune; or damage or cause to be damaged such sand dune or the vegetation growing thereon seaward thereof, except as hereinafter provided.

You are advised that any activity that may be contributing to violations of the above statutes and rules should be ceased immediately.

File Number: VLE 01-31
Condaris/Lani Kai Resort
Page 2

It is extremely important that you contact the Department and provide a response to this Warning Letter. Please address your reply to: Earlene J. Wilson, Environmental Specialist, Department of Environmental Protection, Office of Beaches and Coastal Systems, Mail Station 300, 3900 Commonwealth Boulevard Tallahassee, Florida 32399-3000, and reference file number VLE 01-31. We will expect to hear from you within 14 days of your receipt of this letter.

Please be advised that this Warning Letter is part of an agency investigation, preliminary to agency action in accordance with Section 120.57(5), Florida Statutes. We look forward to your cooperation in completing the investigation and resolution of this matter.

Sincerely,


Jim Martinello
Environmental Manager
Office of Beaches and Coastal Systems

Certified #: 7000 0520 0021 3386 3246
cc: Celora Jackson
Jennie Cowart
Lee County Building Official

DATE 11/11/68

Approx. Mean High Water, 02/06/94

FEMA ZONE
A-12(14)

ESTERO BOULEVARD 50' R/W

11-28-01
COMMUNITY DEVELOPMENT

NOV 19 2001

[illegible]

Subject Property Located in
EMA Flood Zone A-12 (14.0%)
AND Zone A-20 (17.0%)
Parcel #121124-0420-C
Dated: 11/4/91

[illegible]

1. Description as furnished by Client.
2. Notations as shown are based on
conducted by this office.
3. Notations as shown are based on
dated 10/1/59 unless otherwise
indicated.
4. Notations are based on plot of deed.
5. Encumbrances are based on plat.
6. There may be other encumbrances not shown
herein recorded in the Public Records
of governing county.
7. Notations have been made by this office.
Client's Records only up to the
cost of the survey.
8. This survey is protected by copyright
and all rights are reserved.

NOTES:

REFLECT TO: KEVIN JUSZIMSKI
BANGLOMIDY, AFE, 17.5
SUCCESSIONS AND/OR ASSIGNS
ATTORNEYS TITLE INSURANCE FUND, INC.

[illegible]

Property Data for Parcel 19-46-24-W4-0070D.0020

[Next Lower Parcel Number] [Next Higher Parcel Number] [Display Building Permits on this Parcel] [Display Tangible Accounts on this Parcel]

[Display Tax Bills on this Parcel]

Owner of Record	Legal Description	Image of Structure
CONIDARIS ROBERT + GRACE 3622 HERITAGE LN FT MYERS FL 33908	CRESCENT BEACH PB 4 PG 45 BLKS D + E + VAC R/W DESC OR 1293 PG 1208	
Site Address	1400 ESTERO BLVD Fort Myers Beach, FL 33931	
Taxing District		
033 - TOWN OF FT MYERS BEACH		DOR Code
		39 - HOTELS, MOTELS
Property Values	Exemptions	Dimensions
Just	8,908,740 Homestead	0 Measurement Units SF
Assessed	8,908,740 Agricultural	0 Number of Units 117,612.00
Assessed SOH	8,908,740 Widow	0 Frontage 0
Taxable	8,908,740 Widower	0 Depth 0
Building	5,583,840 Disability	0 Bedrooms 5
Land	2,940,300 Wholly	0 Bathrooms 328
Building Extra Features	349,090 Energy	0 Total Sq. Ft. 97,671
Land Extra Features	35,510 SOH Difference	0 Year Built 1980

Sales Transactions				
Sale Price	Date	OR Book/Page	Transaction Type	Vacant/Improved
100	1/1/1993	2360/1911	01	I
0	4/1/1986	1842/3161	01	I

Solid Waste (Garbage) Roll Data				
Solid Waste District	Roll Type	Category	Unit/Area	Total Area
008 - Town of Fort Myers Beach	C - Commercial Category	D	69,069	10,000

Land Lines (Land Use)	
Description	Use Code
Motel	3900
	117612.00 Square Feet

Flood Insurance (FIRM)				
Storm Surge Category	Rate Code	Community	Panel	Version
Tropical Storm	V20:EL17	125124	0429	D
				092096


[View Parcel Info](#)

[[View 2001 TRIM Notice](#)]

[[View 2000 TRIM Notice](#)]

[[Show Building Details](#)]

[[Hide Aerial View](#)]

[[Next Lower Parcel Number](#)] [[Next Higher Parcel Number](#)]

[[New Query](#) | [Parcel Queries Page](#) | [Lee PA Home](#)]

10-28-01
COMMUNITY DEVELOPMENT

ESTERO BOULEVARD 50' R/W

FEMA ZONE
A-12(14)

FEMA ZONE
V-20 (17)

COASTAL
CONSTRUCTION
ZONE LINE AS
OF 10/23/80

DATE: 6/5/96
SCATE: 1-50
JOB: 110656

Approx. Mean High Water 02/06/94

FLORIDA REC. 12229
R.T. SCHEIDT, M.D.
M.D.

Subject Property located in
FEMA Flood Zone A-12 (16.0%),
AND Zone A-20 (17.0%).
Panel #123124-0420-C
Dated: 11/4/97

[illegible]

CERTIFY TO: KEVIN J. JENNINGS
 BANCROFT, LLOYD, & ASSOCIATES
 SUCCESSION AND/OR ASSIGNMENTS
 ATTORNEYS AT LAW, 1000 BROADWAY, NEW YORK, N.Y. 10018

[illegible]

REVIEW CHECKLIST COVER SHEET

Project Name: LAM KAI ISLAND RESORT

New Submittal/Type: LO1

Resubmittal/Type: N/A

D.O. Number: LD 2001-00385

Due Date: 11-28-01

No plans submitted: _____

No Paperwork submitted: _____

Additional information: _____

Distribute to:

_____ Environmental ①

_____ Fire

_____ Utilities

_____ SWP3 form

_____ T.I.S.

file copy

_____ D.O.T. (Inter-office / Andy Getch, P.E. Engineering Services
_____ Hurricane Evacuation (Inter-office/Terry Kelley(TMK)
Emergency Operations)

_____ CHECK LEGAL ②

reviewchecklist8/01

RECEIVED

NOV 19 2001

COMMUNITY DEVELOPMENT



LEE COUNTY

RECEIVED

NOV 19 2001

PERMIT COUNTER

APPLICATION FOR A LIMITED REVIEW DEVELOPMENT ORDER

Applicant's Name: Lani Kai Island Resort Phone # 941-463-3111
Project Name: Lani Kai Island Resort
STRAP Number: 194624W40070D0020

STAFF USE ONLY

Case Number: LDC 2001-00385 Fee: 350.00
Date of Review: _____ Date Fee Paid: 10/19/01
Reviewed By: _____ Receipt Number: _____
Staff Recommendation: _____ Intake By: JMC
TYPE OF LIMITED REVIEW: 1
Communication Tower? YES ☒ NO

LD 2001-00385
RECEIVED
LDC
NOV 19 2001

DCE 11-28-01
COMMUNITY DEVELOPMENT

LEE COUNTY
COMMUNITY DEVELOPMENT
P.O. BOX 398 (1500 MONROE STREET)
FORT MYERS, FLORIDA 33902
PHONE (941) 479-8585

EXPLANATORY NOTES FOR PART I

B. Name of Applicant: Application may be by the landowner or an authorized applicant. [Sec. 10-154(1)].

Where there is more than one owner, either legal or equitable, then all such owners must jointly initiate the application. Exceptions to this are:

- 1) It is not required that both husband and wife initiate the application on private real property owned by them.
- 2) Where the property is subject to a land trust agreement, the trustee may initiate the application.
- 3) Where the fee owner is a corporation, any duly authorized corporate official may initiate the application.
- 4) Where the fee owner is a partnership, the general partner may initiate the application.
- 5) Where the fee owner is an association, the association may appoint an agent to initiate the application on behalf of the association.
- 6) Where the property is a condominium or time-share condominium, refer to Sec. 34-201(a)(1)b. for rules.
- 7) Where the property is a subdivision, refer to Sec. 34-201(a)(1)c. for rules.

C. Relationship of applicant to owner: If the applicant is not the owner of the property, the applicant must submit a **notarized** authorization form (Exhibit 1-C, attached) signed by the owner (see B. above for who must sign) indicating the applicant is the owner's authorized agent. [Sec. 10-154(1)]

E. Name of owner (s): Print "same" if the applicant is the owner.

F. Authorized Agents: If the owner or applicant has authorized agents to act on his/her behalf, list the agent(s) name, mailing address and phone number. [Sec. 10-153(1)f.].

G. Describe briefly how to get to the property from the nearest arterial road.

PART I:
OWNER/APPLICANT/DEVELOPER INFORMATION

A. Name of the proposed development: Lani Kai Island Resort
B. Name of applicant: Robert Conidaris c/o Lani Kai Island Resort
Mailing Address: Street: 1400 Estero Blvd

City: FT. Myers Beach State: Florida Zip: 33931
Phone Number: Area Code: 941 Number: 463-3111 Ext: _____
Fax Number: Area Code: 941 Number: 463-2986

C. Relationship of applicant to property:

X Owner _____ Trustee* _____ Option holder* _____ Lessee* _____
_____ Contract Purchaser* _____ Other (indicate)* _____

*Applicant must submit a notarized authorization form. [see Exhibit I-C (attached)].

D. Name of developer: _____

Mailing Address: Street: _____

City: _____ State: _____ Zip: _____

Phone Number: Area Code: _____ Number: _____ Ext: _____

Fax Number: Area Code: _____ Number: _____

E. Name of owner of property: Robert Conidaris

Mailing Address: Street: 1400 Estero Blvd

City: FMB State: Florida Zip: 33931

Phone Number: Area Code: 941 Number: 463-3111 Ext: _____

Fax Number: Area Code: 941 Number: 463-2986 : 415 7671

F. Authorized Agent(s): List names of authorized agents (attach extra page if more space is needed).

Name: Michael Conidaris c/o Conidaris Builders & General Contractors Inc.

Address: 15645 Pine Ridge Road Ft. Myers, Florida 33908

Phone: 941-415-7671 Fax: 941-415-2886

G. Vehicular route to the site from the nearest arterial road: _____

Summerlin Road to San Carlos Blvd to Estero Blvd.

EXPLANATORY NOTES FOR PART II

A. Legal Description: If the property is not within a platted subdivision recorded in the official plat books of Lee County, a complete legal description must be attached which is sufficiently detailed and legible so as to be able to locate said property on county maps or aerial photographs. Also include the Section, Township, Range, and parcel number(s). [10-153(2)a.] Label the legal description as Exhibit II-A-1.

If the application includes multiple contiguous parcels, the legal description may describe the perimeter boundary of the total area, and need not describe each individual parcel, except where different development requests are made on individual parcels.

A boundary sketch, drawn to scale must also be submitted unless the subject property is vacant and consists of one or more undivided platted lots. The boundary sketch must include the location of any existing structures on the property. Label the Boundary Sketch as Exhibit II-A-2.

STRAP Number(s): If the STRAP Number is unknown, it may be obtained from the Lee County Property Appraiser at 339-6150.

NOTE: The Director has the right to reject any legal description which is not sufficiently detailed or legible so as to locate said property, and may require a certified survey or boundary sketch to be submitted.

B. Project Street Address: If the street address is unknown, the address may be obtained from the Lee County E-911 Addressing Division at (941) - 335-1630.

D. Property Dimensions: If the parcel is irregularly shaped, indicate the average width and depth of the property. Indicate the length of property abutting any existing street rights-of-way or easements. If property abuts more than one street, indicate frontage on each street.

PART II GENERAL INFORMATION

A. Legal Description: Is property within a platted subdivision recorded in the official Plat Books of Lee County? _____

_____ NO. Attach a legible copy of the legal description. _____ YES. Property is identified as:

Subdivision Name: _____

Plat Book: 1284 Page: 1288-45 Unit: _____ Block: _____ Lot: 20

STRAP NUMBER(s): 194624640070D0020

B. Date the property was purchased: _____

C. Project street Address: 1400 ESTERO Blvd. Ft. Myers Beach, FL 33931

D. Property Dimensions:

1. Width (average if irregular parcel): Road 355' _____ feet

2. Depth (average if irregular parcel): 324' _____ feet

3. Frontage on road or street: _____ feet

4. Width along waterbody (If applicable): 388' _____ feet

5. Total land area: 117662 S.F. _____ acres or square feet

E. Current Zoning: C1

If a Communication Tower, was a Special Exception granted? _____ YES ☒ NO Res. #: _____

F. Existing Use: Hotel

G. Are there any zoning actions (district boundary change, special exceptions, variances) currently pending or contemplated on this property? _____ NO ☒ YES: If yes, please provide: _____

Case/Hearing Number: _____

Type of action requested (use addition pages if needed): _____

H. Have any variances/deviations been granted or requested on this property? _____ NO ☒ YES: If yes, please provide: _____

Case/Hearing Number: _____

Type of variance/deviations granted (use addition pages if needed): _____

I. Has a Development Order (or exemption) been applied for prior to this application? _____ NO ☒ YES: If Yes, please provide: _____

Case Number: _____ Date of Approval/Denial: _____

Type of Development Order (or Exemption): _____

J. Are there any Federal, state or local permits or stipulations affecting this development order application? _____ NO ☒ YES. If yes, please indicate what they are: _____

COMMUNICATION TOWER

All communication towers greater than 50 feet in height must apply for a development order as follows:

- a. If the tower and all accessory buildings, pads, and other impervious areas will not increase the total impervious area by more than 2,500 square feet, or increase the rate of runoff from the project site, a Limited Review TYPE 1 may be used.
- b. If the tower and all accessory buildings, pads, and other impervious areas will increase the total impervious area by more than 2,500 square feet, but do not result in any significant impacts, a Limited Review TYPE 12 may be used.
- c. If the tower and all accessory buildings, pads, and other impervious areas will increase the total impervious area by more than 2,500 square feet and result in significant impacts, a regular development order must be used.

TYPE 4 LIMITATIONS:

- a. Each lot must meet or exceed all width, depth and area requirements of the zoning district in which located.
- b. Each lot abuts and has access to a road which is maintained pursuant to Ordinance No. 87-19, as amended or replaced, or to an existing improved right-of-way or easement meeting at least the minimum construction standards required by this chapter. This provision requires that each lot abut and have access to a road complying with the requirements of section 10-296. The maximum allowable density for a proposed lot that will abut and have access to any unpaved rock/shell road (a category D road) is 0.4 units per acre per sections 10-296(d). Compliance with maximum density requirements of the Lee Plan is also required. Compliance with the roadway right-of-way width and wearing surface requirements of Section 10-296 is required;
- c. No alteration of existing utility installations is involved;
- d. No change in drainage will occur which affects the surrounding properties; and
- e. No new road rights-of-way or road easements or upgrading of road rights-of-way or road easements to minimum standards contained in Chapter 10 of the Land Development Code is required. This provision requires that a development order be obtained in order to establish or upgrade a road right-of-way or a road easement or to construct or upgrade a road.

TYPE 5 LIMITATIONS:

- a. Each lot must meet or exceed all width, depth and area requirements of the zoning district in which located or the subdivision is approved by the Director of Community Development under the provisions of Section 34-2221(1), and the overall development complies with all other requirements of chapter 10 of the Land Development Code;
- b. No development may occur on any of the lots without first obtaining a development order for the proposed improvement(s);
- c. If the parent parcel is ten acres or greater, a protected species survey may be required as specified in Chapter 10 of the Land Development Code;
- d. Each lot shall abut and have access to a road which is maintained pursuant to Ordinance # 87-19, as amended or replaced, or to an existing improved road right-of-way or easement meeting at least the minimum construction standards required by Chapter 10 of the Land Development Code;
- e. No alteration of existing utility installations is involved;

(Continued back of next page)

PART III REQUESTED ACTION

A: NATURE OF REQUEST: (Check applicable answer) Communication Towers: Refer to opposite page for explanation of review type required.

- ☒ TYPE 1: A cumulative addition or enlargement of an existing impervious area, provided that the addition or enlargement does not increase the total impervious cover area by more than 2,500 square feet and there is no increase in the rate of runoff from the project site.
- TYPE 2: Any out-of-door type recreational facilities, such as swimming pools, tennis courts, tot lots and other similar facilities, provided the total cumulative additional impervious area does not exceed 8,000 square feet.
- TYPE 3: Any development which received final site plan approval by the Current Planning Department and the Division of Transportation & Public Works prior to November 10, 1982, where the development has been actively constructed continuously, or in phases, in accordance with such approval.
- TYPE 4: Any one-time subdivision of land into four or less lots for single-family detached dwelling units or two-family detached dwelling units, where zoning district regulations permit such subdivision; subject to certain limitations (see opposite page for limitations).
- TYPE 5: Any subdivision of land for a use other than single-family detached dwelling units, two-family detached dwelling units or agricultural subject to certain limitations (see opposite page for limitations).
- TYPE 6: Any single building of two dwelling units or less and any accessory improvements thereto on a single lot which is not a lot of record or a platted lot, provided the applicant submits sufficient evidence that the lot was purchased, or contracted for purchase, prior to January 28, 1983.
- TYPE 7: Any development containing individual lots for single buildings of two dwelling units or less which, prior to January 28, 1983 (see opposite page for limitations):
- TYPE 8: An excavation or mining operation which is subject to Chapter 34, Article VII, Division 15, subdivision II, and which received a general excavation permit, or a renewal permit, from the Board of County Commissioners after August 1, 1984.
- TYPE 9: Any county-initiated improvements for public water access purposes in county-owned or county-maintained rights-of-way.
- TYPE 10: Any development for a fenced or screened enclosed storage yard as defined in Chapter 34, provided that the yard consists solely of stabilized grassed surface, a surface water management system, buffers and fencing; and provided further that site access complies with the provisions of Chapters 10 and 34 of the Land Development Code.
- TYPE 11: The installation of new utility lines in existing rights-of-way or easements.
- TYPE 12: Any other improvement to land determined by the director to have insignificant impacts on public facilities in accordance with applicable standards of measurement in chapter 10 (vehicular trips, amount of impervious surface, gallons per day, etc.).

B. Please explain the proposed improvement (use additional sheets if needed):

- f. No change in drainage will occur which negatively impacts the surrounding properties;*
- g. No new road rights-of-way or road easements or upgrading of road rights-of-way or road easements to minimum standards contained in this chapter are required. This provision requires that a development order be obtained in order to establish or upgrade a road right-of-way or a road easement or to construct or upgrade a road; and*
- h. Reasonable conditions may be attached to the approval so that any development on all of the lots will comply with all county land development regulations.*

TYPE 7 LIMITATIONS:

- a. Has been approved by the county and registered with the state Division of Land Sales and Condominiums, provided that all improvements required or approved by the county have been completed or a surety has been posted and is current; or*
- b. Has been approved for drainage, streets and utilities by the county and for which at least 51 percent of all the lots along both sides of the street segment have been sold to individuals.*

EXPLANATORY NOTES FOR PART IV

- a. The applicant is responsible for the accuracy and completeness of this application. Delays or additional expenses necessitated by the submittal of inaccurate or incomplete information are the responsibility of the applicant.*
- b. All information submitted with the application becomes a part of the public record and will be a permanent part of the file.*
- c. All applications must be submitted in person. Applications received through the mail will not be processed.*
- d. All attachments and exhibits submitted must be of a size that will fit or conveniently fold to fit into a letter size (8 ½" x 11") folder.*
- e. The Department staff will review this application for compliance with requirements of the Lee County Land Development Code. If any deficiencies are noted, the applicant will be notified.*

PART IV
AFFIDAVIT

I, Robert Cordaris, certify that I am the owner or authorized representative of the property described herein, and that all answers to the questions in this application and any sketches, data or other supplementary matter attached to and made a part of this application, are honest and true to the best of my knowledge and belief. I also authorize the staff of Lee County Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application.

[Signature]
Signature of owner or owner-authorized agent 11-14-01 Date:

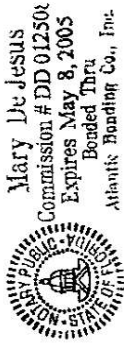
Typed or printed name

STATE OF FLORIDA)
COUNTY OF LEE)

The foregoing instrument was certified and subscribed before me this 14 day of November, 2001, by _____, who is personally known to me or who has produced _____ as identification.

(SEAL)

[Signature]
Signature of notary public
Mary De Jesus
Printed name of notary public



EXPLANATORY NOTES FOR PART V

NOTE A: Aerial photographs may be obtained at the Property Appraisers office at 2480 Thompson Street, Constitutional Complex, Fort Myers.

NOTE B: If the site plan is insufficient for the type of review requested, an engineered drawing may be required.

NOTE C: If the changes the applicant is proposing are over existing impervious ground (i.e. asphalt or concrete), then a Limited Review Development Order may not be required. However, a "Letter of Transmittal" must be obtained from the Development Services Division prior to submitting plans for a Building Permit.

NOTE D: The applicant must submit copies of the documents which are being used to provide evidence that the lots were:

- a. approved by Lee County and were registered with the State Division of Land Sales and Condominiums AND THAT all improvements required or approved by the County have been completed or a surety has been posted and is current; OR
- b. approved for drainage, streets and utilities by the County and for which at least 51 percent of all the lots along both sides of the street segment have been sold to individuals.

PART V
SUBMITTAL REQUIREMENTS for ALL LIMITED REVIEW REQUESTS

COPIES		SUBMITTAL DOCUMENT
SUB'D	REQ'D	
✓	1	Completed application [Section 10-175(1)]
✓	1	Notarized Authorization Form (if applicable)[Section 10-154(1)]
✓	1	Legal Description [Section 10-154(3)]
✓	1	Boundary Sketch (if applicable) [Section 10-154(5)]
✓	1	Area Location Map, drawn to scale, which indicates where the property is located in relation to major roads.[Sec. 10-175(3)] <i>16.00.1110</i>
✓	1	Aerial Photograph: A copy of an aerial photograph (most current available from the County) at a scale of one inch = 300 feet. [Sec. 10-175(4)] See note A.
✓	1	Written Description of Proposed Development and the reasons why it should be approved. [Section 10-175(5).
✓	1	Copy of Approved Building Permits/Site Plans (if applicable). A copy of any current building permit and approved site plan, if applicable. [Section 10-175(6)]
		NOTE: The Director of the Development Services Division may require additional information such as copies of deeds, sealed surveys, calculations, SFWMD permits, and other state, federal or local permits. [Section 10-175(7)]

ADDITIONAL SUBMITTAL REQUIREMENTS FOR SPECIFIC TYPES	
COMMUNICATION TOWERS: In addition to the requirements listed below for specific types of reviews, all applications for communication towers exceeding 50 feet in height must submit:	
1	A copy of the FCC license number currently in effect for the proposed communication tower's service area.
1	A written statement from a professional engineer or other qualified person specifying that the tower and its antennas will comply with all applicable standards of the Federal Communications Commission and Federal Aviation Administration.
TYPES 1 AND 2	
7	A site plan, drawn to scale, which shows the site and location of all buildings, structures, and other impervious areas on the property. [Section 10-175(2)] See note B.
1	Calculations showing total area of impervious cover before and after the improvement (including any additional parking areas required by the zoning regulations). See note C.
TYPE 3	
7	Approved Pre-11/10/82 site-plan
1	A written statement as to what improvements have been made to the property since receiving final site plan approval from the Current Planning Dept. and the Division of Transportation and Public Works. The statement should include a chronology of work and a list of any building permits which have been issued.
TYPE 4 & 5	
1	A sealed survey or boundary sketch of the property, legal description and dimensions of the parent parcel and the location of the proposed split(s). If structures exist on the parent parcel, show all sizes, locations, and setbacks from existing and proposed property lines. Include information on existing adjacent roads (dimensions, elevations, gravel and paved width, etc.).
7	The subdivision plan, drawn on 8.5 x 11 or 8.5 x 14 inch paper, sealed by the surveyor, and ready for recording.
7	The legal descriptions, written on 8.5 x 11 or 8.5 x 14 inch paper, sealed by the surveyor, of each lot in the subdivision, and ready for recording.
7	A site plan, drawn to scale, which shows the site and location of all buildings, structures, and other impervious areas on the property. [(Section 10-175(2)] See note B.
TYPE 6	

	5	A sealed survey or sealed boundary sketch of the boundary, legal description and dimensions of the property to be developed.
TYPE 7		
	1	A copy of the document(s) which are being used to establish eligibility. See note D.
TYPE 8		
	1	A copy of the approved IPD Zoning Final Plan
	5	The mining site plan
	1	Reclamation Plan
	1	SFWMD Permit
	1	Traffic Impact Statement (See Sec. 10-286)
TYPES 9 AND 10		
	7	A site plan, drawn to scale, which shows the site and location of all buildings, structures, and other impervious areas on the property. [Section 10-175(2)] See note B.
	1	Calculations showing total area of impervious cover before and after the improvement (including any additional parking areas required by the zoning regulations). See note C.
	1	A copy of any plat or recorded deeds or easements for the property.
TYPE 11		
	7	Copies of the utility plans, prepared as prescribed in Section 10-151 showing, as appropriate, the location, type, and size of all existing & proposed water mains and services, fire hydrants, sewer mains and services, pumping stations, together with plan and profile drawings showing the depth of utility lines and points where utility lines cross one another or cross storm drain or water management facilities. The location of all existing and proposed services shall be shown.
	1	State Permits
TYPE 12		
	7	A site plan, drawn to scale, which shows the site and location of all buildings, structures, and other impervious areas on the property. [Section 10-175(2)] See note B.
	1	Calculations showing total area of impervious cover before and after the improvement (including any additional parking areas required by the zoning regulations). See note C.
		Additional submittal documents, if required, will be determined by the Director of the Development Services Division on the basis of the nature of the proposed improvement.

EXHIBIT I-C

LETTER OF AUTHORIZATION

The undersigned do hereby swear or affirm that they are the fee simple title holders and owners of record of property commonly known as Lani Kai Island Resort and legally described in exhibit A attached hereto.

The property described herein is the subject of an application for zoning or development. We hereby designate Michael Conidakis as the legal representative of the property and as such, this individual is authorized to legally bind all owners of the property in the course of seeking the necessary approvals to develop. This authority includes but is not limited to the hiring and authorizing of agents to assist in the preparation of applications, plans, surveys, and studies necessary to obtain zoning and development on the site. This representative will remain the only entity to authorize development activity on the property until such time as a new or amended authorization is delivered to Lee County.

[Signature]
Owner

Robert Conidakis
Printed Name

STATE OF FLORIDA
COUNTY OF LEE

Sworn to (or affirmed) and subscribed before me this 14 day of November, 2001, by [Signature], who is personally known to me or who has produced as identification.

[Signature]
Notary Public

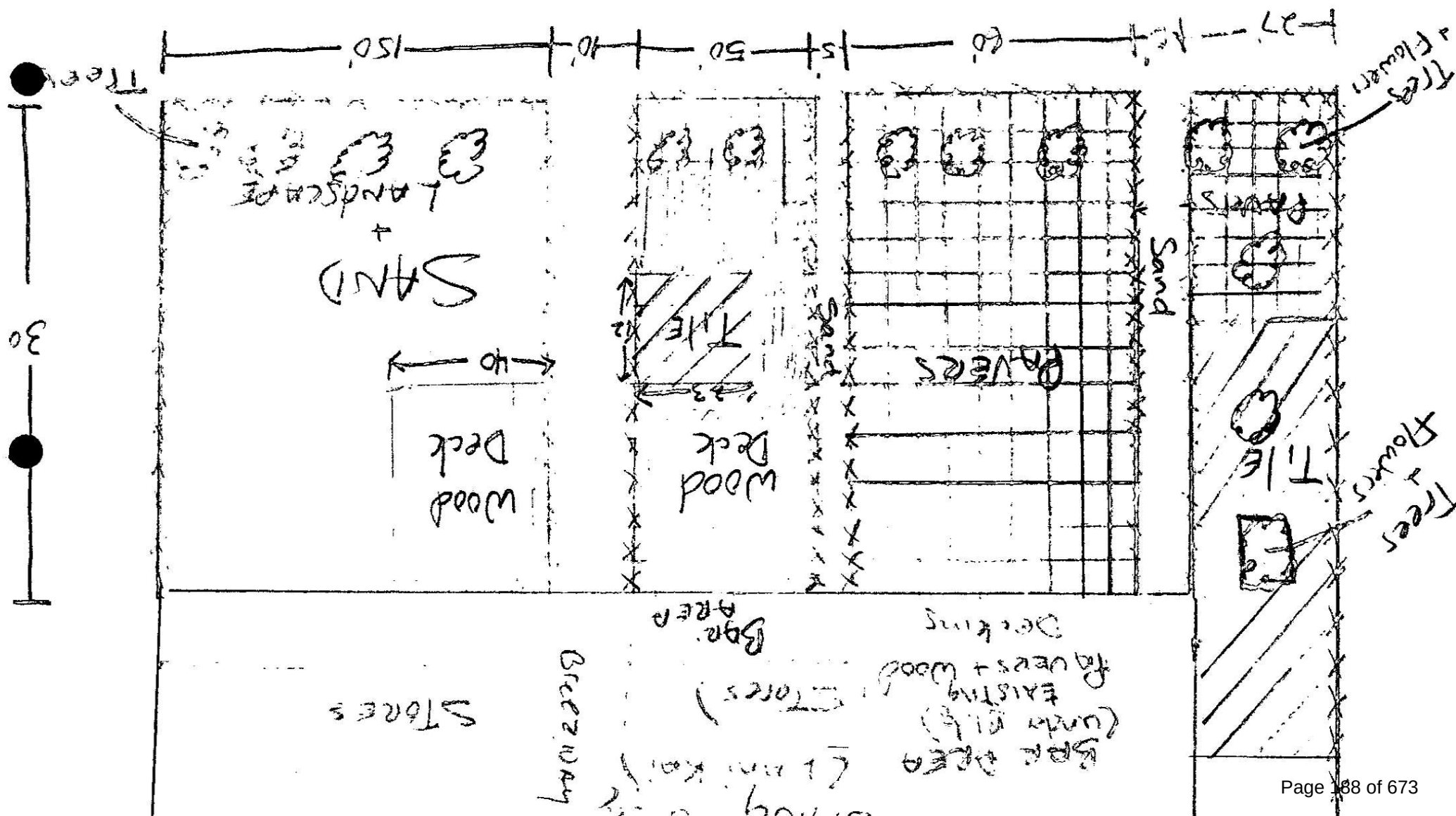
Mary De Jesus
(Name typed, printed or stamped)





NOT TO SCALE

Sheet 4



Summerlin

property:

Lani Kai Island Resort
1400 Estero Blvd.

Ft. Myers Bch, 33931
(941) 463-3111

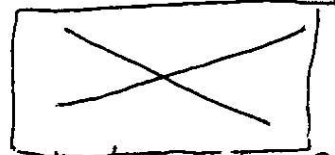
Map to Property

FT Myers Beach
Bridge to Beach

San Carlos Blvd

Estero Blvd.

1400 Estero Blvd



X Lani Kai Island Resort X

1. **Request:**

Meeting Date: September 23, 2024

Request to continue to a date certain of October 7, 2024 at 9:00 AM

A RESOLUTION VACATING AN UTILITY EASEMENT LOCATED OVER REAL PROPERTY OWNED BY FORT MYERS BEACH ART ASSOCIATION, GENERALLY LOCATED AT 3030 SHELL MOUND BOULEVARD, FORT MYERS BEACH; ACCEPTING AND ACCEPTING AND APPROVING A COMPARABLE REPLACEMENT EASEMENT TO BE LOCATED ON THE SAME REAL PROPERTY, SUBJECT TO TERMS AND CONDITIONS AS CONTAINED IN A SECOND AMENDED AND RESTATED UTILITY EASEMENT AGREEMENT; DIRECTING THE TOWN COUNCIL TO ACCEPT THE SECOND AMENDED AND RESTATED UTILITY EASEMENT AND AGREEMENT; DIRECTING CLERK TO RECORD THIS RESOLUTION; AUTHORIZING THE MAYOR TO SIGN ALL NEEDED DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

The Town Council approves easement vacations and relocations.

What the action accomplishes:

Vacation of the easement will allow Fort Myers Beach Art Association to develop the site to suit their needs.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Judith Frankel, Principal Planner

5. **Background:**

The subject utility easement crosses the southern third of the property at 3030 Shell Mound Blvd. The property consists of two whole plats and a portion of a third. The easement is located at the boundary between plats. See Exhibit B. The easement is visible on the original plat map dated 1958. In order for the site to be developed, the easement must be vacated. The applicant has shown that this vacation does not adversely impact future Town infrastructure. The Town has reviewed the site, and no Town utilities are located in the easement. Refer to Exhibit E for the letters of no objection from the Town and other utility providers.

At their September 3rd meeting, the LPA voted 7-0 to recommend approval of the application to the Town Council.

Attachments:

1. 24-190, VAC20240068, 3030 Shell Mound FMB Art Assoc
2. Resolution EXHIBIT. A- Existing Easement Survey
3. Resolution EXHIBIT B - Relocated easement sketch
4. Staff Memo
5. EXHIBIT. A- Survey
6. EXHIBIT B - Easement Location
7. EXHIBIT C - 1958 Plat Map
8. EXHIBIT D - Current Plat Map
9. EXHIBIT E -Letters of No Objection (LONO)
10. EXHIBIT F - Application
11. EXHIBIT E-Postcards

Financial Impact:

Unknown

6. **Alternative Action**

Deny

7. **Management Recommendations:**

Find that the request to vacate the utility easement meets the requirements of the comprehensive plan and approve.

8. **Recommended Approval:**

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

Created/Initiated - 9/9/2024
Approved - 9/9/2024
Approved - 9/17/2024
Approved - 9/17/2024
Final Approval - 9/17/2024

RESOLUTION 24-190

A RESOLUTION VACATING A 12-FOOT WIDE UTILITY EASEMENT LOCATED OVER REAL PROPERTY OWNED BY FORT MYERS BEACH ART ASSOCIATION, GENERALLY LOCATED AT 3030 SHELL MOUND BOULEVARD, FORT MYERS BEACH; ACCEPTING AND APPROVING AN UTILITY EASEMENT AS A REPLACEMENT EASEMENT TO BE LOCATED ON REAL PROPERTY OWNED BY FORT MYERS BEACH ART ASSOCIATION, SUBJECT TO TERMS AND CONDITIONS AS CONTAINED IN A UTILITY EASEMENT AGREEMENT; DIRECTING THE TOWN CLERK TO RECORD THIS RESOLUTION AND THE NEW UTILITY EASEMENT; AUTHORIZING THE MAYOR TO SIGN ALL NEEDED DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the property owner, Fort Myers Beach Art Association, has requested vacation of a 12-foot wide utility easement located on its property at 3030 Shell Mound Boulevard, Fort Myers Beach; and

WHEREAS, Fort Myers Beach Art Association has offered to voluntarily have the vacated easement relocated to the southern property boundary to ensure continued utility access by the Town; Exhibit A shows the approximate location of the existing easement; and

WHEREAS, vacation and relocation of the existing utility easement on the Fort Myers beach Art Association's property would allow for the redevelopment of the real property;

WHEREAS, the existing utility easement was granted to Lee County in 1958 when the land was platted and the Town acquired the easement upon incorporation; and

WHEREAS, Section 2-539 of the Fort Myers Beach Code of Ordinances provides guidelines and criteria for review of requests to vacate any Town streets, alleys, easements, or subdivision plats; and

WHEREAS, the Town has no utilities under the existing easement and letters of no objection have been obtained from private utility companies; and

WHEREAS, a public hearing was held before the Local Planning Agency ("LPA") on September 3, 2024, and after providing the applicant, staff, and the public an opportunity to present testimony and evidence, the LPA voted 7 to 0 finding the request to be consistent with the Town of Fort Myers Beach Comprehensive Plan and recommending approval of the vacation request, subject to final review of the proposed utility easement by the Town Attorney; and

WHEREAS, notice to current property owners within 500 feet was provided more than 15 days prior to the hearing before the Town Council on September 23rd, 2024 and the Town Clerk has received an Affidavit of Mailing as required by Section 2-538(b); and

WHEREAS, adoption of this Resolution is in the best interest of the Town.

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

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

Section 2. The Town Council hereby approves the vacation of the existing utility easement, as more particularly described in Exhibit A, finding that the criteria in Section 2-539 of the Fort Myers Beach Code of Ordinances is satisfied. More specifically, that:

1. There is no future likelihood that the easement will be needed by the Town or otherwise conflict with the Town's future utility infrastructure management; and
2. the applicant has provided a comparable replacement utility easement at no cost to the Town;

Section 3. The Town Council hereby accepts and approves a 6 foot wide utility easement in the approximate area shown on Exhibit B, subject to terms and conditions contained in a Utility Easement and approval as to form and sufficiency by the Town Attorney.

Section 4. The Town Clerk is directed to record this Resolution with its exhibits and the new Utility Easement in the official public records of Lee County, Florida upon adoption and subsequent to recording of any subordination of prior interests, if any, as may be required by the Town Attorney encumbering the real property where the replacement easement is located.

Section 5. The Mayor is authorized to sign any and all documents needed to implement this Resolution.

Section 6. This Resolution shall take effect immediately upon adoption.

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

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

ADOPTED this ____ day of September 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

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

Attachments:

Exhibit A- Survey of Location Existing Easement

Exhibit B- Sketch of Area for Replacement Easement

Exhibit A

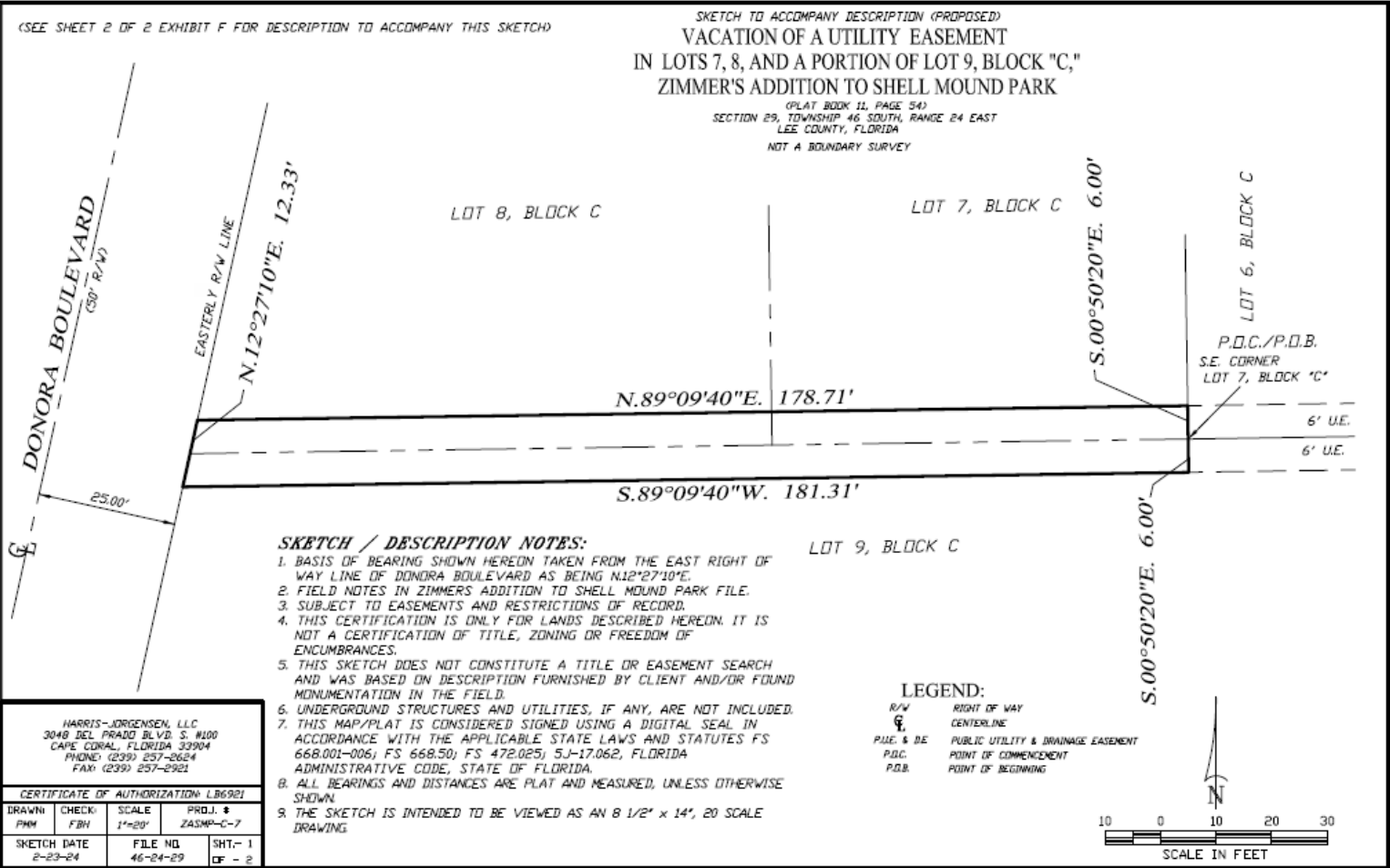
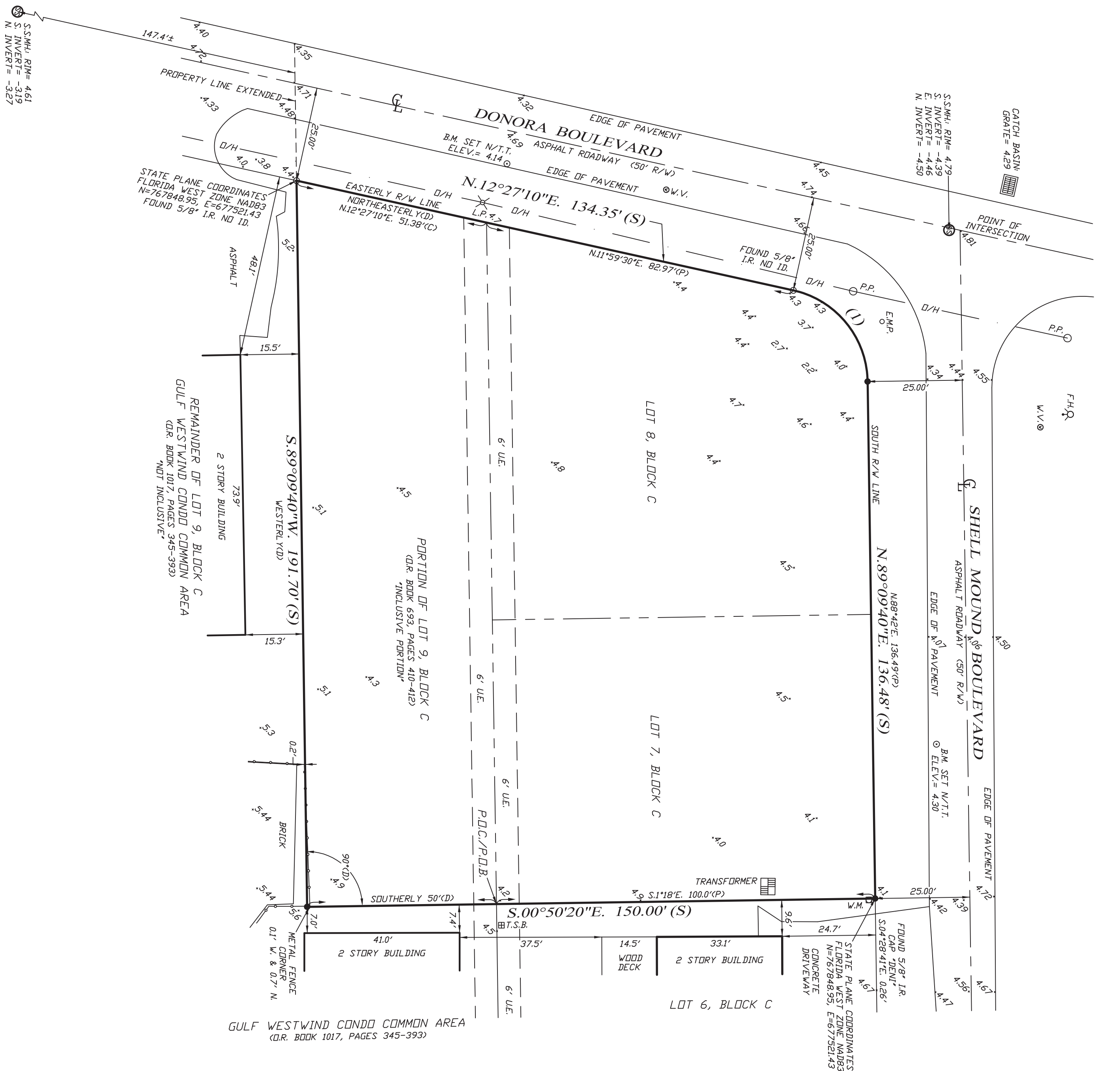


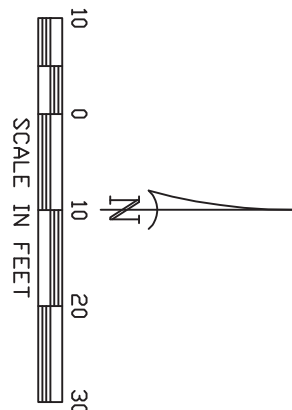
EXHIBIT 6-2

Curve number 1

Radius= 25.00'
Delta= 76°42'30"
Arc= 33.47'
Chord= 31.03'
Chord Brg.= N.50°48'25"E.



BOUNDARY SURVEY OF
LOTS 7, 8 &
A PORTION OF LOT 9, BLOCK C,
ZIMMER'S ADDITION TO
SHELL MOUND PARK,
CITY OF ST. LOUIS, MISSOURI



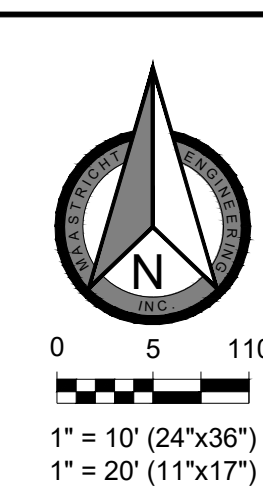
S.S.MH: RIM= 4.66
W. INVERT= -3.73
E. INVERT= -3.84

- LEGEND:
- | | | |
|---------------------------------|--------|-----------------------|
| ● SET 1/2" IRON ROD (CAP LB392) | R.V.B. | RECLAIM WATER BOX |
| □ FOUND IRON ROD (G2) | V.M. | WATER METER |
| □ CONCRETE MONUMENT (C.M.) | D/H | DYERHAD PUMPER |
| □ PERMANENT REFERENCE MONUMENT | P.P. | POWER POLE |
| □ PUBLIC UTILITY EASEMENT | GA&W | GUY ANCHOR & WIRE |
| □ DRAINAGE EASEMENT | T.S.B. | TELEPHONE SERVICE BOX |
| □ POINT OF CURVATURE | N/D | NAIL & DISK |
| □ OFFICIAL RECORDS BOOK | N/T/T | NAIL & TINNAB |
| □ AS PER SURVEY | ELEV. | ELEVATION |
| □ AS PER DEC'D | B.M. | BENCHMARK |
| □ COMPUTED | 0 | TYPICAL ELEVATION |
| □ CURVE NUMBER | A/C | ARC CONDITIONER |
| □ LINE NUMBER | V.M. | VALVE |
| □ L1 | P.E. | PUMP EQUIPMENT |
| □ RIGHT-OF-WAY | C.M.P. | CORROGATED METAL PIPE |
| □ CENTERLINE | CONC. | CONCRETE |
| □ SANITARY SEWER MANHOLE | — | DRAINAGE ARROW |
| □ FIRE HYDRANT | EMP. | ELECTRIC METAL POLE |
| □ WATER VALVE | P.D.C. | POINT OF COMMENCEMENT |
| □ LIGHT POLE | P.D.B. | POINT OF BEGINNING |

SURVEY NOTES:

- THIS SURVEY IS CERTIFIED TO:
1. BASIS OF BEARING SHOWN HEREON TAKEN FROM THE SOUTH RIGHT-OF-WAY LINE OF SHELL MOUND BOULEVARD, AS BEING N89°09'40"E.
 2. FIELD NOTES IN ZIMMER'S ADDITION TO SHELL MOUND PARK.
 3. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.
 4. THIS CERTIFICATION IS ONLY FOR LANDS DESCRIBED HEREON. IT IS NOT A CERTIFICATION OF TITLE, ZONING OR FREEDOM OF ENCUMBRANCES.
 5. THIS SURVEY DOES NOT CONSTITUTE A TITLE OR EASEMENT SEARCH AND WAS BASED ON DESCRIPTION FURNISHED BY CLIENT AND/OR FOUND MONUMENTATION IN THE FIELD.
 6. UNDERGROUND STRUCTURES AND UTILITIES, IF ANY, ARE NOT INCLUDED.
 7. THIS MAP/PLAN IS CONSIDERED LAINED USING A DIGITAL SEAL IN ACCORDANCE WITH THE APPLICABLE STATE LAWS AND STATUTES (FS 668.001-006; FS 668.055; FS 472.020; 5-1-17062, FLORIDA ADMINISTRATIVE CODE, STATE OF FLORIDA, ALL BEARINGS AND DISTANCES ARE PLAIN AND MEASURED, UNLESS OTHERWISE SHOWN.
 8. ALL CORNERS AND DISTANCES ARE PLAIN AND MEASURED, UNLESS OTHERWISE SHOWN.
 9. ISSUANCE OF THIS DRAWING FROM THIS FIRM SHALL NOT RELIEVE THE BUILDER AND/OR CONTRACTORS OF THE RESPONSIBILITY TO REVIEW AND VERIFY ALL NOTES, DIMENSIONS, ELEVATIONS, AND ADHERENCE TO APPLICABLE BUILDING CODES PRIOR TO COMMENCEMENT OF ANY CONSTRUCTION. BUILDER MAY NEED TO ADJUST ELEVATION AND/OR SETBACKS PRIOR TO CONSTRUCTION IF OTHER REQUIREMENTS EXIST OR APPLY.
 10. THIS SURVEY IS INTENDED TO BE VIEWED AS AN 1/8"=1', 20 SCALE DRAWING.
 11. ELEVATIONS ARE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 1988).
 12. SITE BENCHMARK DERIVED FROM NATIONAL GEODETIC SURVEY (NADS) BENCHMARK DESIGNATION 872 5366 F, 1988 ELEVATION 22.60 NAVD 1988.
- FLOOD ZONE: "A2" ELEVATION: 11' NAVD 1988
COMMUNITY NO: 120673 PANEL NO: 0558
SUFFIX --- G REVISION DATE: 11/17/2022
MAP NUMBER 12071005586

REVISED	DESCRIPTION	BY	Phillip M Mould, L66515
			State of Florida
			Date: 2023.12.08
			12/24/19 05:00
DATE OF LAST FIELD WORK:	11/29/23		
DRAWN	CHECK	SCALE	PLOT. #
RBH	PMH	1"-20'	ZASHP-C-7
SURVEY DATE		FILE NO.	SHT.-1
11/29/23		46-24-29	DE - 1
HARRIS-PADGETT, LLC 3048 DEL PALM BLVD. S., SUITE 10 CAPE CORAL, FL 33904 PHONE: (239) 257-6624 FAX: (239) 257-2921			



Page 198 of 673

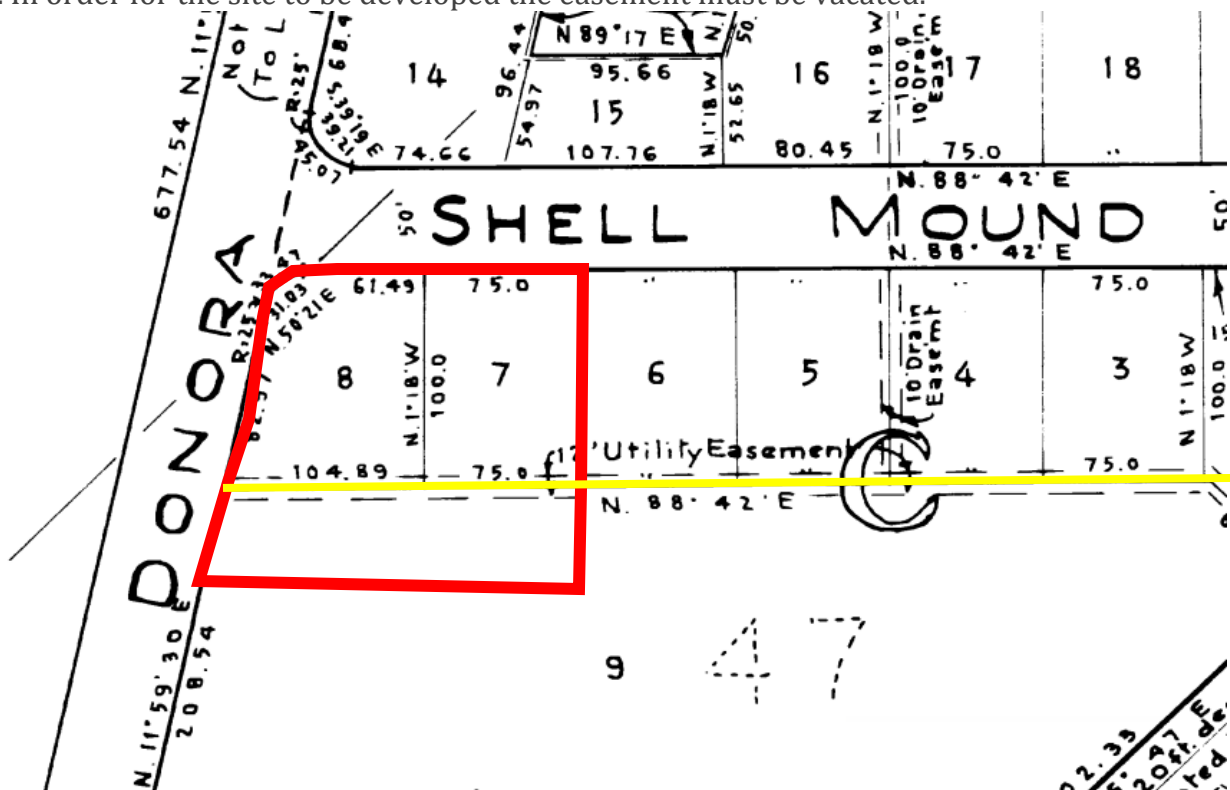


**Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT**

To: Town Council
From: Judith Frankel, AICP,
Date: September 23rd, 2024
Re: VAC20240068, Vacation and Relocation of Utility Easement

BACKGROUND

The subject utility easement crosses the southern third of the property at 3030 Shell Mound Blvd. This property is owned by the Fort Myers Art Association, Inc., which is planning to build a facility for their organization on the site. The property is comprised of two whole plats and a portion of a third. The easement is located at the boundary between plats, as seen in the diagram below. The easement is visible in the original plat map dated 1958 in Exhibit C. In order for the site to be developed the easement must be vacated.



FORT MYERS BEACH ESTERO ISLAND

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



PROPOSED SOLUTION

The current location of the utility easement crosses through the middle of the property of a planned redevelopment of the site by the owners, Fort Myers Beach Art Association. Staff has suggested relocation of the easement to the southern property boundary to maintain the Town's ability to locate future utilities if necessary. The applicant is amenable to this solution and has suggested a 6-foot easement to the Town.

Review Criteria

The applicant has shown that this vacation does not adversely impact utility infrastructure. The Town has reviewed the site, and no Town utilities are located in the easement. Refer to Exhibit E for the letters of no objection from the Town and other utility providers.

Objective 7-I, Policy 7-J-1 of the Comprehensive Plan states that the "Town shall strictly limit vacations of rights-of-way and easements to preserve future access". However, that does not apply in this case as the easement does not allow any public access. The request to vacate the utility easement meets the requirements of the Comprehensive Plan.

Summary

Staff recommends that the Town Council approves of the Vacation of Easement with the condition that the property owner provide the Town a minimum 6-foot easement at the southern property boundary. Vacation of the easement will allow Fort Myers Beach Art Association to develop the site to suit their needs.

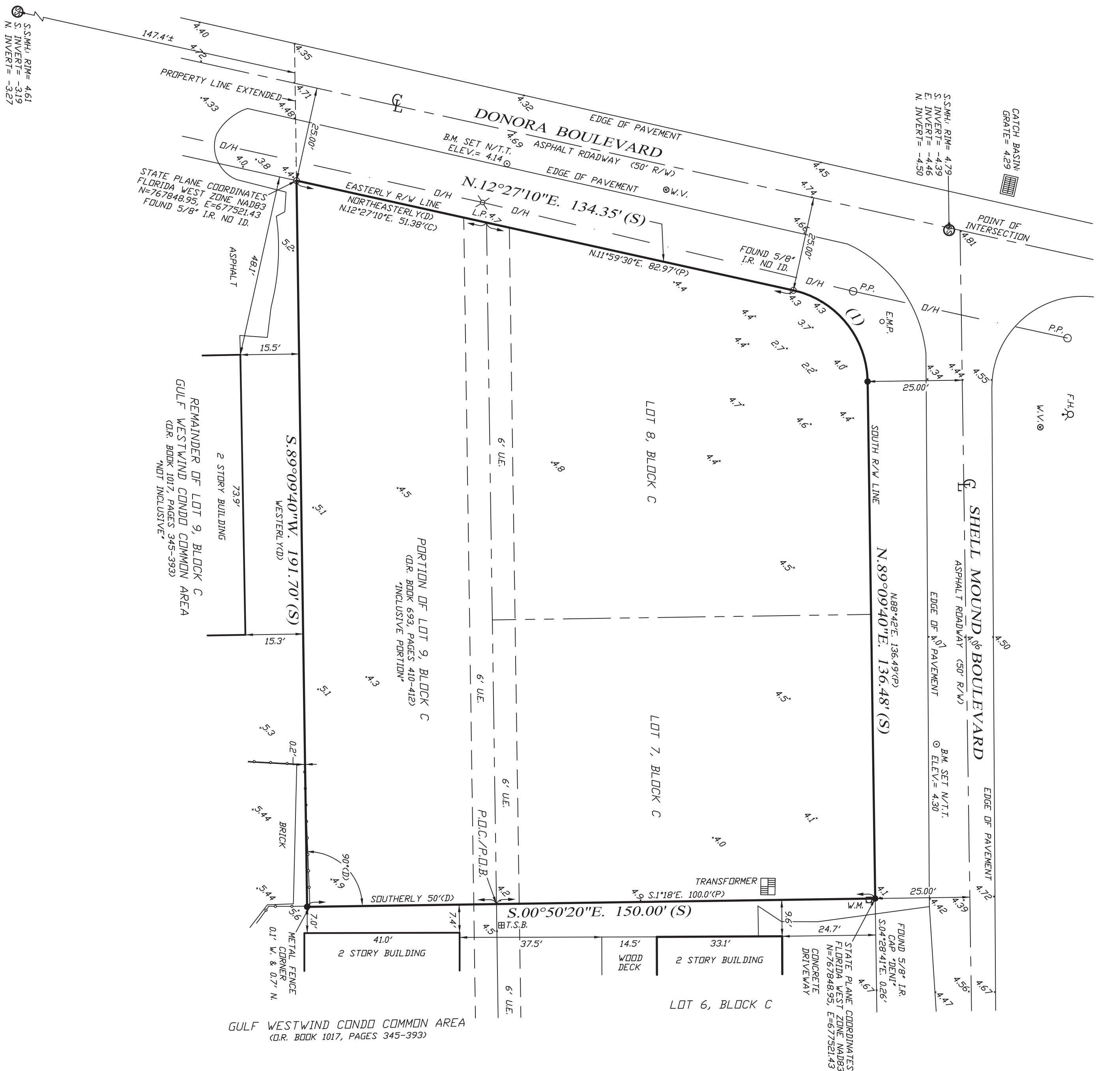
MEMO ATTACHMENTS

Exhibit A – Property Survey
Exhibit B – Easement
Exhibit C – 1958 Plat Map
Exhibit D – Current Play Map
Exhibit E – Letters of No Objection
Exhibit F- Application
Exhibit G - Postcards

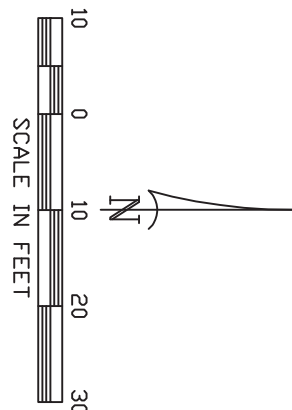
EXHIBIT 6-2

Curve number 1

Radius= 25.00'
Delta= 76°42'30"
Arc= 33.47'
Chord= 31.03'
Chord Brg.= N.50°48'25"E.



BOUNDARY SURVEY OF
LOTS 7, 8 &
A PORTION OF LOT 9, BLOCK C,
ZIMMER'S ADDITION TO
SHELL MOUND PARK,
CITY OF ST. LOUIS, MISSOURI



S.S.MH: RIM= 4.66
W. INVERT= -3.73
E. INVERT= -3.84

- LEGEND:
- | | | |
|---------------------------------|----------|-----------------------|
| ● SET 1/2" IRON ROD (CAP LB392) | R.V.B. | RECLAIM WATER BOX |
| □ FOUND IRON ROD (G2) | V.M. | WATER METER |
| □ CONCRETE MONUMENT (C.M.) | D/H | DYERHAD PUMPER |
| □ PERMANENT REFERENCE MONUMENT | P.P. | POWER POLE |
| □ PUBLIC UTILITY EASEMENT | GA&W | GUY ANCHOR & WIRE |
| □ DRAINAGE EASEMENT | T.S.B. | TELEPHONE SERVICE BOX |
| □ POINT OF CURVAUTUE | N/D | NAIL & DISK |
| □ OFFICIAL RECORDS BOOK | N/T/T | NAIL & TINNAB |
| □ AS PER SURVEY | ELEV. | ELEVATION |
| □ AS PER DECED | B.M. | BENCHMARK |
| □ COMPUTED | 0 | TYPICAL ELEVATION |
| □ CURVE NUMBER | A/C | ARC CONDITIONER |
| □ LINE NUMBER | V.C. | VERTICAL CURVE |
| □ RIGHT-OF-WAY | P.E. | PUMP EQUIPMENT |
| □ CENTERLINE | C.M.P. | CORROGATED METAL PIPE |
| □ SANITARY SEWER MANHOLE | CONCRETE | CONCRETE |
| □ FIRE HYDRANT | ARMED | ARMED |
| □ WATER VALVE | E.M.P. | ELECTRIC METER POLE |
| □ LIGHT POLE | P.D.C. | POINT OF COMMENCEMENT |
| | P.O.B. | POINT OF BEGINNING |

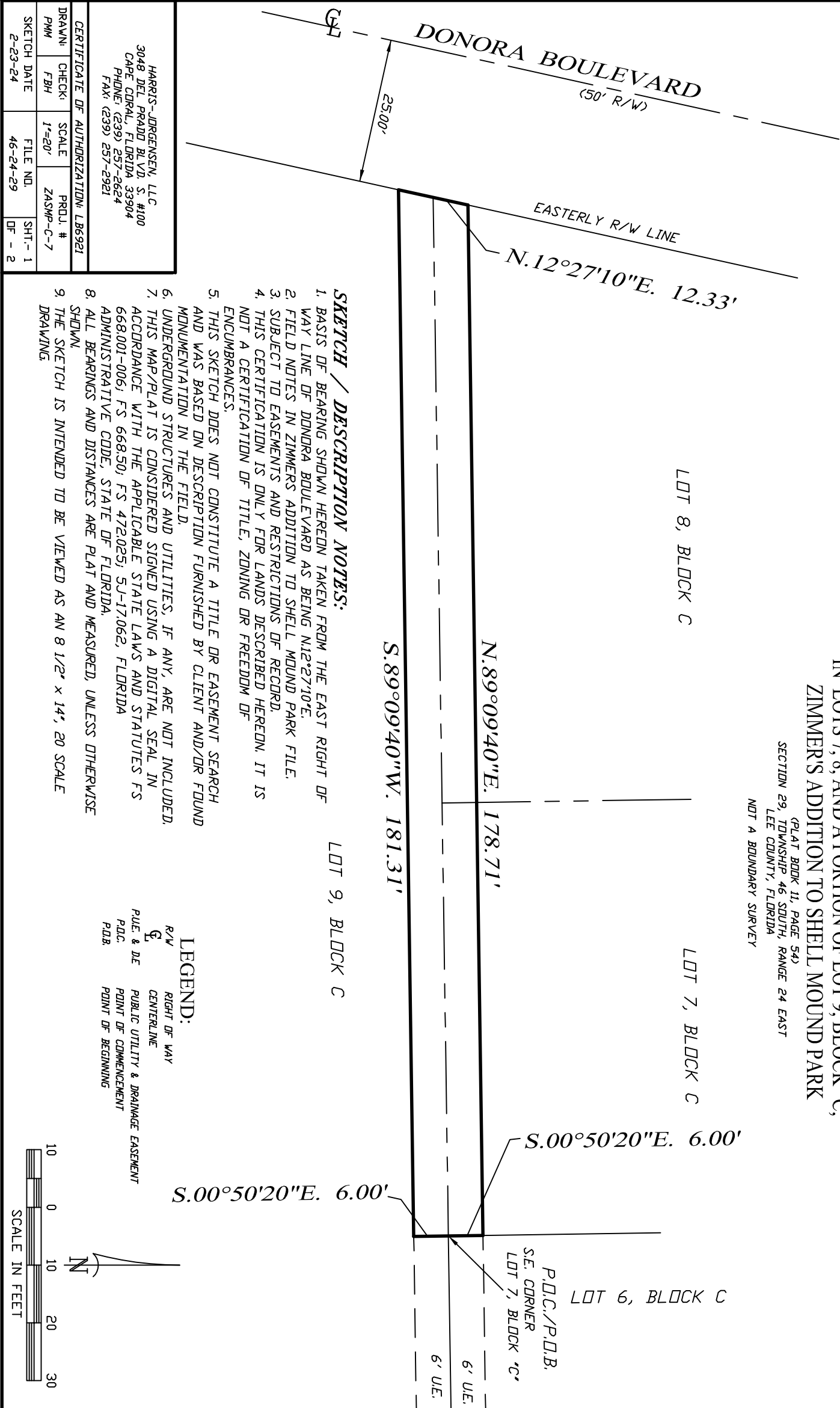
SURVEY NOTES:

- THIS SURVEY IS CERTIFIED TO:
1. BASIS OF BEARING SHOWN HEREON TAKEN FROM THE SOUTH RIGHT-OF-WAY LINE OF SHELL MOUND BOULEVARD, AS BEING N89°09'40"E.
 2. FIELD NOTES IN ZIMMER'S ADDITION TO SHELL MOUND PARK.
 3. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.
 4. THIS CERTIFICATION IS ONLY FOR LANDS DESCRIBED HEREON. IT IS NOT A CERTIFICATION OF TITLE, ZONING OR FREEDOM OF ENCUMBRANCES.
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 10. THIS SURVEY IS INTENDED TO BE VIEWED AS AN 1/8"=4', 20 SCALE DRAWING.
 11. ELEVATIONS ARE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 1988).
 12. SITE BENCHMARK DERIVED FROM NATIONAL GEODETIC SURVEY (NAD83) BENCHMARK DESIGNATION 872 5366 F, 1988 ELEVATION 22.60 NAVD 1988.
- FLOOD ZONE: "4C" ELEVATION: 11' NAVD 1988
COMMUNITY NO: 120673 PANEL NO: 0558
SUFFIX --- G REVISION DATE: 11/17/2022
MAP NUMBER 12071005586
- THIS SURVEY IS CERTIFIED TO:
MAASTRICHT ENGINEERING, INC.

<i>REVISED</i>	<i>DESCRIPTION</i>	<i>B/C</i>
	Phillip M Mould, LS6515, Mould, LS6515, State of Florida Date: 2023, 12/08 12-47:19 -05'00'	
	PHILLIP M. MOULD PROFESSIONAL SURVEYOR AND MAPPER LS6515 – STATE OF FLORIDA	
DATE OF LAST FIELD WORK:	11/29/23	
DRAWN BY	CHECKED BY	SCALE
RBM	PMM	1"=20'
SURVEY DATE	FILE NO.	SHT. – 1
11/29/23	46-24-29	DF – 1
		PROD. #
		ZASWP-C-7
		HARRIS-JORGENSEN, LLC, 3048 E. PRADO BLVD. S., SUITE 100 CHIEF OF COMMERCE, ARIZONA 85504 PHONE: (323) 484-3434 FAX: (323) 457-2921

(SEE SHEET 2 OF 2 EXHIBIT F FOR DESCRIPTION TO ACCOMPANY THIS SKETCH)

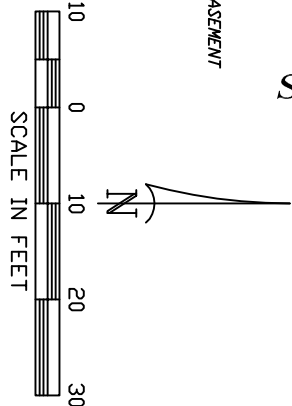
SKETCH TO ACCOMPANY DESCRIPTION (PROPOSED)
VACATION OF A UTILITY EASEMENT
IN LOTS 7, 8, AND A PORTION OF LOT 9, BLOCK "C,"
ZIMMER'S ADDITION TO SHELL MOUND PARK
(PLAT BOOK 11, PAGE 54)
SECTION 29, TOWNSHIP 46 SOUTH, RANGE 24 EAST
LEE COUNTY, FLORIDA
NOT A BOUNDARY SURVEY



SKETCH / DESCRIPTION NOTES:

1. BASIS OF BEARING SHOWN HEREON TAKEN FROM THE EAST RIGHT OF WAY LINE OF DONORA BOULEVARD AS BEING N.12°27'10"E.
2. FIELD NOTES IN ZIMMERS ADDITION TO SHELL MOUND PARK FILE.
3. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.
4. THIS CERTIFICATION IS ONLY FOR LANDS DESCRIBED HEREON. IT IS NOT A CERTIFICATION OF TITLE, ZONING OR FREEDOM OF ENCUMBRANCES.
5. THIS SKETCH DOES NOT CONSTITUTE A TITLE OR EASEMENT SEARCH AND WAS BASED ON DESCRIPTION FURNISHED BY CLIENT AND/OR FOUND MONUMENTATION IN THE FIELD.
6. UNDERGROUND STRUCTURES AND UTILITIES, IF ANY, ARE NOT INCLUDED.
7. THIS MAP/PLAT IS CONSIDERED SIGNED USING A DIGITAL SEAL IN ACCORDANCE WITH THE APPLICABLE STATE LAWS AND STATUTES FS 668.001-006; FS 668.50; FS 472.025; SJ-17.062, FLORIDA ADMINISTRATIVE CODE, STATE OF FLORIDA.
8. ALL BEARINGS AND DISTANCES ARE PLAT AND MEASURED, UNLESS OTHERWISE SHOWN.
9. THE SKETCH IS INTENDED TO BE VIEWED AS AN 8 1/2" x 14", 20 SCALE DRAWING.

- LEGEND:**
- R/W RIGHT OF WAY
 - E CENTERLINE
 - P.U.E. & D.E PUBLIC UTILITY & DRAINAGE EASEMENT
 - P.D.C. POINT OF COMMENCEMENT
 - P.D.B. POINT OF BEGINNING



HARRIS-JORGENSEN, LLC 3048 DEL PRADO BLVD, S. #100 CAPE CORAL, FLORIDA 33904 PHONE: (239) 257-2624 FAX: (239) 257-2921				
CERTIFICATE OF AUTHORIZATION: LB6921				
DRAWN: PJM	CHECK: FBH	SCALE: 1"=20'	PROJ. #: ZASMP-C-7	
SKETCH DATE: 2-23-24	FILE NO.:	46-24-29	SHT.- 1 OF - 2	

(SEE SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY DESCRIPTION)

**VACATION OF A UTILITY EASEMENT
IN LOTS 7, 8, AND A PORTION OF LOT 9, BLOCK "C,"
ZIMMER'S ADDITION TO SHELL MOUND PARK**

(PLAT BOOK 11, PAGE 54)
SECTION 29, TOWNSHIP 46 SOUTH, RANGE 24 EAST,
LEE COUNTY, FLORIDA

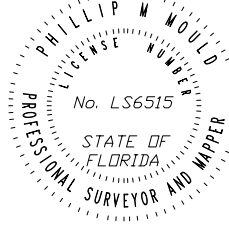
NOT A BOUNDARY SURVEY

DESCRIPTION:

A PLOT OR PORTION OF LAND LYING IN LOT 7, LOT 8, AND A PORTION OF LOT 9, BLOCK "C," ZIMMER'S ADDITION TO SHELL MOUND PARK, AS RECORDED IN PLAT BOOK 11, PAGE 54, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, SAID PLOT OR PORTION OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 7, BLOCK "C," FOR A POINT OF BEGINNING; THENCE RUN S.00°50'20"E. FOR 6.00 FEET; THENCE RUN S.89°09'40"W. TO A POINT ALONG THE EAST RIGHT OF WAY LINE OF DONORA BOULEVARD (50 FEET WIDE) FOR 181.31 FEET; THENCE RUN N.12°27'10"E. ALONG SAID EAST RIGHT OF WAY LINE FOR 12.33 FEET; THENCE RUN N.89°09'40"E. TO A POINT ALONG THE EAST LINE OF SAID LOT 7, BLOCK "C," FOR 178.71 FEET; THENCE RUN S.00°50'20"E. TO SAID SOUTHEAST CORNER OF LOT 7, BLOCK "C," FOR 6.00 FEET, TO THE POINT OF BEGINNING.

CONTAINING: 2158.68 SQUARE FEET, MORE OR LESS.

		Phillip Mould 2024.02.23 13:11:50 -05'00"	
PHILLIP M. MOULD PROFESSIONAL SURVEYOR AND MAPPER LS6515 - STATE OF FLORIDA			
HARRIS-JORGENSEN, LLC 3048 DEL PRADO BLVD. S. #100 CAPE CORAL, FLORIDA 33904 PHONE: (239) 257-2624 FAX: (239) 257-2921			
DRAWN:	CHECK:		PROJ. #
PMM	FBH		ZASMP-C-7
SKETCH DATE:		FILE NO.	SHT.-2
2-23-24		46-24-29	OF - 2

ZIMMER'S ADDITION TO SHELL MOUND PARK

A SUBDIVISION OF PART OF LOTS 45 & 47 CASE'S SUBDIVISION

(According to plat recorded in Plat Book 1 at page 58) *

SECTION 29 T. 46 S., R. 24 E.

ESTERO ISLAND, LEE COUNTY, FLORIDA.

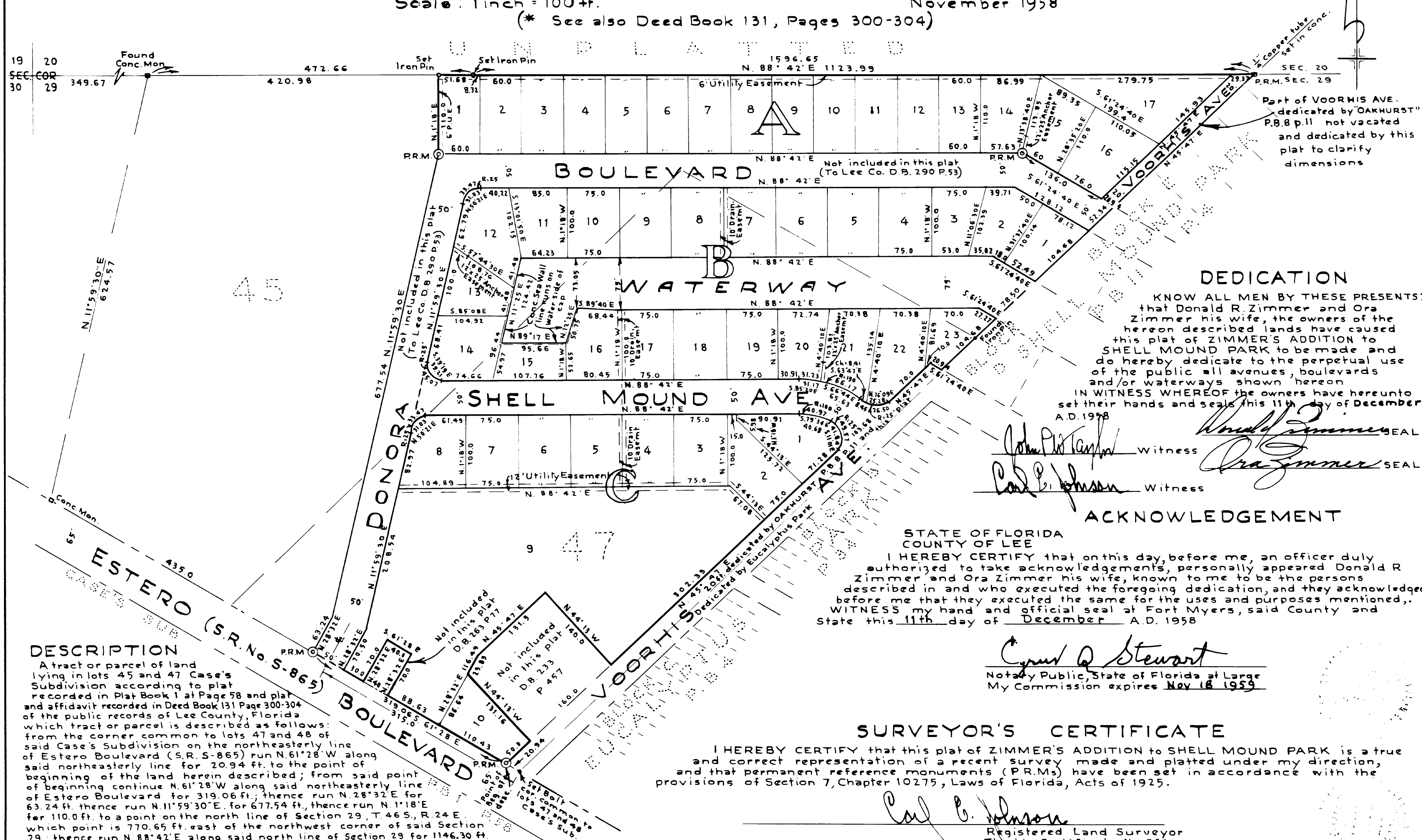
Scale: 1 inch = 100 ft.

November 1958

(* See also Deed Book 131, Pages 300-304)

NOTES

P.R.M.s are 4"x4"x24" Concrete Monuments or 4" x 4" x 60" Concrete Posts, except where otherwise noted. Bearings are calculated from assumed North. South bearing on Sec. Line between Sec. 29 & 30. Both chord and arc distances are shown on curved lines, with chord bearings.



DEDICATION

KNOW ALL MEN BY THESE PRESENTS: that Donald R. Zimmer and Ora Zimmer his wife, the owners of the hereon described lands have caused this plat of ZIMMER'S ADDITION to SHELL MOUND PARK to be made and do hereby dedicate to the perpetual use of the public all avenues, boulevards and/or waterways shown hereon. IN WITNESS WHEREOF the owners have hereunto set their hands and seals this 11th day of December A.D. 1958.

Donald R. Zimmer SEAL
Witness *Ora Zimmer* SEAL
Witness *Carl E. Johnson*

ACKNOWLEDGEMENT

STATE OF FLORIDA
COUNTY OF LEE
I HEREBY CERTIFY that on this day, before me, an officer duly authorized to take acknowledgements, personally appeared Donald R. Zimmer and Ora Zimmer his wife, known to me to be the persons described in and who executed the foregoing dedication, and they acknowledged before me that they executed the same for the uses and purposes mentioned. WITNESS my hand and official seal at Fort Myers, said County and State this 11th day of December A.D. 1958.

Cyril Q. Stewart
Notary Public, State of Florida at Large
My Commission expires Nov 18 1959

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY that this plat of ZIMMER'S ADDITION to SHELL MOUND PARK is a true and correct representation of a recent survey made and platted under my direction, and that permanent reference monuments (P.R.M.s) have been set in accordance with the provisions of Section 7, Chapter 10275, Laws of Florida, Acts of 1925.

Carl E. Johnson
Registered Land Surveyor
Florida Certificate No. 351

APPROVALS

This plat accepted this 17th day of December A.D. 1958 in open meeting of the Board of County Commissioners of Lee County, Florida.

D.J. Farabee Clerk
William C. Pitt Chairman
Tacey A. Bause Co. Road Supt

I HEREBY CERTIFY that this plat of ZIMMER'S ADDITION to SHELL MOUND PARK has been examined by me and from my examination I find that said plat complies in form with the requirements of Chapter 10275 Laws of Florida, Acts of 1925. I FURTHER CERTIFY that said plat was filed for record at 3:30 P.M. this 23rd day of January A.D. 1959 and was duly recorded in Plat Book 11 at Page 54 of the public records of Lee County, Florida.

D.J. Farabee
Clerk of the Circuit Court in and for Lee County, Florida

DESCRIPTION

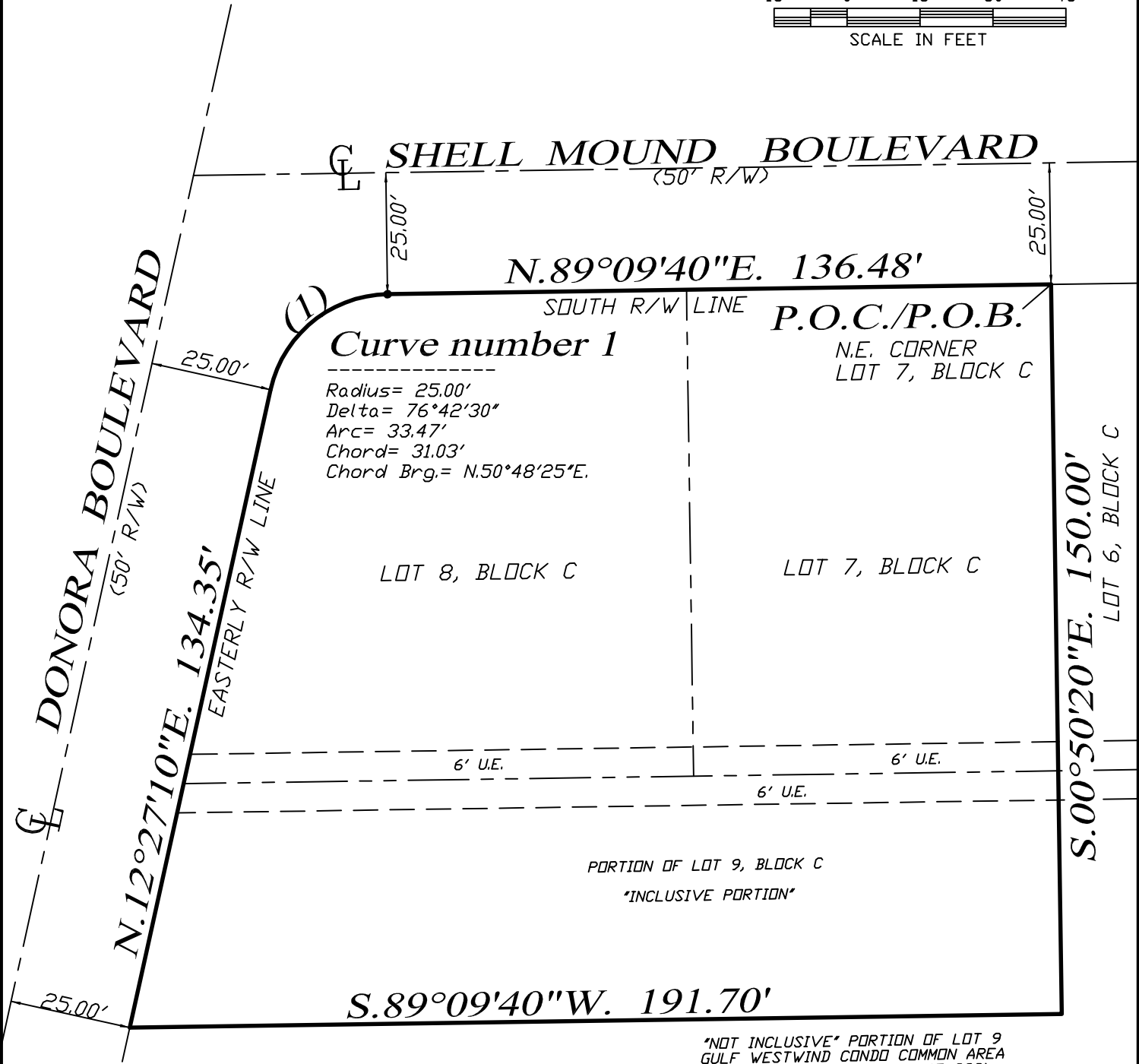
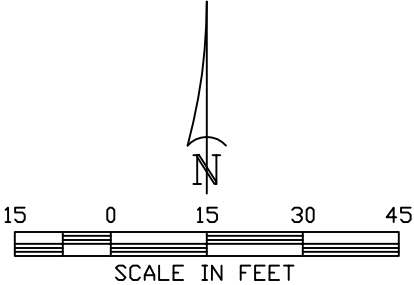
A tract or parcel of land lying in lots 45 and 47 Case's Subdivision according to plat recorded in Plat Book 1 at Page 58 and plat and affidavit recorded in Deed Book 131 Page 300-304 of the public records of Lee County, Florida which tract or parcel is described as follows: from the corner common to lots 47 and 48 of said Case's Subdivision on the northeasterly line of Estero Boulevard (S.R. S-865) run N. 61° 28' W. along said northeasterly line for 20.94 ft. to the point of beginning of the land herein described; from said point of beginning continue N. 61° 28' W. along said northeasterly line of Estero Boulevard for 319.06 ft.; thence run N. 28° 32' E. for 63.24 ft. thence run N. 11° 59' 30" E. for 677.54 ft. thence run N. 1° 18' E. for 110.0 ft. to a point on the north line of Section 29, T. 46 S., R. 24 E. which point is 770.65 ft. east of the northwest corner of said Section 29, thence run N. 88° 42' E. along said north line of Section 29 for 1146.30 ft. thence run S. 45° 47' W. for 1443.57 ft. along the northwesterly line of Voorthis Ave. as shown on the plat of Oakhurst recorded in Plat Book 8 at Page 11 of said public records; to the point of beginning. ALSO All of said Voorthis Ave. subject to the dedication by said plat of Oakhurst of that part not vacated by order of the Lee County Commissioners, recorded in Misc. Book 49 at Page 513 EXCEPTING Donora Boulevard as deeded to Lee County by deed recorded in Deed Book 290 at Page 53. EXCEPTING parcel deeded by deed recorded in Deed Book 263 at Page 77 EXCEPTING parcel deeded by deed recorded in Deed Book 233 at Page 457.

SKETCH TO ACCOMPANY DESCRIPTION
A PORTION OF LOT 9, AND ALL OF LOTS 7 AND LOT 8, BLOCK "C,"
ZIMMER'S ADDITION TO SHELL MOUND PARK

(PLAT BOOK 11, PAGE 54)
SECTION 29, TOWNSHIP 46 SOUTH, RANGE 24 EAST
LEE COUNTY, FLORIDA

NOT A BOUNDARY SURVEY

LEGEND:
R/W RIGHT OF WAY
CL CENTERLINE
U.E. UTILITY EASEMENT
P.O.C. POINT OF COMMENCEMENT
P.O.B. POINT OF BEGINNING



SKETCH / DESCRIPTION NOTES:

1. BASIS OF BEARING SHOWN HEREDON TAKEN FROM THE EAST RIGHT OF WAY LINE OF DONORA BOULEVARD AS BEING N.12°27'10"E.
2. FIELD NOTES IN ZIMMERS ADDITION TO SHELL MOUND PARK FILE.
3. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.
4. THIS CERTIFICATION IS ONLY FOR LANDS DESCRIBED HEREDON. IT IS NOT A CERTIFICATION OF TITLE, ZONING OR FREEDOM OF ENCUMBRANCES.
5. THIS SKETCH DOES NOT CONSTITUTE A TITLE OR EASEMENT SEARCH AND WAS BASED ON DESCRIPTION FURNISHED BY CLIENT AND/OR FOUND MONUMENTATION IN THE FIELD.
6. UNDERGROUND STRUCTURES AND UTILITIES, IF ANY, ARE NOT INCLUDED.
7. THIS MAP/PLAT IS CONSIDERED SIGNED USING A DIGITAL SEAL IN ACCORDANCE WITH THE APPLICABLE STATE LAWS AND STATUTES FS 668.001-006; FS 668.50; FS 472.025; 5J-17.062, FLORIDA ADMINISTRATIVE CODE, STATE OF FLORIDA.
8. ALL BEARINGS AND DISTANCES ARE PLAT AND MEASURED, UNLESS OTHERWISE SHOWN.
9. THE SKETCH IS INTENDED TO BE VIEWED AS AN 8 1/2" x 14", 30 SCALE DRAWING.

HARRIS-JORGENSEN, LLC 3048 DEL PRADO BLVD. S. #100 CAPE CORAL, FLORIDA 33904 PHONE: (239) 257-2624 FAX: (239) 257-2921			
CERTIFICATE OF AUTHORIZATION: LB6921			
DRAWN: PMM	CHECK: FBH	SCALE 1"=30'	PROJ. # ZASMP-C-7
SKETCH DATE 2-23-24		FILE NO. 46-24-29	SHT.- 1 OF - 2

EXHIBIT "A"

DESCRIPTION TO ACCOMPANY SKETCH

(SEE SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY DESCRIPTION)

A PORTION OF LOT 9, AND ALL OF LOTS 7 AND LOT 8, BLOCK "C," ZIMMER'S ADDITION TO SHELL MOUND PARK

(PLAT BOOK 11, PAGE 54)

SECTION 29, TOWNSHIP 46 SOUTH, RANGE 24 EAST
LEE COUNTY, FLORIDA

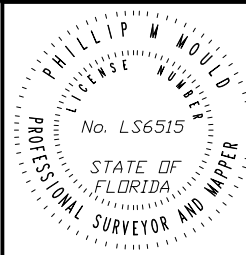
NOT A BOUNDARY SURVEY

DESCRIPTION:

A PLOT OR PARCEL OF LAND BEING A PORTION OF LOT 9, AND ALL OF LOT 7, AND LOT 8, BLOCK "C," ZIMMER'S ADDITION TO SHELL MOUND PARK, AS RECORDED IN PLAT BOOK 11, PAGE 54, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, SAID PLOT OR PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 7, BLOCK "C," FOR A POINT OF BEGINNING; THENCE RUN S.00°50'20"E. FOR 150.00 FEET; THENCE RUN S.89°09'40"W. TO A POINT ALONG THE EAST RIGHT OF WAY LINE OF DONORA BOULEVARD (50 FEET WIDE) FOR 191.70 FEET; THENCE RUN N.12°27'10"E. ALONG SAID EAST RIGHT OF WAY LINE TO A POINT OF CURVATURE FOR 134.35 FEET; THENCE RUN ALONG THE ARC OF A CURVE TO THE RIGHT FOR 33.47 FEET, SAID CURVE HAVING THE FOLLOWING ELEMENTS, A RADIUS OF 25.00 FEET, A CENTRAL DELTA ANGLE OF 76°42'30", A CHORD THAT BEARS N.50°48'25"E., AND A CHORD DISTANCE OF 31.03 FEET; THENCE RUN N.89°09'40"E. ALONG THE SOUTH RIGHT OF WAY LINE OF SHELL MOUND BOULEVARD (50 FEET WIDE) TO THE AFORESAID NORTHEAST CORNER OF LOT 7, BLOCK "C," FOR 136.48 FEET, TO THE POINT OF BEGINNING.

CONTAINING: 25941.41 SQUARE FEET, MORE OR LESS.

		Phillip Mould 2024.02.23 14:14:17 -05'00'	
PHILLIP M. MOULD PROFESSIONAL SURVEYOR AND MAPPER LS6515 - STATE OF FLORIDA			
HARRIS-JORGENSEN, LLC 3048 DEL PRADO BLVD. S. #100 CAPE CORAL, FLORIDA 33904 PHONE: (239) 257-2624 FAX: (239) 257-2921			
DRAWN: PMM	CHECK: FBH	PROJ. # ZASMP-C-7	
SKETCH DATE: 2-23-24		FILE NO. 46-24-29	SHT.-2 OF - 2



CenturyLink

2/6/2024

Aaron Spence

P860262

No Reservations/No Objection

SUBJECT: Vacation request for a portion of a platted utility easement, as shown on Lots 7, 8 & 9, Block C, of Zimmers Addition to Shell Mound Park, as recorded in Plat Book 11, Page 54, in Lee County, Florida.

To Whom It May Concern:

CenturyLink of Florida, Inc. d/b/a CENTURYLINK ("CenturyLink") has reviewed the request for the subject vacation and has determined that it has no objections with respect to the areas proposed for vacation as shown and/or described on Exhibit "A-1" and "A-2", said Exhibits attached hereto and incorporated by this reference.

It is the intent and understanding of CenturyLink that this Vacation shall not reduce our rights to any other existing easement or rights we have on this site or in the area.

This vacation response is submitted WITH THE STIPULATION that if CenturyLink facilities are found and/or damaged within the vacated area as described, the Applicant will bear the cost of relocation and repair of said facilities.

If you have any questions please contact Jerry Peacock at 850-933-8440 or jerry.a.peacock@lumen.com.

Sincerely yours,

CenturyLink Right of Way Team



February 7th, 2024

Attn: Mr. Spence

RE- Letter of No Objection- Easement Release Fort Myers Beach Art Gallery

Dear Mr. Spence,

Thank you for contacting Comcast regarding your request to vacate the easement. This is to inform you that Comcast does not have facilities within the site's development area. We currently have no objection to your plans at this location.

If you have any further question or concerns, please do not hesitate to contact me at (574) 808-8943.

Sincerely,

Christopher Plank
Construction Manager SWFL

12600 Westlinks Dr. Suite #4
Fort Myers, FL 33913
574-808-8943
Christopher.Plank@Comcast.com



15834 Winkler Rd
Fort Myers, Florida 33908

29th January, 2024

Re: No Objection Letter ~ Fort Myers Beach Art Gallery

Mr. Spence,

Florida Power and Light Company has reviewed your proposed construction on the property located at 3030 Shell Mound Blvd, Lee County, and has no objection to the construction at this location. This "no objection" is provided with the stipulation that any FPL facilities within easements at this property retain all rights.

If you have any questions regarding this matter, please contact me at 239-634-8057.

Sincerely,

A handwritten signature in black ink that reads "Drayton L. Diggs". The signature is written in a cursive, flowing style.

Drayton Diggs
FPL Distribution Engineer

Carmine Marceno
Sheriff



"Proud to Serve"

State of Florida
County of Lee

June 19, 2024

Aaron Spence
Maastricht Engineering, Inc.
7370 College Pkwy., Suite 211
Fort Myers, FL 33907

Mr. Spence,

The Lee County Sheriff's Office has reviewed your request to vacate a 12-foot utilities easement located at 3030 Shell Mound Blvd. on Fort Myers Beach, and we have no objection to the request and planned construction at this location. This proposed change will not impact the ability of this Agency to provide services in the Fort Myers Beach community.

Respectfully,

A handwritten signature in black ink that reads "Stan Nelson". The signature is written in a cursive style.

Stan Nelson
Director, Planning & Research



"The Lee County Sheriff's Office is an Equal Opportunity Employer"
14750 Six Mile Cypress Parkway • Fort Myers, Florida 33912-4406 • (239) 477-1000



Fort Myers Beach Fire Control District

Life Safety Branch

100 Voorhis Street · Fort Myers Beach, Florida 33931
Phone (239) 590-4210 • Email: prevention@fmbfirefl.gov

June 11, 2024

Mr. Aaron Spence, Civil Designer
Maastricht Engineering, Inc.
7370 College Parkway, Suite 211
Fort Myers Beach, FL 33907
aaron@maastricht-eng.com

RE: Request for Letter of No Objection for Vacation of a 12' Utility Easement at
3030 Shell Mound Blvd

Mr. Spence:

This letter is in response to your request for a letter of no objection regarding the proposed easement vacation at 3030 Shell Mound Blvd. The easement identified on the provided documents appear to be as follows:

1. **An easement that runs along the southern 3rd of the site, located at 3030 Shell Mound Blvd, Fort Myers Beach Art Gallery.**

The proposed vacation shall not obstruct fire department and/or emergency access to any on-site structure(s) or areas of gathering. No objection with the understanding of the provided comment.

Approvals are based on information provided for review. If you should require any other assistance please contact our office.

Yours in Fire Safety,

Jennifer Campbell, Fire Official
Fort Myers Beach Fire District
Life Safety



FMBgov.com

Dan Allers, Mayor | Jim Atterholt, Vice Mayor | John R. King, Council Member | Karen Woodson, Council Member | [Scott Safford](#), Council Member

Sarah Propst, AICP, PMP

Sr. Planner/Project Manager
Town of Fort Myers Beach
2731 Oak St
Fort Myers Beach, FL. 33931

Date: August 27, 2024

Subject: Letter of No Objection

Sarah:

This letter is to confirm that The Town of Ft Myers Beach does not have any utilities in the 12' utility easement that runs along the southern 3rd of the site, located at 3030 Shell Mound BLVD, Fort Myers Beach, FL 33931. We have no objections to the vacation of the easement.

Thanks,



Mark Ashton
Utilities

Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, FL. 33931
Phone (239) 560-2081

FMBgov.com



Think Green. Please print this e-mail only if necessary.

Please Note; Florida has very broad public records laws; Most written communications to and from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request; Your email communications may be subject to public disclosure;

FORT MYERS BEACH ESTERO ISLAND

P. 239-765-0202 | **F.** 239-765-0909 | 2731 Oak St, Fort Myers Beach, FL 33931



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

This is a first part of a two-part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit a complete Public Hearing application with required, supplemental information, exhibits and documents to zoningpermits@fmbgov.com. Please do not submit the instructions at the end of the application.

Site Address: 3030 Shell Mound Blvd, Fort Myers Beach, FL 33931

STRAP Number: 29-46-24-W1-0120C.0070

Applicant: Fort Myers Beach Art Association, Inc. Phone: 860-331-7142

Contact Name: Stephen Eaton Phone: 860-331-7142

Email: stepheneaton1948@gmail.com Fax: _____

Current Zoning District: Institutional

Future Land Use Map (FLUM) Category: Mixed Residential

FLUM Density Range: _____ Platted Overlay: ☒ YES ☐ NO

ACTION REQUESTED

☐ Special Exception

☐ Variance

☐ Conventional Rezoning

☐ Planned Development ☐ Commercial ☐ Residential

☐ Master Concept Plan Extension

☐ Appeal of Administrative Action

☒ Vacation of Platted Right-of-way and Easement

☐ Other – cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

PH-A

PH-B

PH-C

PH-D

PH-E

PH-F

PH-G

attach on separate sheet

PART I – General Information

A. Applicant*: Maastricht Engineering, INC. Phone: 239-362-1605

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.*

Please see PART III to complete the appropriate Affidavit form for the type of applicant.

Applicant Mailing Address: 7370 College Parkway, Suite 211, Fort Myers, FL 33907

Email: petem@maastricht-eng.com Fax: _____

Contact Name: Peter Maastricht, P.E. Phone: 239-362-1605



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

- | | | |
|--|---|--|
| ☐ Owner* | ☐ Land Trust* | ☐ Partnership* |
| ☒ Corporation* | ☐ Association* | ☐ Condominium* |
| ☐ Subdivision* | ☐ Timeshare Condo* | ☐ Contract Purchaser* |
| ☒ Authorized Representative* ☐ Other* (please indicate) _____ | | |

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.
Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

C. Authorized Agent(s). Please list the name of Agent authorized to receive correspondence Agents

Name: Maastricht Engineering, INC. Phone: 239-362-1605
Address: 7370 College Parkway, Suite 211, Fort Myers, FL, 33907
Email: petem@maastricht-eng.com Fax: _____

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: Fort Myers Beach Art Association, Inc. Phone: 860-331-7142
Address: P.O. Box 2359, Fort Myers Beach, FL 33932
Email: stepheneaton1948@gmail.com Fax: _____

Name: _____ Phone: _____
Address: _____
Email: _____ Fax: _____

PART II – Nature of Request

Requested Action (each request requires a separate application)

- ☐ Special Exception
- ☐ Variance from LDC Section _____ - _____
- ☐ Conventional Rezoning from _____ to _____
- ☐ Planned Development
- ☐ Rezoning from _____ to ☐ Commercial PD ☐ Residential PD
- ☐ Amendment. List the project number: _____
- ☐ Extension/reinstatement of Master Concept Plan. List project number: _____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

☐ Appeal of Administrative Action

☒ Vacation ☐ Right-of-Way ☒ Easement

☐ Other. Please Explain: _____

PART III – Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

Code Section: _____ Description: _____

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV – Property Ownership (Single Owner)

☐ Single Owner (individual or husband and wife)

Name: _____ Phone: _____

Mailing Address: _____

Email: _____ Fax: _____

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, _____ swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;

All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

I have authorized the staff of the Town of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that

The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Signature

Printed Name

STATE OF _____ COUNTY OF _____

The foregoing instrument was certified and subscribed before me by means of ____ physical

presence OR ____ online notarization, this ____ day of _____, 20____, by

_____, ☐ who is personally known to me OR ☐ who has produced

_____ as identification.

(SEAL)

Notary Public Signature

PART V

Property Ownership (Multiple Owners)

☒ Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)

- ☒ Complete Disclosure of Interest Form (see below)
- ☐ Attach list of property owners as Exhibit 5-1
- ☐ Attach map showing property owners interests as Exhibit 5-2 (for multiple parcels)
- ☐ For condominiums and timeshares see Explanatory Notes Part V - Exhibit 5-3
- ☐ Letter of Opinion - Exhibit 5-4

DISCLOSURE OF OWNERSHIP INTEREST

If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address

Percentage Ownership



COMMUNITY DEVELOPMENT DEPARTMENT

APPLICATION for PUBLIC HEARING

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address and Office

JOAN ZOELLI, PRES., 14868 Crescent Cove Dr, Ft Myers, FL 33908

Percentage of Stock

non stock corporation

STEPHEN EATON, TRES., 8291 Grand Palm Dr #1, Ft Myers, FL 33926

non stock corporation

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address

Percentage of Interest

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address

Percentage of Ownership

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office

Percentage of Stock



COMMUNITY DEVELOPMENT DEPARTMENT

APPLICATION for PUBLIC HEARING

Date of Contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

Stephen Eaton

Signature

Stephen Eaton

Printed Name

AFFIDAVIT

APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.), LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE

I, Peter Maastricht, P.E. (name), as President (title)
of Maastricht Engineering, INC. (company), swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.



COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING

Fort Myers Beach Art Association, Inc.

Name of Entity (corporation, partnership, LLP, LLC, etc)

Stephen Eaton

Signature

Stephen Eaton

Typed or Printed Name

TREASURER

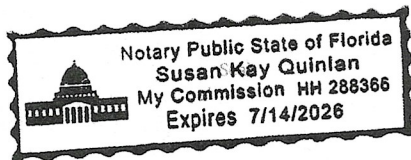
Title

2/29/2024

Date

STATE OF FLORIDA COUNTY OF LEE

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



Susan Kay Quinlan
Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 29-46-24-W1-0120C.0070

Property Address: 3030 Shell Mound Blvd, Fort Myers Beach, FL 33931

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee County? ☐ No. Attach a legible copy of the legal description as Exhibit 6-1.

☒ Yes. Property identified in subdivision: Case's Subdivision Lots 45 & 47

Book: 11 Page: 54 Unit: _____ Block: 0120C Lot(s): 0070

B. Boundary Survey:

☒ Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 6-2.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 172.4 feet
Depth (please provide an average width if irregular in shape) 151.0 feet
Frontage on street: 304.3 feet. Frontage on waterbody: N.A. feet
Total land area: 0.597 ☒ acres ☐ square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

Heading South on San Carlos Boulevard after passing over the Sky Bridge
into Fort Myers Beach, turn left onto Estero Boulevard. Continue East for 1.3 Miles
and make a left onto Donora Boulevard. Continue for about 0.1 Miles and the
property, 3030 Shell mound Boulevard will be on your right.

☒ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

- ☒ There are no deed restrictions and/or covenants on the subject property.
☐ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 6-4.
☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

- ☒ Attach a list of surrounding property owners within 500 feet as Exhibit 6-6.
☒ Attach a map showing the surrounding property owners as Exhibit 6-7.
☒ Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

- | | |
|---|--|
| ☐ Low Density | ☐ Marina |
| ☒ Mixed Residential | ☐ Recreation |
| ☐ Boulevard | ☐ Wetlands |
| ☐ Pedestrian Commercial | ☐ Platted Overlay |



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

SUPPLEMENT -PH-G

Petition for Vacation of Platted Rights-of-Way and Easements

This is the second part of a two part application. Please be sure to include the Administrative Action Application, which requires general information, with this supplemental form requiring specific information regarding a **Vacation of a Right-of-Way or Easement**. Please submit *two paper copies* and *one digital/electronic copy* of all required applications, supplemental information, exhibits and documents.

Fees: \$1000.00

Type of Vacation: ☒ Right-of-Way (Form A) ☐ Easement (Form B)
☐ Plat- no ROW

Site Address: 3030 Shell Mound Blvd, Fort Myers Beach, FL 33931

STRAP Number(s): 29-46-24-W1-0120C.0070

Petitioner: Fort Myers Beach Art Association, Inc. Phone: 860-331-7142

Authorized Agent: Stephen Eaton Phone: 860-331-7142

Petitioner/Agent Address: P.O. Box 2359, Fort Myers Beach, FL 33932

Email: stepheneaton1948@gmail.com Fax: _____

Please provide a statement of the reason(s) for seeking the vacation (Use additional sheets if necessary):

In order to upgrade the FMB Art Association Building, additional facilities will be
required to meet the current FMB Land Development Code Standards. In order
to accommodate these changes the utility easement will need to be vacated.

All petitions seeking to vacate platted rights-of-way and easements must comply with the requirements below. (LDC Section 10-219)

- A signed Petition, either Form A (F.S. Ch. 336) or Form B (F.S. Ch. 117) for each vacation request.
- A legal description of the area sought to be vacated and a recent survey prepared and executed by a registered surveyor showing the area sought to be vacated. (Please label as Exhibit A) The survey must show the location of all existing improvements including, but not limited to:
 - Drainage facilities.
 - All public and private utilities.
 - Surface water management facilities.
 - Pavement.
 - Buildings.
 - Any other physical features within 100 feet of the real property.
- A copy of the plat showing the area(s) to be vacated. (Please label as Exhibit B)
- Certificate(s) showing that all property taxes have been paid in full for all real property that abuts the right-of-way or easement sought to be vacated. (Please label as Exhibit C)
- Notarized signatures of fee simple owners of record of all real property that abuts the right-of-way or easement sought to be vacated. (Please see adjacent property affidavit)
- A list containing the names, addresses, and signatures of all real property owners holding legal interest in the real property subject to, or affected by, the requested vacation.
- A printed list of the names of all current real property owners, STRAP numbers, and mailing addresses of property that is within a 500-foot radius of the right-of-way or easement sought to be vacated, including two (2) sets of mailing labels for the real property owners on this list.

➤ Signed letter of No Objection from:

Town of Fort Myers Beach Public Works Department

Florida Power and Light

The local cable television company serving the Town

The local telephone company serving the Town

The local liquid propane gas company serving the Town

Lee County or other provider of sanitary sewer services

Lee County Sheriff's Office

Fort Myers Beach Fire Control District

Any other provider of private or public utilities whose facilities or infrastructure may be affected by the vacation, as determined by the director.

*** PLEASE NOTE: If any of the foregoing companies or agencies determines that the requested vacation may not be in the best interest of the public, the petitioner may offer an alternative or replacement right-of-way or easement. The affected company or agency shall not, however, be under any obligation to accept the offered alternative. Where a petitioner has offered to provide a replacement right-of-way or easement, town council shall not take action on the petition to vacate until the legal instrument(s) necessary to grant the alternative or replacement right-of-way or easement has been approved in form and content by the affected company or agency, properly executed by the granting or conveying property owner, and delivered to the town to be held in trust pending the town council's consideration of the requested vacation.

➤ A statement from the Lee County Community Development Director, or designee, whether vacation by Lee County is required.



PETITION TO VACATE (Form A - F.S. Ch. 336)

Petitioner(s), _____
requests the Town Council of the Town of Fort Myers Beach, Florida to grant this petition
to Vacate and states as follows:

1. Petitioner(s) Mailing Address: _____

2. In accordance with Florida Statute (F.S.) Chapter 336, Petitioner desires to vacate the public's interest in the right-of-way or portion of right-of-way legally described in the attached *Exhibit A*.
3. A sketch/site plan showing the area(s) the Petitioner desires to vacate is attached as *Exhibit B*.
4. Petitioner provided notice to all affected property owners concerning the intent of this Petition.
5. In accordance with the attached letters of no objection provided by the various governmental and utility entities, there is no apparent impediment to granting Petitioner's request.

Wherefore, Petitioner respectfully requests that the Town Council adopt a resolution granting the Petition to Vacate.

Submitted by:

_____ Petitioner Signature	_____ Printed Name	_____ Date
_____ Petitioner Signature	_____ Printed Name	_____ Date
_____ Petitioner Signature	_____ Printed Name	_____ Date



PETITION TO VACATE (Form B_ F.S. Ch.177)

Petitioner(s), Fort Myers Beach Art Association, Inc.

requests the Town Council of the Town of Fort Myers Beach, Florida to grant this petition to Vacate and states as follows:

1. Petitioner(s) Mailing Address: P.O. Box 2359 Fort Myers Beach, FL 33932

2. In accordance with Florida Statute (F.S.) Chapter 177, Petitioner desires to vacate the public's interest in the easement, plat or portion of a plat legally described in the attached *Exhibit A*.
3. A sketch/site plan showing the area the Petitioner desires to vacate is attached as *Exhibit B*.
4. Proof the Petitioner paid all applicable state and county taxes is attached as *Exhibit C*.
5. Petition is fee simple title holder to the underlying land sought to be vacated.
6. Petitioner provided notice to all affected property owners concerning the intent of this
Petition.
7. In accordance with the attached letters of no objection provided by the various governmental and utility entities, there is no apparent impediment to granting Petitioner's request.

Wherefore, Petitioner respectfully requests that the Town Council adopt a resolution granting the Petition to Vacate.

Submitted by:

Stephen Eaton

Petitioner Signature

Stephen Eaton

Printed Name

2/27/24

Date

Petitioner Signature

Printed Name

Date

Petitioner Signature

Printed Name

Date



ADJACENT PROPERTY AFFIDAVIT

I, Fort Myers Beach Art Association, Inc. (name), of

P.O. Box 2359, Fort Myers Beach, FL 33932 (address)

swear or affirm under oath, that I am the fee simple owner of the above-mentioned property and I agree that the petition to vacate the platted right-of-way or platted easement located at:

3030 Shell Mound Blvd, Fort Myers Beach, FL 33931 (address) should be vacated

by the Town Council.

Stephen Eaton

Signature

Stephen Eaton

Typed or Printed Name

Treasurer

Title

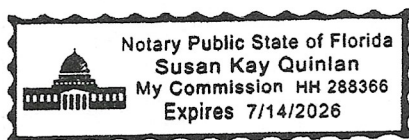
2/27/24

Date

STATE OF FLORIDA COUNTY OF LEE

The foregoing instrument was certified and subscribed before me by means of ✓ physical presence OR online notarization, this 27 day of FEBRUARY, 2024 by Stephen EATON, ✓ who is personally known to me OR who has produced as identification.

(Seal)



Susan Kay Quinlan
Notary Public Signature



(SAMPLE LETTER of NO OBJECTION)

PETITION TO VACATE

REQUEST FOR LETTER OF NO OBJECTION

Today's Date:

Contact Person
Company Name
Mailing Address
City, State, Zip

RE: Request for a Letter of No Objection on a proposed right-of-way or easement vacation at (property address here)

To Whom It May Concern:

We intend to submit a Petition to the Fort Myers Beach Town Council seeking to vacate the public interest in the right-of-way, road easement, utility or drainage easement at the location identified above in order to accomplish the following purpose:

(Provide rationale here)

We have included a sketch or drawing of the right-of-way, road easement, utility or drainage easement we desire to vacate. Please provide us with a letter of review and recommendation so we can proceed with our petition submittal. If you have any questions or concerns, please do not hesitate to contact us directly and thank you in advance for your consideration.

Signed,

The Petitioner

(include your return mailing address, email address and daytime phone number)

ZIMMER'S ADDITION TO SHELL MOUND PARK

A SUBDIVISION OF PART OF LOTS 45 & 47 CASE'S SUBDIVISION

(According to plat recorded in Plat Book 1 at page 58) *

SECTION 29 T. 46 S., R. 24 E.

ESTERO ISLAND, LEE COUNTY, FLORIDA.

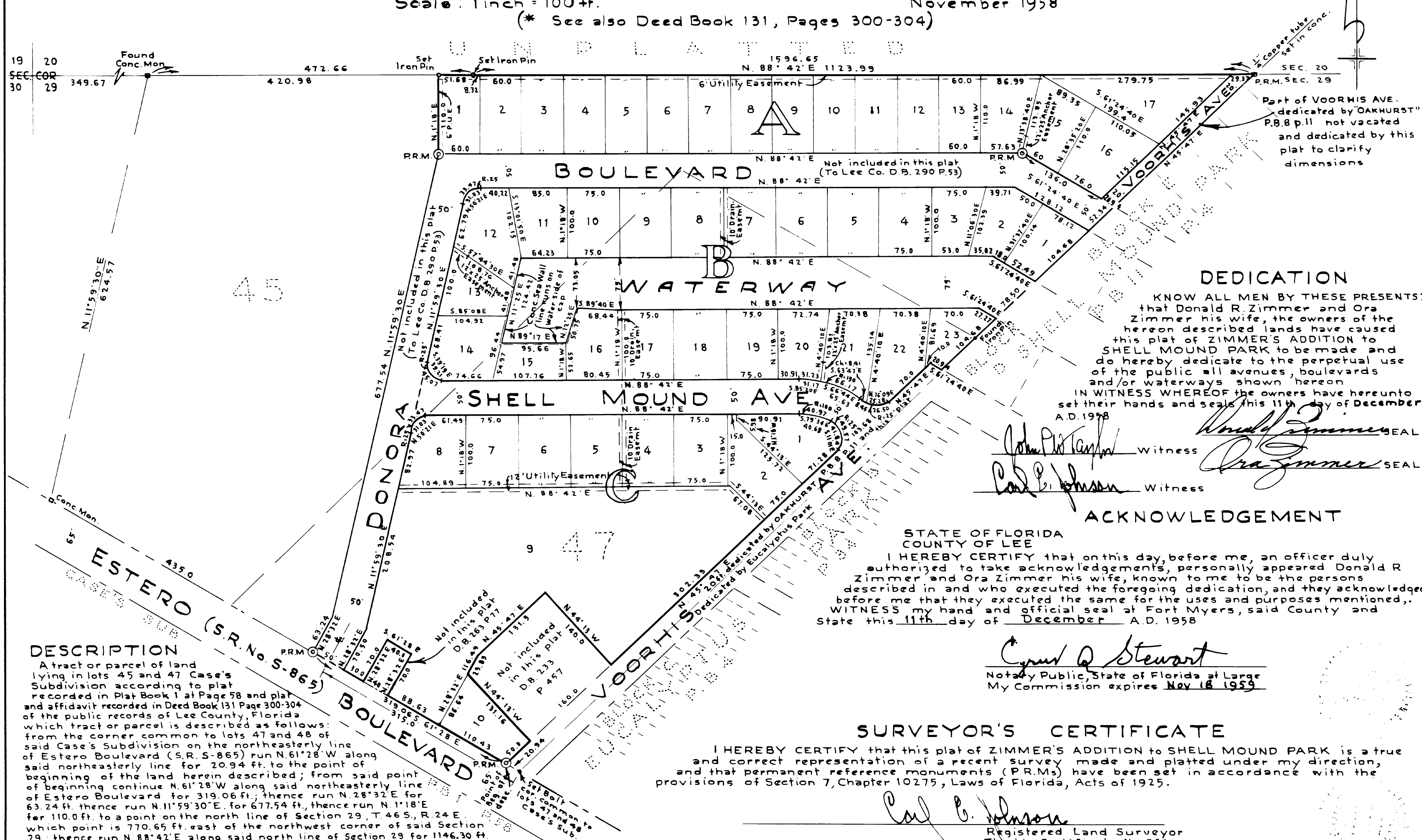
Scale: 1 inch = 100 ft.

November 1958

(* See also Deed Book 131, Pages 300-304)

NOTES

P.R.M.s are 4"x4"x24" Concrete Monuments or 4" x 4" x 60" Concrete Posts, except where otherwise noted. Bearings are calculated from assumed North. South bearing on Sec. Line between Sec. 29 & 30. Both chord and arc distances are shown on curved lines, with chord bearings.



DEDICATION

KNOW ALL MEN BY THESE PRESENTS: that Donald R. Zimmer and Ora Zimmer his wife, the owners of the hereon described lands have caused this plat of ZIMMER'S ADDITION to SHELL MOUND PARK to be made and do hereby dedicate to the perpetual use of the public all avenues, boulevards and/or waterways shown hereon. IN WITNESS WHEREOF the owners have hereunto set their hands and seals this 11th day of December A.D. 1958.

Donald R. Zimmer SEAL
Witness *Ora Zimmer* SEAL
Witness *Carl E. Johnson*

ACKNOWLEDGEMENT

STATE OF FLORIDA
COUNTY OF LEE
I HEREBY CERTIFY that on this day, before me, an officer duly authorized to take acknowledgements, personally appeared Donald R. Zimmer and Ora Zimmer his wife, known to me to be the persons described in and who executed the foregoing dedication, and they acknowledged before me that they executed the same for the uses and purposes mentioned. WITNESS my hand and official seal at Fort Myers, said County and State this 11th day of December A.D. 1958.

Cyril Q. Stewart
Notary Public, State of Florida at Large
My Commission expires Nov 18 1959

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY that this plat of ZIMMER'S ADDITION to SHELL MOUND PARK is a true and correct representation of a recent survey made and platted under my direction, and that permanent reference monuments (P.R.M.s) have been set in accordance with the provisions of Section 7, Chapter 10275, Laws of Florida, Acts of 1925.

Carl E. Johnson
Registered Land Surveyor
Florida Certificate No. 351

APPROVALS

This plat accepted this 17th day of December A.D. 1958 in open meeting of the Board of County Commissioners of Lee County, Florida.

D.J. Farabee Clerk
William C. Pitt Chairman
Tacey A. Bause Co. Road Supt

I HEREBY CERTIFY that this plat of ZIMMER'S ADDITION to SHELL MOUND PARK has been examined by me and from my examination I find that said plat complies in form with the requirements of Chapter 10275 Laws of Florida, Acts of 1925. I FURTHER CERTIFY that said plat was filed for record at 3:30 P.M. this 23rd day of January A.D. 1959 and was duly recorded in Plat Book 11 at Page 54 of the public records of Lee County, Florida.

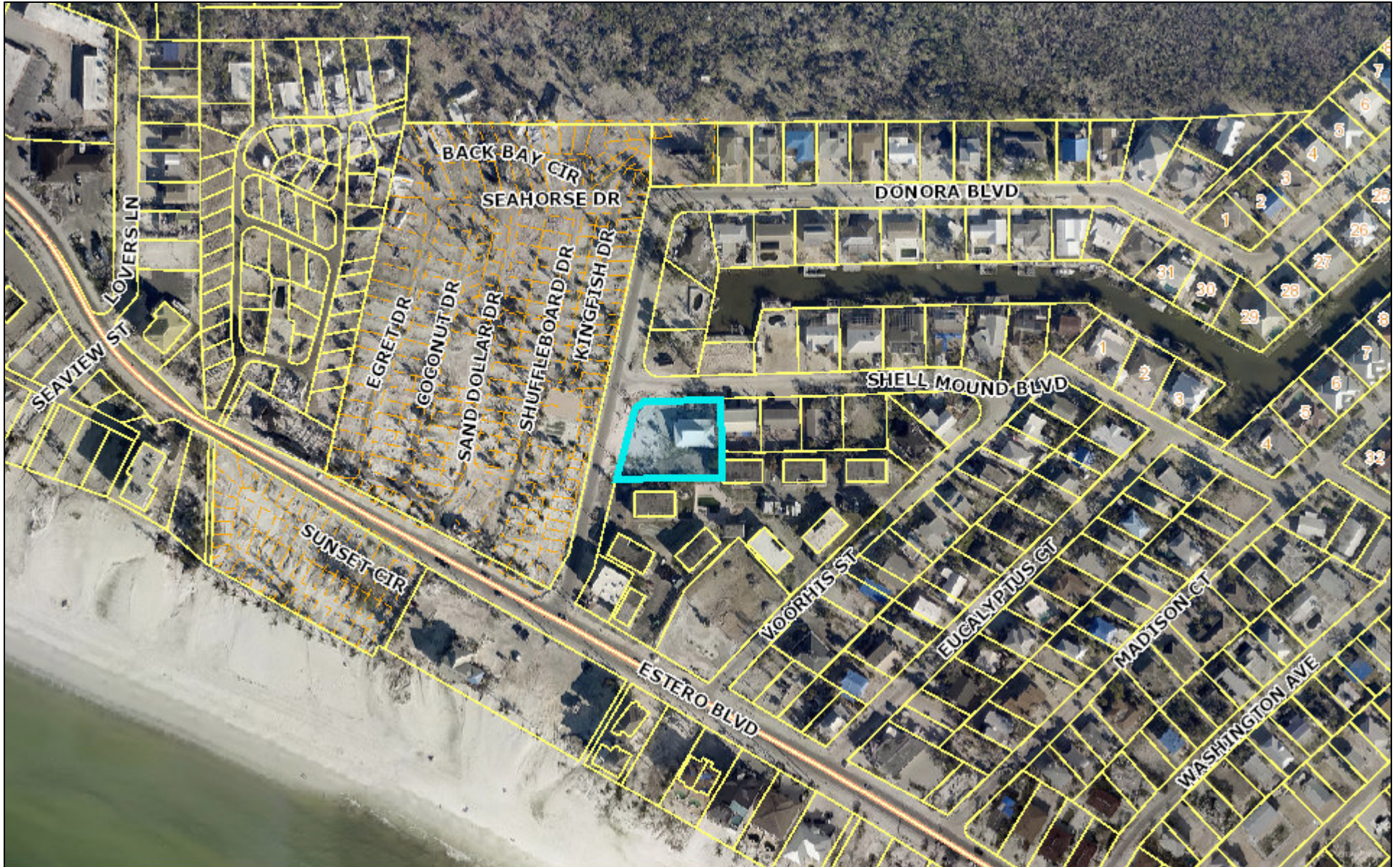
D.J. Farabee
Clerk of the Circuit Court in and for Lee County, Florida

DESCRIPTION

A tract or parcel of land lying in lots 45 and 47 Case's Subdivision according to plat recorded in Plat Book 1 at Page 58 and plat and affidavit recorded in Deed Book 131 Page 300-304 of the public records of Lee County, Florida which tract or parcel is described as follows: from the corner common to lots 47 and 48 of said Case's Subdivision on the northeasterly line of Estero Boulevard (S.R. S-865) run N. 61° 28' W. along said northeasterly line for 20.94 ft. to the point of beginning of the land herein described; from said point of beginning continue N. 61° 28' W. along said northeasterly line of Estero Boulevard for 319.06 ft.; thence run N. 28° 32' E. for 63.24 ft. thence run N. 11° 59' 30" E. for 677.54 ft. thence run N. 1° 18' E. for 110.0 ft. to a point on the north line of Section 29, T. 46 S., R. 24 E. which point is 770.65 ft. east of the northwest corner of said Section 29, thence run N. 88° 42' E. along said north line of Section 29 for 1146.30 ft. thence run S. 45° 47' W. for 1443.57 ft. along the northwesterly line of Voorthis Ave. as shown on the plat of Oakhurst recorded in Plat Book 8 at Page 11 of said public records; to the point of beginning. ALSO All of said Voorthis Ave. subject to the dedication by said plat of Oakhurst of that part not vacated by order of the Lee County Commissioners, recorded in Misc. Book 49 at Page 513 EXCEPTING Donora Boulevard as deeded to Lee County by deed recorded in Deed Book 290 at Page 53. EXCEPTING parcel deeded by deed recorded in Deed Book 263 at Page 77 EXCEPTING parcel deeded by deed recorded in Deed Book 233 at Page 457.

EXHIBIT 6-3

GeoView Map



February 28, 2024

Air Photos: 2023 Hi-Res (3 inch)



Hospital Locations



Library Locations

School Locations



School Locations



CCC_Parks

--- County Boundary

Major Roads Medium

I - 75

US 41

Other Highways

Other Roads



Parcels Near

1:2,908

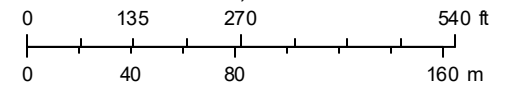


EXHIBIT 6-7





Town of Fort Myers Beach
Community Development Services - Planning Division
2731 Oak St,
Fort Myers Beach, FL 33931

NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

Notice is hereby given that the Local Planning Agency/ Town Council of the Town of Fort Myers Beach will be conducting a public hearing at the Town Hall Council Chambers located at 2731 Oak St, Fort Myers Beach, Florida, 33931.

TIME: 9 AM- LPA and 6 PM-Town Council
DATE: LPA September 3rd, 2024 (9AM), Town Council September 23d, 2024 (6PM)
CASE: VAC20240068
ADDRESS: 3030 Shell Mound Blvd
APPLICANT: Fort Myers Beach Art Association, Inc.
REQUEST: Requesting a vacation and relocation of a utility easement to allow for redevelopment of the property.

TOWN CONTACT: JUDITH FRANKEL jfrankel@fmbgov.com

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence. At this hearing, the **Local Planning Agency/ Town Council** will review the application materials and hear testimony to make a **recommendation/decision**. Complete records or transcripts of the proceedings are not provided by the Town.

Copies of the application and staff report are available for viewing at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you need reasonable accommodation, contact Town Hall at 239-765-0202.



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Town of Fort Myers Beach
2731 Oak St,
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
2731 Oak St,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

Town of Fort Myers Beach
2731 Oak St,
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
2731 Oak St,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»

1. **Request:**

Meeting Date: September 23, 2024

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 2545 AND 2555 ESTERO BLVD., GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-00458.0000; 19-46-24-W3-00458.0010 IN FORT MYERS BEACH, TO ALLOW A FIRE STATION AND A MIXED USE DEVELOPMENT INCLUDING CIVIC, RESIDENTIAL, LODGING, RETAIL, OFFICE AND MARINE USES; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The existing CPD for the site does not allow for Essential Services uses like a Fire Station. It is necessary for the Town Council to approve an ordinance to allow for this use.

What the action accomplishes:

Approval of the CPD ordinance and the requested deviations will allow for the construction of a Fire Station and reduces potentially incompatible uses on the rear portion of the site.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Judith Frankel, Principal Planner

5. **Background:**

Fort Myers Beach Fire Control, the owner and applicant for 2545 and 2555 Estero Blvd., is requesting to rezone the subject parcels from CPD (governed by RES 08-08) to a CPD that allows the development of a new Fort Myers Beach Fire Station. The Fire Control district intends to divide the total site into two parts. They will develop 1.17 acres fronting Estero Boulevard with a new Fire Station shown on the Master Concept Plan (MCP) in the application packet. The remaining 0.99 acres is intended to be sold and later developed and an MCP is not provided for that portion of the tract. However, the applicant has requested a reduction in the number of uses for that portion of the tract with the aim of reducing the impact of any future development on neighboring properties.

At their September 3rd meeting, the LPA voted 7-0 to recommend approval of the application to the Town Council.

Attachments:

1. Ordinance 24-27 CPD Fire Station
2. Staff Report
3. Exhibit A Application
4. Exhibit B MCP
5. Exhibit C - Postcards
6. 24-27, Business Impact Estimate - FMB Fire Control District

Financial Impact:

unknown

6. **Alternative Action**

APPROVE WITH CONDITIONS or DENY

7. **Management Recommendations:**

Staff finds that the request complies with the Comprehensive Plan and Land Development Code for the Town and recommends approval.

8. **Recommended Approval:**

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

Created/Initiated - 9/10/2024
Approved - 9/10/2024
Approved - 9/16/2024
Approved - 9/16/2024
Final Approval - 9/16/2024

ORDINANCE 24-27

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 2545 AND 2555 ESTERO BLVD., GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-00458.0000; 19-46-24-W3-00458.0010 IN FORT MYERS BEACH, TO ALLOW A FIRE STATION AND A MIXED USE DEVELOPMENT INCLUDING CIVIC, RESIDENTIAL, LODGING, RETAIL, OFFICE AND MARINE USES; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, Fort Myers Beach Fire Control District, the owner, and Paul Torocco of Quattrone and Associates and Greg Stuart of Stuart and Associates, as agents for the property located at 2545 and 2555 Estero Blvd., parcels generally identified as STRAP numbers 194624W3004580000; 194624W3004580010 in the Town of Fort Myers Beach, filed applications to rezone the property from the CPD adopted in Resolution 08-08 to CPD with Master Concept Plan (MCP) with certain deviations to the Land Development Code (LDC) in order to develop a Fire Station and a mixed use development with a density of 6 dwelling units to be later defined by a MCP amendment; and

WHEREAS, the subject property is a combination of two parcels located in the Boulevard Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on September 3rd, 2024; and

WHEREAS, at the September 3rd, 2024 public hearing the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, as required by Section 34-85 of the Town Land Development Code; and

WHEREAS, at the September 3rd, 2024 public hearing the LPA found that the request is consistent with the comprehensive plan and the requirements of the LDC and voted to recommend approval with conditions by a x-x vote; and

WHEREAS, on September 23rd, 2024 the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the Applicant, the

recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Section 34-85 of the LDC; and

WHEREAS, the Town Council voted to have a second reading of the proposed Ordinance and a public hearing on this matter was noticed in the Fort Myers News-Press more than 10 days prior to the Town Council on October 7th, 2024; and

WHEREAS, at the October 7th, 2024 public hearing, the Town Council gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34- 85; and

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

WHEREAS, a Business Impact Estimate has been prepared and published on the Town's website; and

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

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

WHEREAS, Exhibit B is the approved Master Concept Plan (MCP), which future development should be substantially in compliance with; and

WHEREAS, the Town Council finds that this request to rezone the property from the CPD adopted in Resolution 08-08 to CPD with MCP with six deviations to the LDC) in order to develop a Fire Station and a mixed use development with a density of 6 dwelling units to be later defined by a MCP amendment; and

WHEREAS, the requested deviations from the LDC include:

Deviation #1

Deviation from LDC section 10-416(d)(3) Type D Site Perimeter ROW Buffer Standard, that requires a 15-ft landscape buffer with 5 trees per 100 LF, a double hedge and no wall; for Estero Blvd. to require a 15-ft landscape buffer with a double hedge augmented with 18 shrubs per 100 LF and no wall.

Deviation #2

Deviation from LDC 10-285(a) Major Street Access Connection, that requires a 250-ft center-line connection spacing; to require a 127-ft +/- Fire Station driveway to Tropical Shores Way connection separation, and a 126-ft +/- Gulf Beach Road connection separation.

Deviation #3

Deviation from LDC 34-2013(a)(3) Parking Lot Access Aisle Width, that requires a maximum 25-ft width at the property line; to allow a 75-ft access aisle width at Estero Blvd. as depicted on the MCP, and a maximum 40-ft access aisle width at Tropical Shores Way as depicted on the MCP.

Deviation #4

Deviation from LDC 10-416(c)(2.a) Parking Lot Internal Landscaping, that requires one tree planted per 250 sf and with one tree for each parking space permeable island; to require no landscaped permeable island and trees for the Fire Station's north oriented parking lot.

Deviation #5

Deviation from LDC 10-416(c)(2.c) Min. Average Width of Parking Lot Landscaping Area, that requires a minimum average dimension of 10-ft; to require a minimum average dimension of 5-ft for the Fire Station's Estero Blvd. oriented parking lot.

Deviation #6

Deviation from LDC 34-632(1) that requires computed to be round down to the next whole number, which would allow a computed density of 5.94 units, to be rounded up to but not to exceed 6 dwelling units any combination of uses for the future development area.

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

- a. The rezoning would carry out the policies and requirements of the Comprehensive Plan and Land Development Code.
- b. The Town Council carefully considered the testimony of the applicant, the recommendations of staff and of the local planning agency, and testimony from the public.
- c. The rezoning would be consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses in the Comprehensive Plan.
- d. The rezoning would meet or exceed all performance and locational standards set forth for the proposed use.
- e. Urban services are available and adequate to serve the proposed use.
- f. The rezoning would protect, conserve, or preserve environmentally critical areas and natural resources.
- g. The rezoning would be compatible with existing and planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- h. The rezoning would not place an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.
- i. The rezoning, with the mitigating factors volunteered by the applicant and the special conditions imposed by the Town Council, is consistent with the Fort Myers Beach Comprehensive Plan, Land Development Code, and other applicable town ordinances or codes.
- l. The proposed use or mix of uses is appropriate at the subject location.
- m. Sufficient safeguards to the public interest are provided by the recommended special

conditions to the master concept plan and by other applicable regulations.

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

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

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

WHEREAS, the Town Council finds that this application to approve Ordinance 24-15 which is, **consistent/ not consistent** with the Town of Fort Myers Beach Comprehensive Plan and LDC and voted to **deny/ approve/ approve with conditions** the Application.

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

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

Section 2. The Town Council determines the Applicant **did/did not** meet its burden of proof, that the request to approve Town of Fort Myers Beach's Ordinance 24-xx and the conditions of approval for the commercial planned development zoning, **does/ does not** meet the requirements of the Town Comprehensive Plan and LDC. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council **DENY/ APPROVE/ APPROVE WITH CONDITIONS** the requested application.

Section 3. Town Ordinance 24-xx is adopted and the schedule of uses and conditions of approval for the Property's CPD set forth in Exhibit A and the attached Master Concept Plan in Exhibit B, attached hereto and incorporated herein by this reference are approved.

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

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

Section 6. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

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

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

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

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

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

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

Attachments:

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

Exhibit A: CONDITIONS OF APPROVAL & SCHEDULE OF USE

Conditions of Approval

Staff finds that the CPD with deviations meets the criteria set forth in Sec. 34-85(b) and (c) and 34-216(2) of the LDC and recommends approval of DCI20230246 with the attached conditions:

- 1) Any tenant with consumption on premises will be required to acquire a separate COP license.
- 2) A local development order is required prior to any development of the site, in accordance with this planned development approval and consistent with the approved MCP.
- 3) All state and local permits, including but not limited to right of way and stormwater permits must be applied for and received prior to site development.
- 4) All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131
- 5) The Fire Station shall provide flashing indicator light(s) facing Estero Blvd. to alert pedestrians and vehicles when emergency vehicles are exiting the station.
- 6) Deviations 1-5 shall only apply to the proposed Fire Station as shown on the provided site plan.
- 7) The north site future development phase will include a north property line Type C buffer with screening wall to mitigate potential impacts to the Tropical Shores neighborhood. The north site future development phase will include a 5-ft Type A buffer for the shared fire station boundary.

SCHEDULE OF USE

- Civic
 - Principal
 - Essential services
 - Essential Services equipment
 - Essential Services building
 - Beach or Bay Access
 - Day care center, adult or child
 - Cultural Facility
 - Theater
 - Park, community or regional
 - Parking lot, shared, permanent
 - Place of worship
 - Religious Facility
 - Recreation Facility, private off-site or public
 - School
 - Accessory
 - Dwelling unit, caretaker
 - Subordinate commercial use
- Residential – 6 DU/Acre
 - Principal
 - Dwelling unit, multi-family
 - Dwelling unit, live/work

- Timeshare units
 - Assisted living facility-subject to LDC 34-1415
 - Accessory
 - Residential accessory uses
- Lodging
 - Principal
 - Rental of any permitted dwelling unit to a single family for periods of one day or longer
 - Hotel/Motel - guest units must comply with LDC Chapter 34, Article IV, Div. 19
 - Bed and Breakfast
 - Accessory
 - Subordinate commercial uses
- Retail
 - Principal
 - Laundromat
 - Personal services
 - Retail store small
 - Accessory
 - ATM
 - Commercial accessory uses
- Office
 - Principal
 - Health care facility
 - Offices, general or medical
 - Personal Services
 - Wholesale establishment
 - Accessory
 - Administrative offices
 - Home occupation- no outside help
- Marine
 - Accessory
 - Dock - sole use by occupants of principal use



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Commercial Planned Development

CASE NUMBER: DCI Rezoning 20240155

CASE NAME: Fort Myers Beach Fire Station CPD

**Town Council
HEARING DATE:** September 23rd, 2024, at 6 PM

**STAFF
RECOMMENDATION:** Approval with conditions

**PREPARED/
SUBMITTED BY:** Judith Frankel, AICP

I. APPLICATION SUMMARY

Applicant/Owner: Fort Myers Beach Fire Control District

Request: The applicant is requesting to rezone 2.16 acres from a CPD (under Resolution 08-08) to a CPD with 7 deviations to include an Essential Services building

Subject property: See attached site plan

Physical Address: 2545 Estero Blvd.; 2555 Estero Blvd.

STRAP #: 194624W3004580000; 194624W3004580010

FLU: Boulevard

Zoning: CPD

Adjacent zoning and land uses:

North: RESIDENTIAL CONSERVATION (RC)
Multifamily residential

South:	RESIDENTIAL MULTIFAMILY (RM) Multifamily residential
East:	INSTITUTIONAL (IN) Places of Public Assembly, Schools and Civic Uses COMMERCIAL BOULEVARD (CB) Commercial Mixed-uses
West:	COMMERCIAL BOULEVARD (CB) Commercial Mixed-uses

II. BACKGROUND AND ANALYSIS

Background:

Fort Myers Beach Fire Control, the owner and applicant for 2545 and 2555 Estero Blvd., is requesting to rezone the subject parcels from CPD (governed by RES 08-08) to a CPD that allows the development of a new Fort Myers Beach Fire Station. The previous Fire Station, which was located at 3043 Estero Blvd., was damaged beyond repair by Hurricane Ian. These two parcels comprise a 2.16-acre tract where the former Topps Shopping Center was located. The Fire Control district intends to divide the total site into two parts. They will develop 1.17 acres fronting Estero Boulevard with a new Fire Station shown on the Master Concept Plan (MCP) in the application packet. The remaining 0.99 acres is intended to be sold and later developed. No MCP is provided for that portion of the tract, however the applicant has requested a reduction in the number of uses for that portion of the tract with the aim of reducing the impact of any future development on neighboring properties. Since no MCP is presented for the remaining .99 acres a CPD amendment and master concept plan will be required when development is proposed.

In 2008, the Town Council adopted Resolution 08-08 to approve the rezoning of the subject site from Commercial Boulevard to a CPD to allow for a phased redevelopment of a mixed-use complex that included a Topps Supermarket. CPD RES 08-08 allowed a number of uses by right, including Hotel/ Motel, Health Care Facility Offices, General Offices, Medical Offices, Personal Services, Restaurant, and Retail Store. The intensity was approved at 50,304 sf (0.53 FAR), which included 13 multifamily dwelling units or 36 hotel units. Development was required to be consistent with a master concept plan (MCP) entitled "The Topps Remodel". The MCP included 13 condominiums that were never constructed.

At their September 3rd meeting, the LPA voted 7-0 to recommend approval of the application to the Town Council.

Analysis:

The site is located in the designated “Civic Complex/Heart of the Island” neighborhood and with a “Boulevard” land use designation in the Comprehensive Plan. The Boulevard land use category permits a maximum 1.5 F.A.R. LDC Section 34-953, states that building placement, size, design, and all other property development regulations in a CPD zoning district shall be the same as for the CB zoning district for CPDs that are not primarily lodging. The CB zoning district permits a maximum FAR of 1.0 or a 94,089.6 square foot building area for the subject property. The Applicant is proposing a FAR of 0.34 (17,188 SF/50,965.2 SF) for the Fire Station and an FAR of 0.23 (10,000 SF/43,124.4 SF) for the rear portion of the property. This totals 0.57 FAR, which is compliant with Town regulations. The proposed Fire Station includes a ground level garage, covered entrance, exterior stairwell, balcony and interior administrative space.

The site is approximately one mile south of the Sky Bridge and to the west adjoins the previous FMB Town Hall along Tropical Shores Way. To the east, the site is bounded by Gulf Beach Road with the adjacent Bay Oaks Community Complex (park, pool & school) and residential uses zoned Commercial Boulevard along Estero Boulevard. To the north the property adjoins Residential Conservation zoned single family homes along Tropical Shores Way and a canal that adjoins Gulf Beach Road.

The applicant is requesting 6 deviations as allowed under section 34-212 of the LDC. Deviations 1 through 5 are related to parking and driveway configurations particular to the Fire Station and emergency vehicles. Deviation 6 will allow computed density to be rounded up for the remaining .99 acre rear portion of the tract. The rear portion of the tract which is proposed to be slightly less than 1 acre and so only allows a density of 5 units as the code requires that density calculations are rounded down to the nearest whole number. If the calculation is rounded up 6 units would be permitted. Special conditions for unique aspects of a parcel may be applied for the protection of public interest as defined in LDC section 34-932.

The existing CPD zoning is not sufficient for the proposed Fire Station. A Fire Station is classified as an Essential Services Building within the Civic land use sub-category in the Town’s Land Development Code (LDC). Due to this classification a re-zoning is necessary to allow the Fire Station. The proposed location was strategically chosen for greatest access and proximity to other civic services.

Under the proposed new CPD, the rear portion of the tract, not occupied by the Fire Station, will be allowed a variety of general uses that should minimally impact the neighboring residences. Any development at that location will be reviewed by Town Staff and will likely necessitate a CPD amendment MCP at that time.

The proposed new schedule of uses omits several uses that are currently allowed under Resolution 08-08. Deleted uses are restaurant, bar or cocktail lounge, on-premises consumption of alcoholic beverages, commercial dock use (for water taxi), and transit

terminal. New proposed uses are parks, places of worship, religious facility, school, assisted living facility, and bed and breakfast in addition to essential service building, for the fire station.

Requested Schedule of Uses

- Civic
 - Principal
 - Essential services
 - Essential Services equipment
 - Essential Services building
 - Beach or Bay Access
 - Day care center, adult or child
 - Cultural Facility
 - Theater
 - Park, community or regional
 - Parking lot, shared, permanent
 - Place of worship
 - Religious Facility
 - Recreation Facility, private off-site or public
 - School
 - Accessory
 - Dwelling unit, caretaker
 - Subordinate commercial use
- Residential – 6 DU/Acre
 - Principal
 - Dwelling unit, multi-family
 - Dwelling unit, live/work
 - Timeshare units
 - Assisted living facility-subject to LDC 34-1415
 - Accessory
 - Residential accessory uses
- Lodging
 - Principal
 - Rental of any permitted dwelling unit to a single family for periods of one day or longer
 - Hotel/Motel - guest units must comply with LDC Chapter 34, Article IV, Div. 19
 - Bed and Breakfast
 - Accessory
 - Subordinate commercial uses
- Retail
 - Principal
 - Laundromat
 - Personal services

- Retail store small
 - Accessory
 - ATM
 - Commercial accessory uses
- Office
 - Principal
 - Health care facility
 - Offices, general or medical
 - Personal Services
 - Wholesale establishment
 - Accessory
 - Administrative offices
 - Home occupation- no outside help
- Marine
 - Accessory
 - Dock - sole use by occupants of principal use

Neighborhood Compatibility:

The proposed Fire Station fronts Estero Boulevard which will permit the necessary access for emergency vehicles. The location is close to several other public uses including the Bay Oaks Community Center. The rear portion of the property abuts a single-family home neighborhood. In consideration of the potential for nuisance noise, restaurant and bar land uses were removed from the requested schedule of uses. None of the proposed uses appear to create conflict with the adjacent uses. The rear portion of the lot will be required to install the applicable buffers to separate the uses.

III. Requested Deviations

The Applicant requests the following deviations consistent with LDC section 34-212(3) and 34-932(b).

1. Deviation One from LDC section 10-416(d)(3) Type D Site Perimeter ROW Buffer Standard, that requires a 15-ft landscape buffer with 5 trees per 100 LF, a double hedge and no wall; for Estero Blvd. to require a 15-ft landscape buffer with a double hedge augmented with 18 shrubs per 100 LF and no wall.
 - a. Applicant Justification: The deviation advances the objectives of the new Fire Station MCP by designing and developing a Town of Fort Myers Beach Fire Station that has maximum safe and effective direct access onto Estero Blvd characterized by being unimpeded and unobstructed by tall perimeter buffer trees. By eliminating potentially obscuring trees, the deviation advances the achievement of high order emergency response times. A double staggered hedge, augmented by additional shrub landscaping based on 18 shrubs per 100 LF, will serve to ensure that the public interest and public welfare in having an aesthetically pleasing and well landscaped Estero Blvd will be maintained. The deviation benefits the public interest by securing a safe, effective and direct emergency vehicle

egress and ingress. The deviation benefits the public health, safety and welfare since it fully advances the development of the new FMB Fire Station based upon the Fire Control District's design criteria. Deviation One is consistent with Comprehensive Plan policies 1-A-3, 1-B-2 and 3-A-4.

- b. Staff response: The deviation request relates to the proper functioning of the Fire Station. The applicant is offering significant landscaping to further the Town goal of beautification of Estero Blvd.
2. Deviation Two from LDC 10-285(a) Major Street Access Connection, that requires a 250-ft center-line connection spacing; to require a 127-ft +/- Fire Station driveway to Tropical Shores Way connection separation, and a 126-ft +/- Gulf Beach Road connection separation.
 - a. Applicant Justification: The deviation achieves the objectives of the Fire Station MCP in designing and developing a new Town of Fort Myers Beach Fire Station that has safe and effective direct access onto Estero Blvd to secure the highest order of emergency response times. The connection is identical to the long-standing Estero Blvd connection that served the Topps Shopping Center. By matching the existing connection spacing and location, the public interest and welfare in advancing effective and efficient emergency response time is achieved. The deviation benefits the public health, safety and welfare interest since it fully advances the development of the new FMB Fire Station based upon the Fire Control District's design criteria. Deviation Two is consistent with the Town of Fort Myers Beach Comprehensive Plan as identified by the following Objectives and Policies:
 - i. Intergovernmental Coordination OBJECTIVE 14-B Coordination of Services - to ensure coordination in establishing level of service standards for public facilities, providing for efficient delivery of services, monitoring progress of goals and construction of improvements.
 - ii. OBJECTIVE 14-A Intergovernmental Coordination of Plans — Ensure coordination of this comprehensive plan with comprehensive plans of Lee County and the Lee County School Board, other units of local government providing services but not having regulatory authority over the use of land, and with regional and state plans.
 - iii. POLICY IGC14-D-8 The town will exchange information with the Fort Myers Beach Fire Control District and solicit input from the fire district on development proposals.
 - b. Staff response: The reduction in driveway spacing is necessary due to the functions of the Fire Station and situation of the site. The Town should consider requiring a flashing indicator light facing Estero Blvd. to alter pedestrians and vehicles when emergency vehicles are exiting the station.

3. Deviation Three from LDC 34-2013(a)(3) Parking Lot Access Aisle Width, that requires a maximum 25-ft width at the property line; to allow a 75-ft access aisle width at Estero Blvd. as depicted on the MCP, and a maximum 40-ft access aisle width at Tropical Shores Way as depicted on the MCP.
 - a. Applicant Justification: The deviation advances the objectives of the new Fire Station MCP by de-signing and developing a Town of Fort Myers Beach Fire Station that has maximum safe and effective direct access with full turning movements for large emergency response vehicles onto both Estero Blvd and Tropical Shores Way. The 75-ft and 40-ft aisle width standards advances the highest order of emergency response times. A twenty-five foot maximum width standard is not appropriate nor functional for large fire trucks and emergency response vehicles. The project is designed to facilitate large emergency vehicle ingress and egress turning movement requirements that require large driveway aisle connection width. The deviation benefits the public health, safety and welfare interest by securing safe, effective and direct emergency vehicle egress and ingress based upon the Fire Control District's design criteria. Deviation Three is consistent with policies 1-A-3, 1-B-2, 3-A-4, IGC 14-A, IGC 14-B and IGC 14-D-8.
 - b. Staff response: Emergency vehicles need extended width access aisle for the large vehicles.
4. Deviation Four from LDC 10-416(c)(2.a) Parking Lot Internal Landscaping, that requires one tree planted per 250 sf and with one tree for each parking space permeable island; to require no landscaped permeable island and trees for the Fire Station's north oriented parking lot.
 - a. Applicant Justification: The deviation advances the objectives of the new Fire Station MCP by designing and developing a Town of Fort Myers Beach Fire Station that has a large unobstructed north site interior large emergency response vehicle parking and circulation area. This design feature is essential for the staging of emergency response vehicles at the new fire station while entering and exiting onto Tropical Shores Way. The alternative parking lot landscaping standards advances the highest order of emergency response times by maximizes efficient internal large vehicle movements. The deviation benefits the public health, safety and welfare interest by securing safe, effective and direct emergency vehicle site parking and circulation movements within the site and towards Tropic Shores Way egress and ingress based upon the Fire Control District's design criteria. Deviation Four is consistent with policies IGC 14-A, IGC 14-B and IGC 14-D-8.
 - b. Staff response: Trees could impact the emergency vehicles' movement due to the height and volume of those vehicles.
5. Deviation Five from LDC 10-416(c) (2.c) Min. Average Width of Parking Lot Landscaping Area, that requires a minimum average dimension of 10-ft; to require

a minimum average dimension of 5-ft for the Fire Station's Estero Blvd. oriented parking lot.

- a. Applicant Justification: The deviation advances the objectives of the new Fire Station MCP by designing and developing a Town of Fort Myers Beach Fire Station that has a functionally unobstructed south site interior large emergency response vehicle and other vehicle parking and circulation area. The slight 5-ft parking island width reduction serves to advance efficient emergency response and other vehicle parking and circulation movement for the Estero Blvd oriented parking area. The deviation benefits the public health, safety and welfare interest by securing safe, effective and efficient south site parking and circulation movements along with safe and efficient Estero Blvd egress and ingress based upon the Fire Control District's design criteria. Deviation Five is consistent with policies 1-A-3, 1-B-2, 3-A-4, IGC 14-A, IGC 14-B and IGC 14-D-8.
 - b. Staff response: The parking lot landscape requirement would hinder the movement of the emergency vehicles.
6. Deviation Six from LDC 34-632(1) that requires computed to be round down to the next whole number, which would allow a computed density of 5.94 units, to be rounded up to but not to exceed 6 dwelling units any combination of uses for the future development area.
- a. Applicant Justification: The deviation is established by Deviation Five Res. 08-08. In this case the di-minimus increase of 0.06 falls well within the established practice of granting reasonable density by, in this case, very slightly rounding up. Given the narrowest of margins, the public interest is not serviced by discounting one residential unit. The applicant's interest in regulatory consistency and reasonableness is upheld.
 - b. Staff response: This deviation will only apply to the smaller segment of the site. No dwelling units will be added to the larger (Fire Station) portion which reduces overall density available under the existing CPD.

IV. FINDINGS AND CONCLUSIONS

LDC Sec. 34-85(b) and (c) and 34-216(2) sets forth the required considerations and findings for the approval of a rezoning:

LDC Sec. 34-85 (b) Considerations. In reaching its decision, the town council shall consider the following, whenever applicable:

(1) Whether there exists an error or ambiguity which must be corrected.

Staff response: No errors or ambiguities exist.

(2) Whether there exist changed or changing conditions which make approval of the request appropriate.

Staff response: The site was vacant prior to Hurricane Ian. The redevelopment of the site makes the requests appropriate. At present, no Fire Station exists in Fort Myers Beach.

(3) The impact of a proposed change on the intent of this chapter.

Staff response: No impact on the intent of this chapter will occur.

(4) The testimony of any applicant.

(5) The recommendation of staff and of the local planning agency.

(6) The testimony of the public.

(7) Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.

Staff response: The density and intensity request are consistent with the Town of Fort Myers Beach Comprehensive Plan.

(8) Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.

Staff response: The proposed development will be required to meet performance standards set forth in 34-2031.

(9) Whether urban services are, or will be, available and adequate to serve a proposed land use change.

Staff response: The urban services exist in this location.

(10) Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

Staff response: The request will have no impact on environmentally critical areas and natural resources. The site has been comprehensively developed and current is characterized by almost 100% impervious with no onsite natural systems. The request does not include any revision to the environmentally critical areas.

(11) Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.

Staff response: The FMB Fire Station is the primary use, with construction proposed to begin in 2025. The mixture and type of uses, along with site plan for future phase development is undetermined and will be subject to a formal CPD amendment process that includes an MCP. The available density will be 6 du/acre if the requested deviation 6 is approved. The north site future development phase will include a north property line Type C buffer with screening wall to mitigate potential impacts to the Tropical Shores neighborhood. The north site future development phase will include a 5-ft Type A buffer for the shared fire station boundary. When compared to Res. 08-08, the 2024 CPD lessens intensity of impacts and eliminates a significant number of commercial uses including restaurants and water taxis. The CPD to CPD request is not perceived to negatively impact adjoining FMB civic uses.

(12) Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.

Staff response: The applicant submitted a Traffic Impact Statement with Level of Service analysis for the CPD request. The report states that the CPD to CPD zoning request will not have an impact on the current level of service of Estero Boulevard.

(13) For planned development rezonings, see § 34-216 for additional considerations

LDC Sec. 34-85 (c) Findings: Before granting any rezoning, the town council shall find that the requested zoning district complies with:

(1) The Fort Myers Beach Comprehensive Plan.

Staff response: The proposed uses and requested deviations for the CPD comply with the Comprehensive Plan.

(2) This chapter.

Staff response: The proposed uses comply with this chapter except in regards to the deviations.

(3) Any other applicable town ordinances or codes.

Staff response: The proposed request complies with the town ordinances and codes, except in regard to the deviations.

(4) For planned development rezonings, see § 34-216 of this chapter for additional findings

At their September 3rd meeting, the LPA voted 7-0 to recommend approval of the application to the Town Council.

LDC Sec. 34-216(b)(2) The recommendation made to the town council must be supported by the guidelines set forth in [§ 34-85](#) of this chapter. In addition, the findings must address whether the following criteria can be satisfied:

a. The proposed use or mix of uses is appropriate at the subject location;

Staff response: The proposed mix of uses is appropriate in this location, it is in the Boulevard Future land use. Most of the proposed 2024 uses are currently permitted CPD uses. The current CPD requests the following new additional uses: Essential services building; parks; Assisted living facility; Place of worship; Religious facility; School; Bed and breakfast

b. Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations;

Staff response: Sufficient safeguards are provided for the public interest through required buffering at the northern/rear portion of the property.

c. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development;

Staff response: All conditions are related to the impacts on the public interest.

d. The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:

1. Policies 4-B-4 and 4-C-3 on commercial uses in the "mixed residential" category.

Staff response: Not applicable.

2. Policies 4-B-5 and 4-C-3 on commercial rezonings in the "boulevard" category.

Staff response: Deviations number 7 requests a slight deviation from the maximum 6 dwelling units per acre. The proposed CPD does not present a commercial expansion into a residential area.

3. Policy 4-C-4 on building heights taller than the standard height limit.

Staff response: No additional height is requested.

4. Policy 4-C-8 on density transfers.

Staff response: Not applicable.

5. Policy 4-E-1 on pre-disaster build back.

Staff response: Not applicable.

6. Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts.

Staff response: The applicant has submitted a traffic impact analysis. There are no anticipated adverse traffic impacts

Findings for Deviation Requests:

Per Sec. 34-216(4) all deviations must be approved, approved with modification, or rejected based upon a finding that:

a. Each item enhances the achievement of the objectives of the planned development; and

Staff response: The requested deviations 1 through 5 allow the development of the site for unique Fire Station use. Deviation 6 allows for one additional dwelling unit for a total of six.

b. The general intent of this chapter to protect the public health, safety and welfare will be preserved and promoted;

Staff response: The proposed deviations preserve public health.

c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and

Staff response: The deviations are not a detriment to the public interest. Additional conditions may need to be provided at a later date depending on the proposed use of the north/rear portion of the property.

d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.

Staff response: The deviations are consistent with the comprehensive plan

V. RECOMMENDATION

Staff finds that the CPD with deviations meets the criteria set forth in Sec. 34-85(b) and (c) and 34-216(2) of the LDC and recommends **approval** of DCI20240115 with the following conditions.

Recommended Conditions

- 1) A local development order is required prior to any development of the site, in accordance with this planned development approval and consistent with the approved MCP.
- 2) All state and local permits, including but not limited to right of way and stormwater permits must be applied for and received prior to site development.
- 3) All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131
- 4) The Fire Station shall provide flashing indicator light(s) facing Estero Blvd. to alert pedestrians and vehicles when emergency vehicles are exiting the station.
- 5) Deviations 1-5 shall only apply to the proposed Fire Station as shown on the provided MCP.
- 6) The north site future development phase will include a north property line Type C buffer with screening wall to mitigate potential impacts to the Tropical Shores neighborhood. The north site future development phase will include a 5-ft Type A buffer for the shared fire station boundary.

V. EXHIBITS

Staff Report Exhibits:

A – Complete Application

B – Fire Station Master Concept Plan (MCP)

C - Postcards

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-D

Additional Required Information for a Planned Development Application

This is the second part of a two-part application. This part requests specific information for a planned development rezoning or an amendment to an approved planned development. Include this form with the Request for Public Hearing form.

Fee in the amount of \$8000.00 up to 1 acre +1000.00 per additional acre
\$2000.00 PD Amendment minor (< acre total property area)
\$4000.00 PD Reinstatement or \$6500.00 PD Amendment

Project Name: The Fort Myers Beach Fire Station CPD
Authorized Applicant: Scott Wirth, Fire Chief
STRAP Number(s): 194624W3004580000; 194624W3004580010

Current Property Status: Former Topps Shopping Center, Vacant & Paved
Current Zoning: CPD
Future Land Use Map (FLUM) Category: Boulevard
Platted Overlay? ☐ yes, ☒ no FLUM Density Range: 6 Units Per Ac

Requested Action:

☐	DRI (with rezoning)
☒	Planned Development (also check below)
☒	Rezoning from: CPD to: CPD
☐	Amendment to Master Concept Plan/attendant documentation

PART I Narrative Statements

A. Comprehensive Plan Amendments (check one)

☒	There are NO Comprehensive Plan Amendments pending that could affect the future use of this property.
☐	The following Comprehensive Plan Amendments ARE pending and could affect the future use of this property (list the amendment and give a brief explanation of its possible effect)
	NA

B. Phasing of Construction

☐	The development is to be constructed in a single phase.
☒	The development is to be constructed in phases as follows: (describe proposed phasing below)
	First Phase _ the Estero Blvd. Fire Station @ 17, 118 sf
	Future North Site Phase _ @ 10,000 sf



Explain how the proposed development complies with applicable Goals, Objectives, and Policies of the Fort Myers Beach Comprehensive Plan.

[illegible]

For projects required to meet Commercial Design Standards, explain how the proposed development complies with the design standards set forth in LDC Sections 34-991 through 34-997.

[illegible]



Explain how the proposed development complies with the guidelines for decision-making embodied in LDC Section 34-85.

[illegible]

Provide a list of the requested deviations keyed to the Master Concept Plan and provide a written justification for each deviation. The location of each deviation should be indicated on the Master Concept Plan.

[illegible]



For amendments to an approved Master Concept Plan, indicate the specific amendments that could not be approved administratively as set forth in LDC Section 34-219.

[illegible]

All applications for a planned development must submit fourteen (14) copies of this application form and all applicable exhibits.

Public Hearing Request Form
Supplement Form PH-D
Master Concept Plan
Traffic Impact Statement
Architectural Elevations
Schedule of Uses
Fee in the amount of \$8000.00 up to 1 acre +1000.00 per additional acre
\$2000.00 PD Amendment minor (< acre total property area)
\$4000.00 PD Reinstatement or \$6500.00 PD Amendment

3/30/2021

Guide to Filing Supplement PH-D for Planned Developments

Amendments Applications for amendments to an approved Master Concept Plan or its attendant documentation will require as much information as is needed to describe the changes requested, to specify the incremental change in impacts expected from the amendment, and to detail the changes in surrounding land uses that have occurred since the original application. Some amendments can be approved administratively as provided in LDC Section 34-219, but all other amendments must proceed through the public hearing process.

Through a pre-application meeting with Community Development staff, prospective applicants can determine whether proposed amendments will require a public hearing, and can request waivers from any submittal requirements that are not necessary to specify the changes requested.

All other planned developments All other applications must complete and submit the Request for Public Hearing and Supplement PH-D, along with all required documents. Refer also to the instructions for the Request for Public Hearing form.

Case Number will be inserted by Community Development staff.

Project Name must be the same as the name used on the Request for Public Hearing form.

Authorized Applicant must be the same as on the Request for Public Hearing form.

STRAP numbers must be the same as on the Request for Public Hearing form.

Current status of property must be the same as on the Request for Public Hearing form.

Requested Action: Indicate whether the request is a DRI (Development of Regional Impact) that requires rezoning, a Planned Development, or an amendment to a Planned Development.

Part 1 Narrative Statements:

Comprehensive Plan Amendments

If Comprehensive Plan Amendments are pending that might affect the future use of the property, explain the amendments' possible effects.

Construction Phasing

If the project is to be constructed in multiple phases, describe the ordering and timing of the proposed phasing. In the absence of a phasing plan, phasing of development would be governed by the limitations of LDC Section 34-220.

Comprehensive Plan Compliance

Explain how the proposed development complies with the Fort Myers Beach Comprehensive Plan. Address the Future Land Use Map category or categories applicable to the subject property and any other relevant policies.

Design Standards Compliance

For properties and/or projects as described in LDC Section 34-992, explain how the proposed development will comply with the standards in LDC Sections 34-991 through 34-997.

Decision-making compliance

Explain how the proposed development will comply with the standards for decision-making in LDC Section 34-85.

Schedule of deviations and written justification

Identify the deviations from the requirements of the Land Development Code that are requested for the proposed development and justify them in relation to the guidance in LDC Section 34-932(b).

Administrative amendments

If the request is for an amendment to a planned development, indicate which of the requested changes could not be approved administratively as allowed by LDC Section 34-219.

Part 2 Submittal Requirements

Public Hearing Application Form. Applications for rezoning, including Planned Developments and Planned Development amendments for which public hearing is required, consist of the Public Hearing form and the supplemental form PH-D. Both parts of the application form must be completed and submitted.

Master Concept Plan. The master concept plan consists of maps, graphic illustrations, and written statements concerning the development. Space has

been provided on this form for many of the required narrative statements, though they can be attached on separate sheets. A master concept plan must include the following required information:

- a. The general size, configuration, and location of each development phase, and a description of the phasing of construction, unless the development is to be constructed in a single phase.
- b. The maximum height of any proposed buildings or structures, using the Land Development Code's method of measuring building height (see LDC Section 34-631).
- c. Proposed principal and accessory uses, identified using the terminology employed in the Land Development Code. Employ the groupings of uses in Tables 34-1 and 34-2 of the Land Development Code, or specify individual uses if necessary.
- d. The density and intensity of the proposed uses, in terms of dwelling units by type, or through conversion factors for hotel/motel units. Provide gross square footages for types of commercial uses, and maximum Floor-Area Ratio.
- e. The minimum width and composition of proposed buffers along the perimeter of the property. References to the types of buffers required by LDC chapter 10 are acceptable.
- f. The location of any environmentally sensitive land and water, based on standard environmental data capable of verification by Town staff. Developments larger than one acre in size may require a protected species survey under LDC Section 10-473.
- g. The exact location of all points of vehicular ingress and egress from existing easements or rights-of-way into the development, with distances from other existing or planned rights-of-way or access points.
- h. Access and facilities for public transit, if applicable.
- i. The general location of stormwater management areas.
- j. The specific locations of requested deviations, including sample detail drawings illustrating their effects if applicable.
- k. The exact location of existing rights-of-way and easements, whether or not those easements are recorded.
- l. Proposed dedications, if any, including beach access, boat ramps, park or recreation areas, open space, or other easements.

Traffic Impact Statement. A traffic impact statement in the same format and to the same degree of detail required for development orders (LDC Section 10-286).

Architectural Elevations. Architectural elevations or three-dimensional renderings that show at minimum all building façades adjoining public streets. These drawings will serve for the sketch requirement of LDC Section 34-202(b)(5) as well. If aspects of the proposed design will not comply with the commercial design standards of LDC Sections 34-991 through 34-997 (if required), the applicant may request deviations from those standards.

Schedule of uses. A list of all proposed principal and accessory uses. Identify these uses by reference to the groups of uses in Tables 34-1 and 34-2 of the Land Development Code unless greater specificity is necessary. For amendments to planned developments that were approved under different regulations, the enumeration of uses in the schedule of uses supplied for the amendment must be specific enough to explain what uses were previously approved without future reference to prior regulations or approvals.



August 1, 2024

To: Ms. Judith Frankel
Community Development Department, Town of Fort Myers Beach,
jfrankel@fmbgov.com. 239 940 8118

From: Greg Stuart, MAURP

Re Project: The Fort Myers Beach Fire Station CPD 2024-0155 _ Sufficiency Response 2
Revised Request Statement

Request: Rezone 2.16 ac. +/- From CPD to CPD for Essential Services Building

Strap #: 194624W3004580000 - 2545 Estero Blvd.
194624W3004580010 - 2555 Estero Blvd.

In response to your Department's request for additional information ,dated 20 July 2024, and on behalf of the Fort Myers Beach Fire Control District, I hope that the additional information along with the revised Request Statement will be satisfactory in providing evidence to schedule the LPA hearing in support the CPD to CPD request.

LAND USE & DEVELOPMENT STANDARD SUMMARY TABLE

Future Land Use	Boulevard
Zoning	CPD (08-08)
Parcel Number - 2545 Estero Blvd.	194624W3004580000
Parcel Number - 2555 Estero Blvd.	194624W3004580010
Project Site Area	2.16 ac. +/-
* Fire Station Site	1.17 ac. +/-
* North Site Future Phase	0.99 ac. +/-
Project Intensity _	
Fire Station	17,188 sf (1)
Fire Station FAR	33.7%
North Site Future Phase	10,000 sf
North Site Future Phase FAR	23.1%
* Future Phase Residential; or	6 units

* Future Phase Lodging;	15 rooms
Site Development Regulations _	
Min. Lot Area	30,000 sf
Min Lot Width	180-ft
Min Lot Depth	180-ft
Max. FAR	40%
Fire Station Building Height	30-ft/3-stories
Building Setback, Estero Blvd.	25-ft
Building Setback, Gulf Bch. Rd./Tropical Shores Way	15-ft
Building Setback, Rear/Waterbody	15-ft.
Flood Zone	AE13-ft

(1) Fire Station total FAR includes ground level, balcony, ancillary impervious pads and covered entrance at a 34% FAR. The heated and cooled Fire Station 14,800 sf intensity is equal to a 29% FAR.

PROJECT REQUEST AND USES

The application requests to rezone the subject parcel from CPD (RES 08-08) to CPD in a manner that permits by right the development of the new Fort Myers Beach Fire Station. The Fort Myers Beach Fire Station is classified as an Essential Services Building within the Civic land use sub-category. The Fire Station rests on part of a 2.16 acre tract. It consists of 1.17 acres of the previous Topps Shopping Center site and utilizes the former shopping center's driveway connection onto Estero Boulevard access. The intent of the rezoning is to allow by right a new Essential Services building and to maintain existing by-right complimentary and compatible RES 08-08 civic, retail, office, residential and lodging uses on the future development 0.99 acre parcel (see pages 4 - 6).

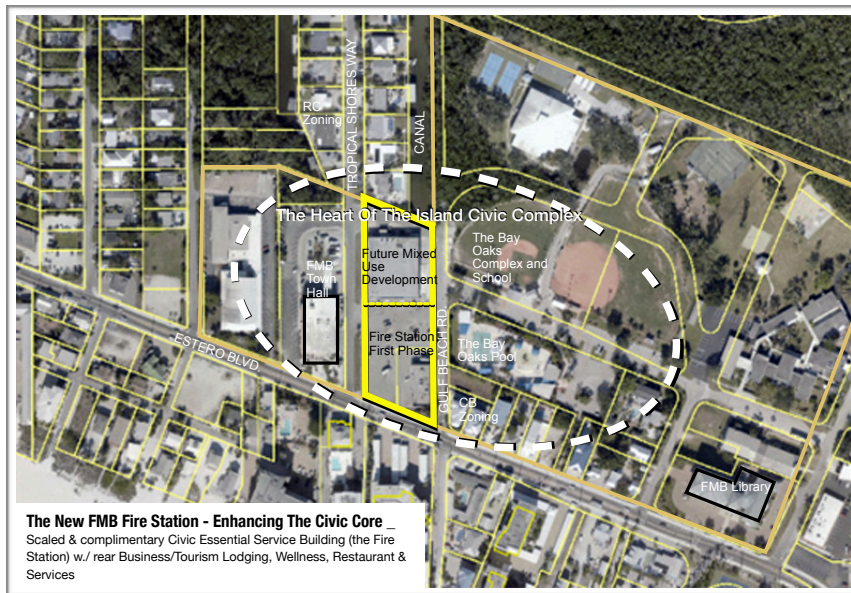
The current CPD (Res. 08-08) granted 13 units of residential density for the site and 50,304 square feet of commercial development. The approved master concept plan was a three phase plan. A Development Order was never submitted, building permits were never applied for, and the proposed buildings were never constructed. In early 2019 both of the existing Topps Center buildings were demolished. The site is currently a paved, vacant. The 2024 request deletes the previously approved Restaurant, Bar or cocktail lounge, On-premises consumption of alcoholic beverages, Dock use (for water taxi), and Transit terminal. The 2024 use request includes new Essential service building, Parks, Places of worship, Religious facility, School, Assisted living facility, and Bed and Breakfast. The Future Phase permits a not to exceed 6 residential units in any combination of site use. Hotel/Motel unit density will be subject to 34-1803 and 34-1415 density rules. All future phase development will be required to amend the CPD consistent with LDC Sec. 34-85 and 34-216 and through public hearing process.

SITE LOCATION

The two plus acre parcel is located with the Civic Complex Area and is classified as a future Boulevard Land Use. It is approximately one mile south of the Sky Bridge and to the west adjoins the FMB Town Hall civic use along Tropical Shores Way. To the east the site is bounded by Gulf Beach Road with the adjacent Bay Oaks Community Complex (park, pool & school) along with Estero Boulevard fronting seasonal and permanent residential uses zoned Commercial Boulevard. To the north the property adjoins Residential Conservation zoned single family homes along Tropical Shores Way and an 80-ft wide man-made canal that adjoins Gulf Beach Road.



LOCATION MAP



AIR PHOTO LOCATION MAP

THE USE SCHEDULE

2024 FMB Fire Station CPD Use Request	Existing 08-08 Permitted Uses
CIVIC:	
Principal:	
Essential services	Permitted by right
Essential service equipment	Permitted by right
Essential services building	
Beach or bay access (1)	Permitted by right
Day care center, adult or child (1)	Permitted by right
Cultural facility (1)	Permitted by right
Theater (1)	Permitted by right
Park, community or regional (1)	
Parking lot, shared, permanent	Permitted by right
Place of worship (1)	
Religious facility (1)	
Recreation facility, private off-site or public (1)	Permitted by right
School (1)	
Accessory:	
Dwelling unit, caretaker (1)	Permitted by right
Subordinate commercial uses	Permitted by right
RESIDENTIAL	
Principal:	
Dwelling unit, multi-family (1)(2)	Permitted by right - 13 units
Dwelling unit, live/work (1)(2)	Permitted by right - 13 units
Timeshare units (1)(2)(3)	Permitted by right - 13 units
Assisted living facility - subject to 34-1415 (1)(3)	
Accessory:	

2024 FMB Fire Station CPD Use Request	Existing 08-08 Permitted Uses
Residential accessory uses (1)	Permitted by right
LODGING	
Principal:	
Rental of any permitted dwelling unit to a single family for periods of one day or longer (1)(2)	Permitted by right
Hotel/Motel - guest units must comply with LDC Chapter 34, Article IV, Div. 19 (1)(3)	Permitted by right
Bed and Breakfast (1)(2)(3)	
Accessory:	
Subordinate commercial uses (1)	Permitted by right
RETAIL:	
Principal:	
Laundromat (1)	Permitted by right
Personal services (1)	Permitted by right
Retail store small (1)	Permitted by right
Accessory:	
ATM (1)	Permitted by right
Commercial accessory uses (1)	Permitted by right
OFFICE:	
Principal:	
Health Care facility (1)	Permitted by right
Offices, general or medical (1)	Permitted by right
Personal services (1)	Permitted by right
Wholesale establishment (1)	Permitted by right
Accessory:	
Administrative office (1)	Permitted by right
Home occupation - no outside help (1)	Permitted by right
MARINE:	

2024 FMB Fire Station CPD Use Request	Existing 08-08 Permitted Uses
Accessory:	
Dock - sole use by occupants of principal use (1)	Permitted by right

(1) Permitted only within the site's rear, north Future Phase area.

(2) Not to exceed 6 units in any combination of uses.

(3) Subject to 34-1803 and 34-1415 density rules.

PART C. COMPREHENSIVE PLAN COMPLIANCE

The site is located in the designated "Civic Complex/Heart of the Island" neighborhood and with a Future Boulevard Land Use designation. Located between Town Hall and Bay Oaks Park, School and the Library along Estero Blvd., the Town Plan characterizes this area as a "mix of residential and commercial uses with little coherent integration among them". From the 2008 CPD site zoning, in April, 2008 the Town of Fort Myers Beach issued Comprehensive Plan goals, objectives and policies consistency findings. In approving CPD RES 08-08 the Town allowed by right a number of uses by right, including Hotel/ Motel, Health Care Facility Offices, General Offices, Medical Offices, Personal Services, Restaurant, and Retail Store. The maximum allowable intensity was set at 50,304 sf, along with 13 MF dwelling units or 36 hotel units. Since that date and in regard to this specific property, it is the Applicant's understanding that the FMB Comprehensive Plan has not undergone any significant amendments that would change the regulatory framework used for consideration regarding the CPD to CPD zoning request. Other than the vacation and subsequent demolition of the site's Topps Grocery store, there has not been any significant external change to the adjoining and adjacent neighborhoods since the original approval. Therefore, the requested new uses and site plan will remain consistent the FMB Comprehensive Plan as per the original consistency findings. The FMB Comprehensive Plan consistency assessment is as follows.

Policy 1-A-3 _ In commercial and mixed-use areas, the town shall identify specific portions of Estero Boulevard where changes in land development regulations could work towards a more coherent "framing" of the Boulevard. New regulations should accomplish the following design goals over time through infill and redevelopment: (i) bringing buildings closer to the sidewalk; encouraging or requiring compatible means of meeting the mandatory flood elevation requirements (for example; using dry-flood proofing techniques); (iii) locating most parking to the rear of buildings, limiting curb cuts, and promoting shared parking areas; (iv) facilitating pedestrian and bicycle access and contributing to the interconnectedness of the circulation system; (v) adopting design guidelines that encourage architecture and urbanism along Estero Boulevard that contributes to the human scale and "beach cottage character"

- ▶ Response _ Other than the project's requested deviations, the project complies to the existing regulatory land use framework. Due to the functional requirements of a fire station, the building cannot be built close to Estero Blvd. and requires a minimum 13-ft FF flood elevation. Most of the project's required parking is within the rear of the site. Pedestrian and bicycle circulation will be facilitated by new sidewalk construction along Gulf Beach Road and Tropical Shores Way. The CPD will comply with flood elevation standards and FMB Architectural Design Standards. The CPD request remains consistent with 1-A-3.

Policy 1-B-2 _ Improve the appearance of the town throughout by landscaping public property and rights-of-way with native vegetation.

- ▶ Response _ The new MCP presents a comprehensive redevelopment of the 2.16 acre site. It features a code required pedestrian and bike path system along Tropical Shores Way and Gulf Beach Road, providing multi-modal interconnections with Estero Blvd. Both roads will incorporate Type D landscaping. Estero Blvd will feature a double staggered hedge augmented with 18 shrubs per 100 LF (see Deviation One). The CPD request remains consistent with 1-B-2.

Policy 3-A-4 _ A "heart of the island" plan should be prepared to coordinate the public and private actions needed to fully implement this concept, including identifying the sequence of actions, responsibilities for implementation, and potential funding sources. Initial actions should include: (i) develop a design concept consistent with the new streetscape plan for Estero Boulevard, identifying approximate costs, potential funding sources, and suggested phasing; (ii) refine regulations that would allow a compatible mix of uses such as residential, live-work spaces such as studios or galleries, and small-scale specialty retail uses consistent with the historic theme, including eased setback and parking regulations.

- ▶ Response _ The towns' Civic Core identity and functionality is enhanced by the new fire station. This essential service building functionally enhances and is complimentary with the adjacent Town Hall, Bay Oaks Community Complex and FMB Library. The future phase's mixed use may feature limited lodging, small retail or office. The Civic Core's Town Hall is strengthened by having adjoining emergency services adjacent to principle governmental functions. This locational proximity advances inter-governmental coordination and communications. The Civic Core's Town Hall is further strengthened by having adjoining lodging, conference and office space uses that can support and are complimentary to principle governmental functions. These type of potential mixed uses next to the FMB Town Hall are highly advantageous for business travelers and professional, trade and other parties doing business with the town. The lodging and/or associated mixed uses can allow for increased Bay Oaks Park utilization with associated fee revenues due to proximate pedestrian access. The fire station along with the request's mixed uses will serve to "knit" together the various private business and public civic library, school, park and town hall uses

through landscape, sidewalk and architectural improvements consistent with FMB design standards. The CPD request remains consistent with 3-A-4.

Policy 4-A-2 _The Town of Fort Myers Beach values its vibrant economy and walkable commercial areas. Through this plan, the town will ensure that new commercial activities, when allowed, will contribute to the pedestrian-oriented public realm.

- ▶ Response _ The new MCP is a comprehensive redevelopment of the 2.16 acre site. It features a comprehensive pedestrian and bike path system along Tropical Shores Way, Gulf Beach Road, providing multi-modal interconnections with Estero Blvd. The CPD request remains consistent with 4-A-2.

Policy 4-A-3 _The town shall protect residential neighborhoods from intrusive commercial activities.

- ▶ Response _ The requested CPD does not present a commercial expansion into a residential area since the entire site has historically been used as commercial/retail grocery and package store. The new CPD de-intensifies the site's historic and allowable uses and intensities previously developed (the Topps Center) and/or granted by RES 08-08. The 2.16 acre site is functionally separate from the Tropical Shores Way residential and seasonal rental neighborhood street. Approximately three-quarters of the site's perimeter consists of non-residential to non-residential uses, including the Town Hall and the Bay Oaks community complex. All of these facts lead to a finding of "no commercial intrusion into residential neighborhoods", including the Tropical Shores Way neighborhood. Finally, in regard to the Tropical Shores Way neighborhood, the subject property has a limited adjoining non-residential to residential neighboring shared border due to the canal. The CPD's northern future development phase shares a 110-ft border with the 106/108 Tropical Shores Way single family home and associated neighborhood area. The remaining northern site boundary adjoins a man-made canal. The site's entire northern boundary will incorporate a 15-ft Type C Buffer with solid screening wall. The project's first phase fire station has adjacent non-residential to residential uses associated with the seasonal rental 2601 Estero Blvd and 100 Gulf Beach Road homes. The project's Gulf Beach Road will include a 15-ft Type D buffer. The project's perimeter buffering will serve to ameliorate potential non-residential to residential compatibility impacts. The project remains consistent with 4-A-3.

Policy 4-B-5 _"BOULEVARD": a mixed-use district along portions of Estero Boulevard, including less intense commercial areas, historic cottages, and mixed housing types. This category is not intended to allow commercial uses on all properties; its mixed-use nature is intended to remain permanently. For new residential development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map's "platted overlay" indicates a maximum density of 10 units per acre for legally existing dwelling units). To obtain approval for

new or expanded commercial activities, proposals must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code. These qualities and overall consistency with this comprehensive plan shall be evaluated by the town through the planned development rezoning process. Non-residential uses (including motels and churches) now comprise 46.9% of the land in this category, and this percentage shall not exceed 70%.

- ▶ Response _ The development is located within the Future Boulevard category. It is noted that the new CPD does not present a commercial expansion into a residential area. This is so in that the entire site has been used for years as commercial/retail grocery surrounded by Fort Myers Beach civic uses. The requested CPD de-intensifies the allowable uses and intensities previously granted by 08-08. It is noted that the 2.16 acre site is functionally separate from the Tropical Shores Way residential and seasonal rental neighborhood street. The project is mixed use, with an essential civic use for one-half of the site (the new fire station). The other half of the site may be used for lodging, retail, residential or civic uses, consistent with 4-B-5. Approximately three-quarters of the site's perimeter consist of non-residential to non-residential use (commercial, Town Hall and the Bay Oaks community complex). The proposed project contains a mix of uses and will not negatively impact the adjacent civic uses of the Bay Oaks complex and City Hall. The subject property has limited adjoining non-residential to residential neighboring context. Specifically, the northern future development phase shares a 110-ft border with the 106/108 Tropical Shores Way single family home and associated neighborhood area. The remaining northern site boundary adjoins a man-made canal. The northern boundary will incorporate a 15-ft Type C Buffer with solid screening wall. The project's initial fire station phase has adjacent non-residential to residential uses associated with 2601 Estero Blvd and 100 Gulf Beach Road. The project's Gulf Beach Road will include a 15-ft Type D buffer. The project's perimeter buffering will serve to ameliorate potential non-residential to residential compatibility impacts, consistent with 4-B-5.

Policy 4-C-2 _COMMERCIAL INTENSITY: The maximum intensity of allowable commercial development in any category may be controlled by height regulations (see Policy 4-C-4) or by other provisions of this plan and the Land Development Code. Standards in the Land Development Code will encourage more intense commercial uses only in the "Pedestrian Commercial" category. The Land Development Code shall specify maximum commercial intensities using floor-area-ratios (the total floor area of the building divided by the area of the site in the category allowing commercial uses).

- ▶ Response _ The CPD's requested 27,188 sf presents a 28.8% site building coverage, which is well below the regulatory 40% standard and is far less than the former CPD's 50,304 sf intensity. The CPD will comply with the FMB building height rules and standards and will be under the 40% FAR rule. The CPD request remains consistent with 4-C-2.

Policy 4-C-3 _COMMERCIAL LOCATIONS: When evaluating proposals for new or expanded commercial uses in categories where they are permitted, the following principles shall apply: (iv) In the "Boulevard" category, where mixed-use development including some commercial uses may be permissible, landowners may seek commercial rezoning only through the planned development process. Proposals must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code. The following principles shall be considered by the town when evaluating requests for new commercial uses: (a.) Shopping and services for residents and overnight guests are strongly preferred over shopping and services that will attract additional day visitors during peak-season congestion. (b.) Shopping and services that contribute to the pedestrian character of the town are strongly preferred over buildings designed primarily for vehicular access. (vi) The neighborhood context of proposed commercial uses is of paramount importance. The sensitivity of a proposed commercial activity to nearby residential areas can be affected by: (a.) the type of commercial activities (such as traffic to be generated, hours of operation, and noise); (b) its physical scale (such as the height, and bulk of proposed buildings); and (c) the orientation of buildings and parking). Commercial activities that will intrude into residential neighborhoods because of their type, scale, or orientation shall not be approved.

- ▶ Response _ The CPD request is not a new commercial use. The site has been used for retail neighborhood shopping and package store retail. The new CPD reduces the amount of previously approved commercial uses and intensities, from 50,304 sf to 27,188 sf, of which 17,188 sf is Essential services building (the fire station) and the remaining 10,00 sf within the north site future development phase. The CPD remains consistent with 4-C-3.

Policy 4-C-4 _BUILDING HEIGHTS: The Land Development Code shall limit the height of new buildings under most conditions to two stories above flood elevation (exceptions may include the build-back situations (see Policies 4-D-1 and 4-E-1),

- ▶ Response _ The CPD fire station and the future development phase will comply with the Town of Fort Myers Beach LDC 34-631 building height rules with a maximum building height of 30-ft above flood elevation and not to exceed three stories. (see CR zoning district standard).

Policy 4-C-6 _MOTEL DENSITIES: The Land Development Code shall specify equivalency factors between guest units (which include motel rooms) and full dwelling units. These factors may vary based on size of guest unit and on land-use categories on the Future Land Use Map. They may vary between a low of one guest unit and a high of three guest units for each dwelling unit.

- ▶ Response _ The CPD's future phase lodging intensity request is based on 6 units per acre on 0.99 acres at a Boulevard land use 2.5 coefficient, equal to 15 motel/hotel rooms. The new CPD remains consistent with 34-1803 and 34-1415 density rules.

Policy 4-C-8 _ DENSITY TRANSFERS:

- ▶ Response _ No density transfers are proposed.

Policy 4-E-1 _ PRE-DISASTER BUILD BACK:

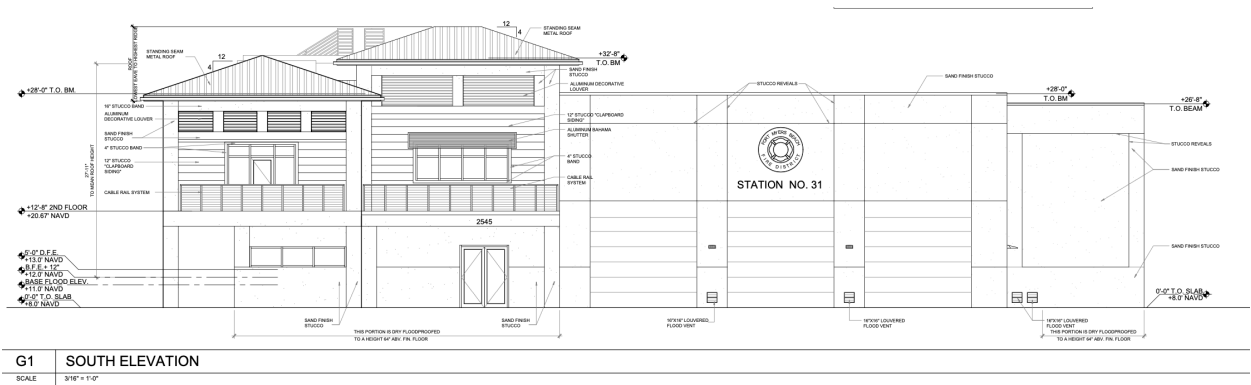
- ▶ Response _ The pre-disaster build back policy is not being utilized for this development.

Policy 7-J-2 _ TRAFFIC IMPACT ANALYSIS AND POTENTIAL DESIGN IMPROVEMENTS THAT COULD OFFSET TRAFFIC IMPACTS:

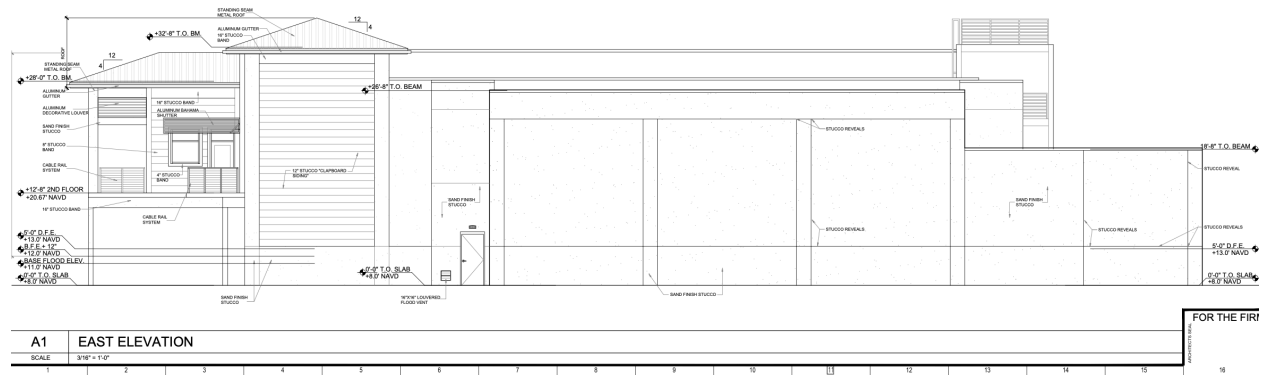
- ▶ Response _ The applicant has submitted a traffic impact analysis. There are no unanticipated traffic impacts and the request serves to de-intensify the site.

PART D. DESIGN STANDARDS COMPLIANCE

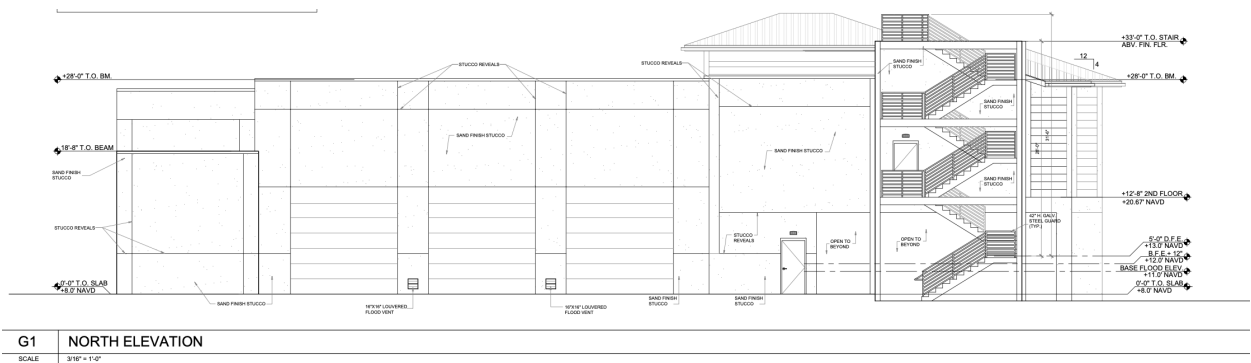
Referring to the revised Architectural Elevations, the CPD's new fire station and MCP will comply with LDC Division Seven 34-991 through 997 Commercial Design Standards as required by 34-951. The same will be true for the future development areas non-residential mixed uses. The new Fire Stations requires a building height deviation, from 33 feet/3 stories, to 35-ft/3 stories (see Deviation Six). All other uses shall meet the 30-ft height standard. The new Fire Station's exterior walls and principal facade comply with 34-994 and 34-995. It roof line and materials will comply with 34-996. The project will include an open space 9/11 Memorial Area consistent with 34-997.



FIRE STATION ESTERO BLVD. FACADE ELEVATION



FIRE STATION GULF BEACH ROAD FACADE ELEVATION



FIRE STATION NORTH CANAL ORIENTATION FACADE ELEVATION



- (1) *Whether there exists an error or ambiguity which must be corrected.*
 - ▶ Response _ Though there is no error or ambiguity in that the site is a formally improved but demolished shopping center, the RES 08-08 MCP is no longer valid and useful to the Fort Myers Beach Fire Control District. The need to replace the Town's Hurricane Ian destroyed fire station is of paramount importance.
- (2) *Whether there exist changed or changing conditions which make approval of the request appropriate.*
 - ▶ Response _ The change of conditions that makes the approval of the CPD request is the vital importance to construct a new fire station to replace the Town's formal fire station that was destroyed by Hurricane Ian
- (3) *The impact of a proposed change on the intent of this chapter.*
 - ▶ Response _ The proposed CPD provides a new primary Fire Station MCP that will allow for the future development of complimentary civic, lodging, retail and office uses that support the Civic Complex/Heart of the Island neighborhood and Boulevard

Future Land Use. These new future uses will be implemented through a formal CPD and MCP Amendment Process consistent with LDC 34-85 and 34-2126. It is noted that almost all of the requests uses are permitted uses as per the previously adopted Resolution 08-08 (see pages 4 - 6).

(4) *The testimony of any applicant.*

- ▶ Response _ The Applicant has documented that the CPD to CPD request is consistent with the Town's Comprehensive Plan and Land Development Code.

(7) *Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.*

- ▶ Response _ The Applicant has documented that the CPD to CPD request is consistent with the Town's Comprehensive Plan goals, objectives and policies. The Future Phase residential density is based on 1 acre/6 units and a 2.5 hotel unit conversion coefficient. Building coverage is far lower than what was previously built and what was approved by 08-08. The requested 27,188 sf FAR is below a permissible 40% FAR site intensity. The density and intensity request is consistent with the Town of Fort Myers Beach Comprehensive Plan.

(8) *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*

- ▶ Response _ The Applicant has provided documentation that the previous approval found that the proposed uses and intensities will not cause increased air, water or noise pollution. Given that the fire station and future mixed uses are much lower in functional intensities, such as and including trip generation, noise and light generation and other impacts, the request continues to meet all performance and locational standards.

(9) *Whether urban services are, or will be, available and adequate to serve a proposed land use change.*

- ▶ Response _ All required urban services are available to adequately serve the new fire station and future phase mixed uses.

(10) *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*

- ▶ Response _ The site has been comprehensively developed and current is characterized by almost 100% impervious with no onsite natural systems. The request does not include any revision to the environmentally critical areas.

(11) *Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.*

- ▶ Response _ The property was previously used for a grocery store and a liquor package store; these are fairly intense commercial uses. The FMB Fire Station is the primary use, with construction to begin in 2025. The mixture, type and density of uses, along with site plan for future phase development is undetermined and will be subject to a formal CPD amendment process. The north site future development phase will include a north property line Type C buffer with screening wall to mitigate potential impacts to the Tropical Shores neighborhood. The north site future development phase will include a 5-ft Type A buffer for the shared fire station boundary. When compared to Res. 08-08, the 2024 CPD lessens intensity of impacts and eliminates a significant number of non-residential public activities and uses including restaurants and water taxis. As per previous 08-08 findings, the CPD to CPD request will not impact adjoining FMB civic uses.

(12) *Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.*

- ▶ Response _ The applicant submitted a Traffic Impact Statement with Level of Service analysis for the CPD request. The report states that the CPD to CPD zoning request will not have an impact on the current level of service of Estero Boulevard.

(13). *LDC Section 34-216 specifies that “the recommendation made to the town council must be supported by the guidelines set forth in § 34-85” as well the findings must address whether the criteria found in this section can be addressed. These criteria are discussed below:*

a. The proposed use or mix of uses is appropriate at the subject location;

- ▶ Response _ Most of the proposed 2024 uses are currently permitted CPD uses. The 2024 CPD requests the following new additional uses:
 - ▶ Essential services building; parks; Assisted living facility; Place of worship; Religious facility; School; Bed and breakfast;
- ▶ Response _ The 2024 CPD deletes the following uses:
 - ▶ Restaurant, Bar or cocktail lounge, On-premises consumption of alcoholic beverages, Dock use (for water taxi), and Transit terminal. New 2024 uses are Essential service building, Parks, Places of worship, Religious facility, School, Assisted living facility, and Bed and Breakfast.
- ▶ Response _ The 2024 MCP will have the FMB Fire Station as the initial site and building development. The new MCP meets all of the development standards, with the exception of identified requested code deviations. The mix of uses proposed

continue to be appropriate for the Civic Complex/Heart of the Island neighborhood and Boulevard Future Land Use.

b. *Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations;*

- ▶ Response _ The applicant's MCP, development standards and low intensity provide safeguards to accommodate the public interest.

d. The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:

1. Policies 4-B-4 and 4-C-3 on commercial uses in the "mixed residential" category.
2. Policies 4-B-5 and 4-C-3 on commercial rezonings in the "boulevard" category.
3. Policy 4-C-4 on building heights taller than the standard height limit.
4. Policy 4-C-8 on density transfers.
5. Policy 4-E-1 on pre-disaster build back.
6. Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts.

- ▶ Response _ Refer to the Comprehensive Plan Consistency Assessment identified on pages 6 through 11.

PART F. SCHEDULE OF DEVIATIONS AND JUSTIFICATION

As key elements to the CPD to CPD zoning request, the Owner/Applicant requests the following deviations consistent with 34-212(3) and 34-932(b).

Deviation One LDC 10-416(d)(3) Type D Site Perimeter ROW Buffer Standard, that requires a 15-ft landscape buffer with 5 trees per 100 LF, a double hedge and no wall; for Estero Blvd. to require a 15-ft landscape buffer with a double hedge augmented with 18 shrubs per 100 LF and no wall.

- ▶ Request _ The deviation advances the objective of building a new fire station MCP by designing and developing a Town of Fort Myers Beach Fire Station that maximizes safe and effective Estero Blvd direct access characterized by having unimpeded and unobstructed views hindered by tall perimeter buffer trees. By eliminating potentially obscuring trees, the deviation advances the achievement of high ordered emergency response times. A double staggered hedge, augmented by additional shrub landscaping based on 18 shrubs per 100 LF, will serve to ensure that the public interest and welfare in having an aesthetically pleasing, well landscaped Estero Blvd will be maintained. The deviation benefits the public interest by securing a safe, unobstructed direct emergency vehicle egress and ingress. The deviation benefits public health, safety and welfare since it fully advances the development of the new

FMB Fire Station based upon the Fire Control District's design criteria. Deviation One is consistent with policies 1-A-3, 1-B-2 and 3-A-4.

Deviation Two LDC 10-285(a) Major Street Access Connection, that requires a 250-ft centerline connection spacing; to require a 152-ft +/- Fire Station driveway to Tropical Shores Way connection separation, and a 102-ft +/- Gulf Beach Road connection separation.

- ▶ Request _ The deviation achieves the objectives of the Fire Station MCP in designing and developing a new Town of Fort Myers Beach Fire Station that has safe and effective direct access onto Estero Blvd so as to secure high-ordered emergency response times. The connection is at the same centerline location as the access connection that served the Topps Shopping Center. By matching the existing connection spacing and location, the public interest and welfare in advancing effective and efficient emergency response time is achieved. The deviation benefits the public health, safety and welfare interest since it fully advances the development of the new FMB Fire Station based upon the Fire Control District's design criteria. Deviation Two is consistent with the Town of Fort Myers Beach Comprehensive Plan as identified by the following Objectives and Policies:
 - Intergovernmental Coordination OBJECTIVE 14-B Coordination of Services - to ensure coordination in establishing level of service standards for public facilities, providing for efficient delivery of services, monitoring progress of goals and construction of improvements.
 - OBJECTIVE 14-A Intergovernmental Coordination of Plans – Ensure coordination of this comprehensive plan with comprehensive plans of Lee County and the Lee County School Board, other units of local government providing services but not having regulatory authority over the use of land, and with regional and state plans.
 - POLICY IGC14-D-8 The town will exchange information with the Fort Myers Beach Fire Control District and solicit input from the fire district on development proposals.

Deviation Three LDC 34-2013(a)(3) Parking Lot Access Aisle Width, that requires a maximum 25-ft width at the property line; to allow a 76-ft access aisle width at Estero Blvd. as depicted on the MCP, and a maximum 43-ft access aisle width at Tropical Shores Way as depicted on the MCP.

- ▶ Request _ The deviation advances the objectives of the development of a new FMB fire station by designing and developing a facility that has maximum safe and effective direct access with full turning movements for large emergency response vehicles onto both Estero Blvd and Tropical Shores Way. The 76-ft and 43-ft aisle width standards advances the high-ordered emergency response times. A twenty-five foot maximum width standard is not appropriate nor functional for large fire trucks and emergency

response vehicles. The project is designed to facilitate large emergency vehicle ingress and egress turning movement requirements that require large driveway aisle connection widths. The deviation benefits public health, safety and welfare interests by securing safe, effective and direct emergency vehicle egress and ingress based upon the Fire Control District's design criteria. Deviation Three is consistent with policies 1-A-3, 1-B-2, 3-A-4, IGC 14-A, IGC 14-B and IGC 14-D-8.

Deviation Four LDC 10-416(c)(2.a) Parking Lot Internal Landscaping, that requires one tree planted per 250 sf and with one tree for each parking space permeable island; to require no landscaped permeable island and parking lot trees for the Fire Station's north oriented parking lot.

- ▶ Request _ The deviation advances the objectives of the new Fire Station MCP by designing and developing a Town of Fort Myers Beach Fire Station that has a large unobstructed north site parking lot and staging area for large emergency response vehicles. This deviation is essential for the staging and maintaining emergency response vehicles adjacent to Tropical Shores Way. The alternative parking lot landscaping deviation advances the high-ordered emergency response times by maximizes efficient internal large vehicle movements. The deviation benefits public health, safety and welfare interests by securing safe, effective and direct emergency vehicle site parking and circulation movements within the site and towards Tropic Shores Way egress and ingress based upon the Fire Control District's design criteria. Deviation Four is consistent with policies IGC 14-A, IGC 14-B and IGC 14-D-8.

Deviation Five LDC 10-416(c)(2.c) Min. Average Width of Parking Lot Landscaping Area, that requires a minimum average diminution of 10-ft; to require a minimum average dimension of 6.5-ft for the Fire Station's Tropical Shores Way oriented handicapped parking space.

- ▶ Request _ The deviation advances the objectives of the new Fire Station MCP by designing and developing a Town of Fort Myers Beach Fire Station that has a functionally unobstructed south site interior large emergency response vehicle and other vehicle parking and circulation area. The slight 3.5-ft parking island width reduction serves to advance efficient emergency response and other vehicle parking and circulation movement for the Estero Blvd oriented parking area. The deviation benefits public health, safety and welfare interests by securing safe, effective and efficient south site parking and circulation movements along with safe and efficient Estero Blvd egress and ingress based upon the Fire Control District's design criteria. Deviation Five is consistent with policies 1-A-3, 1-B-2, 3-A-4, IGC 14-A, IGC 14-B and IGC 14-D-8.

Deviation Six LDC 34-632(1) that requires computed to be round down to the next whole number, which would allow a computed density of 5.94 units, to be rounded up to but not to exceed 6 dwelling units any combination of uses for the future development area.

- ▶ Request _ The deviation is established by Deviation Five Res. 08-08. In this case the diminimus increase of 0.06 falls well within the established practice of rounding up. Given the narrowest of margins, the public interest is not serviced by discounting one residential unit. The applicant's interest in regulatory consistency and reasonableness is upheld.

FINDINGS AND CONCLUSIONS

The planning and zoning land use findings presented herein demonstrate entitlement to the requested Fort Myers Beach Fire Control District CPD zoning request. The Request Statement confirms adherence to the Town of Fort Myers Beach Comprehensive Plan and the Land Development Code. It is consistent with the intensity set forth in the Town Plan and LDC, is compatible with existing and planned uses, has adequate services and infrastructure required to service the project.



Greg Stuart, MAURP

GS/24006/applicationdevelop/finalreport_1augfinalfmbfirestation_requeststatement.pgs

PART F. SCHEDULE OF DEVIATIONS AND JUSTIFICATION - revised 08/01/24

As key elements to the CPD to CPD zoning request, the Owner/Applicant requests the following deviations consistent with 34-212(3) and 34-932(b).

Deviation One LDC 10-416(d)(3) Type D Site Perimeter ROW Buffer Standard, that requires a 15-ft landscape buffer with 5 trees per 100 LF, a double hedge and no wall; for Estero Blvd. to require a 15-ft landscape buffer with a double hedge augmented with 18 shrubs per 100 LF and no wall.

- ▶ Request _ The deviation advances the objectives of the new Fire Station MCP by designing and developing a Town of Fort Myers Beach Fire Station that has maximum safe and effective direct access onto Estero Blvd characterized by being unimpeded and unobstructed by tall perimeter buffer trees. By eliminating potentially obscuring trees, the deviation advances the achievement of high order emergency response times. A double staggered hedge, augmented by additional shrub landscaping based on 18 shrubs per 100 LF, will serve to ensure that the public interest and public welfare in having an aesthetically pleasing and well landscaped Estero Blvd will be maintained. The deviation benefits the public interest by securing a safe, effective and direct emergency vehicle egress and ingress. The deviation benefits the public health, safety and welfare since it fully advances the development of the new FMB Fire Station based upon the Fire Control District's design criteria. Deviation One is consistent with policies 1-A-3, 1-B-2 and 3-A-4.

Deviation Two LDC 10-285(a) Major Street Access Connection, that requires a 250-ft center-line connection spacing; to require a 127-ft +/- Fire Station driveway to Tropical Shores Way connection separation, and a 126-ft +/- Gulf Beach Road connection separation.

- ▶ Request _ The deviation achieves the objectives of the Fire Station MCP in designing and developing a new Town of Fort Myers Beach Fire Station that has safe and effective direct access onto Estero Blvd so as to secure the highest order of emergency response times. The connection is identical to the long-standing Estero Blvd connection that served the Topps Shopping Center. By matching the existing connection spacing and location, the public interest and welfare in advancing effective and efficient emergency response time is achieved. The deviation benefits the public health, safety and welfare interest since it fully advances the development of the new FMB Fire Station based upon the Fire Control District's design criteria. Deviation Two is consistent with the Town of Fort Myers Beach Comprehensive Plan as identified by the following Objectives and Policies:

- Intergovernmental Coordination OBJECTIVE 14-B Coordination of Services - to ensure coordination in establishing level of service standards for public facilities, providing for efficient delivery of services, monitoring progress of goals and construction of improvements.
- OBJECTIVE 14-A Intergovernmental Coordination of Plans – Ensure coordination of this comprehensive plan with comprehensive plans of Lee County and the Lee County School Board, other units of local government providing services but not having regulatory authority over the use of land, and with regional and state plans.
- POLICY IGC14-D-8 The town will exchange information with the Fort Myers Beach Fire Control District and solicit input from the fire district on development proposals.

Deviation Three LDC 34-2013(a)(3) Parking Lot Access Aisle Width, that requires a maximum 25-ft width at the property line; to allow a 75-ft access aisle width at Estero Blvd. as depicted on the MCP, and a maximum 40-ft access aisle width at Tropical Shores Way as depicted on the MCP.

- ▶ Request _ The deviation advances the objectives of the new Fire Station MCP by designing and developing a Town of Fort Myers Beach Fire Station that has maximum safe and effective direct access with full turning movements for large emergency response vehicles onto both Estero Blvd and Tropical Shores Way. The 75-ft and 40-ft aisle width standards advances the highest order of emergency response times. A twenty-five foot maximum width standard is not appropriate nor functional for large fire trucks and emergency response vehicles. The project is designed to facilitate large emergency vehicle ingress and egress turning movement requirements that require large driveway aisle connection width. The deviation benefits the public health, safety and welfare interest by securing safe, effective and direct emergency vehicle egress and ingress based upon the Fire Control District's design criteria. Deviation Three is consistent with policies 1-A-3, 1-B-2, 3-A-4, IGC 14-A, IGC 14-B and IGC 14-D-8.

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- ▶ Request _ The deviation advances the objectives of the new Fire Station MCP by designing and developing a Town of Fort Myers Beach Fire Station that has a large unobstructed north site interior large emergency response vehicle parking and circulation area. This design feature is essential for the staging emergency response vehicles at the new fire station while entering and exiting onto Tropical Shores Way. The alternative parking lot landscaping standards advances the highest order of emergency re-

sponse times by maximizes efficient internal large vehicle movements. The deviation benefits the public health, safety and welfare interest by securing safe, effective and direct emergency vehicle site parking and circulation movements within the site and towards Tropic Shores Way egress and ingress based upon the Fire Control District's design criteria. Deviation Four is consistent with policies IGC 14-A, IGC 14-B and IGC 14-D-8.

Deviation Five LDC 10-416(c)(2.c) Min. Average Width of Parking Lot Landscaping Area, that requires a minimum average diminution of 10-ft; to require a minimum average dimension of 5-ft for the Fire Station's Estero Blvd. oriented parking lot.

- ▶ Request _ The deviation advances the objectives of the new Fire Station MCP by designing and developing a Town of Fort Myers Beach Fire Station that has a functionally unobstructed south site interior large emergency response vehicle and other vehicle parking and circulation area. The slight 5-ft parking island width reduction serves to advance efficient emergency response and other vehicle parking and circulation movement for the Estero Blvd oriented parking area. The deviation benefits the public health, safety and welfare interest by securing safe, effective and efficient south site parking and circulation movements along with safe and efficient Estero Blvd egress and ingress based upon the Fire Control District's design criteria. Deviation Five is consistent with policies 1-A-3, 1-B-2, 3-A-4, IGC 14-A, IGC 14-B and IGC 14-D-8.

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- ▶ Request _ The deviation is established by Deviation Five Res. 08-08. In this case the diminus increase of 0.06 falls well within the established practice of granting reasonable density by, in this case, very slightly rounding up. Given the narrowest of margins, the public interest is not serviced by discounting one residential unit. The applicant's interest in regulatory consistency and reasonableness is upheld.

FMB Fire Control District _ The Estero Blvd. Fire Station

Future Land Use _ Boulevard

Zoning _ CPD

2024 FMB Fire Station CPD Use Request
CIVIC:
Principal:
Essential services
Essential service equipment
Essential services building
Beach or bay access (1)
Day care center, adult or child (1)
Cultural facility (1)
Theater (1)
Park, community or regional (1)
Parking lot, shared, permanent
Place of worship (1)
Religious facility (1)
Recreation facility, private off-site or public (1)
School (1)
Accessory:
Dwelling unit, caretaker (1)
Subordinate commercial uses
RESIDENTIAL
Principal:

2024 FMB Fire Station CPD Use Request
Dwelling unit, multi-family (1)(2)
Dwelling unit, live/work (1)(2)
Timeshare units (1)(2)(3)
Assisted living facility - subject to 34-1415 (1)(3)
Accessory:
Residential accessory uses (1)
LODGING
Principal:
Rental of any permitted dwelling unit to a single family for periods of one day or longer (1)(2)
Hotel/Motel - guest units must comply with LDC Chapter 34, Article IV, Div. 19 (1)(3)
Bed and Breakfast (1)(2)(3)
Accessory:
Subordinate commercial uses (1)
RETAIL:
Principal:
Laundromat (1)
Personal services (1)
Retail store small (1)
Accessory:
ATM (1)
Commercial accessory uses (1)
OFFICE:
Principal:
Health Care facility (1)
Offices, general or medical (1)
Personal services (1)
Wholesale establishment (1)

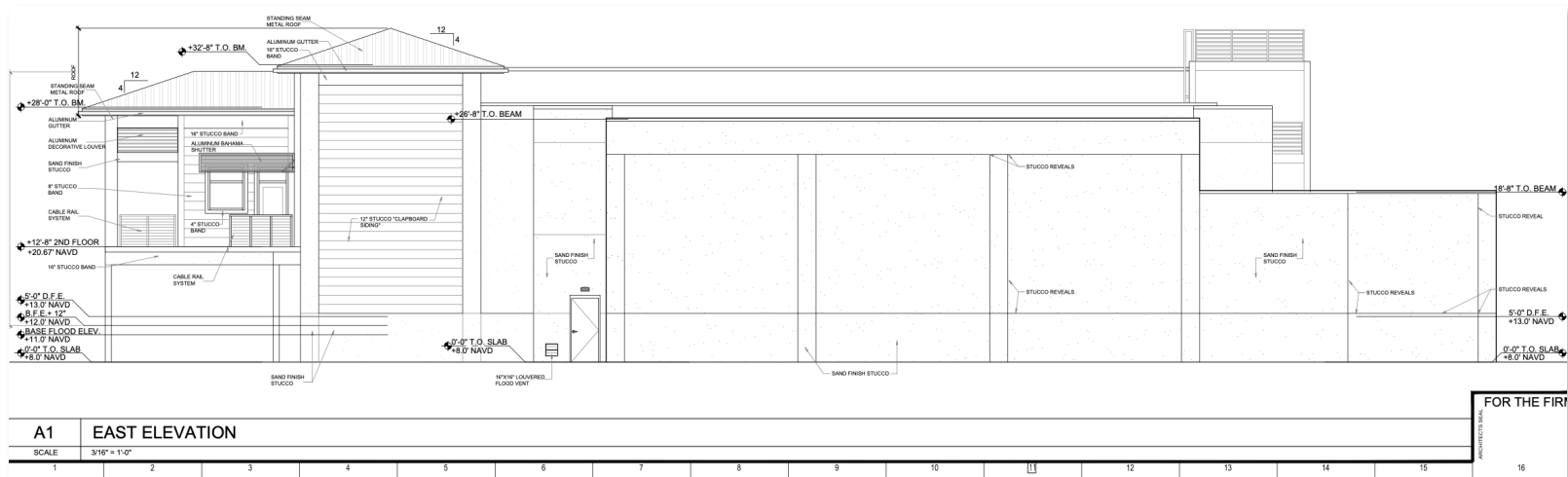
2024 FMB Fire Station CPD Use Request
Accessory:
Administrative office (1)
Home occupation - no outside help (1)
MARINE:
Accessory:
Dock - sole use by occupants of principal use (1)

Footnotes _

- (1) Permitted only within the site's rear, north Future Phase area.
- (2) Not to exceed 6 units in any combination of uses
- (3) Subject to 34-1803 and 34-1415 density rules.

General Comment _ Deleted RES 08-08 uses are Restaurant, Bar or cocktail lounge, On-premises consumption of alcoholic beverages, Dock use (for water taxi), and Transit terminal. New 2024 uses are Essential service building, Parks, Places of worship, Religious facility, School, Assisted living facility, and Bed and Breakfast.

GULF BEACH RD. FACADE ELEVATION



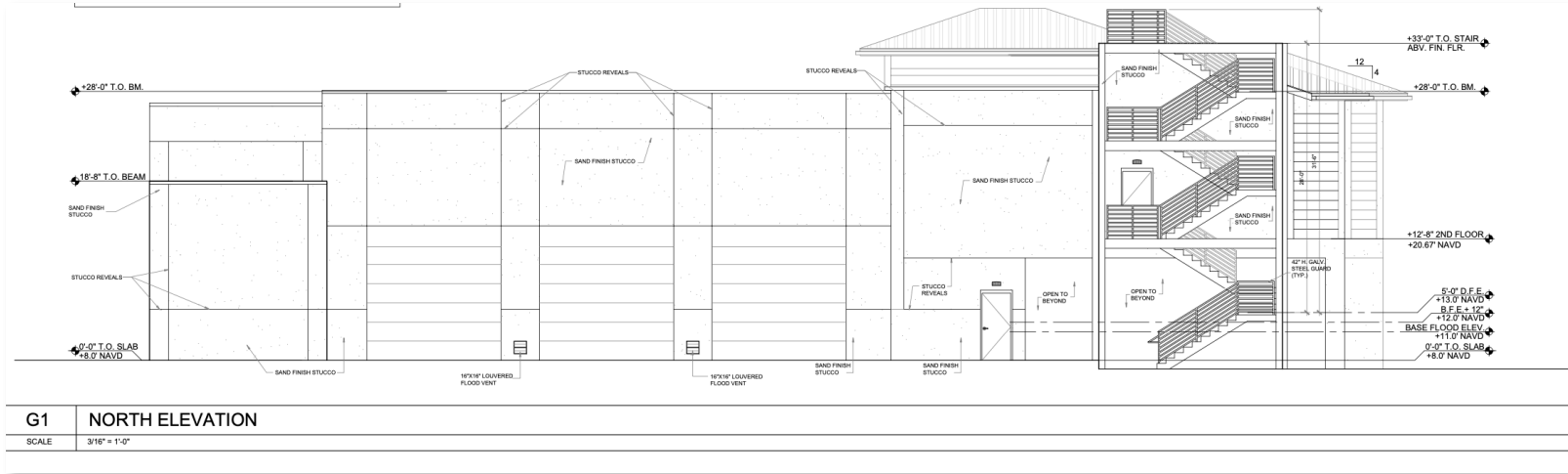
WEST ELEVATION

SCALE 3/16" = 1'-0"

Annotations:

- T.O. STAIR
- +28'-0" T.O. BM. ABV. GRADE
- 12'-8" 2ND FLOOR +20.67' NAVD
- 5'-0" D.F.E. +13.0' NAVD
- 8'-6" = 12' +12.0' NAVD
- BASE FLOOD ELEV. +11.0' NAVD
- 0'-0" T.O. SLAB +8.0' NAVD
- NOTE: PERFORATED METAL SCREEN AT STAIR. THIS FACADE ONLY.
- 1" STUCCO BAND
- 12" STUCCO "CLAYBOARD BOND"
- ALUMINUM BAHAMA SHUTTER
- 4" STUCCO BAND
- 8" STUCCO BAND
- 24" STUCCO BAND
- SAND FINISH STUCCO
- 1" STUCCO "CLAYBOARD BOND"
- 8" STUCCO BAND
- 1" STUCCO BAND
- STANDING BEAM METAL ROOF
- 12
- 4
- ROOF JAWBARGE
- +28'-0" T.O. BM.
- ALUMINUM GUTTER
- SAND FINISH STUCCO
- ALUMINUM DECORATIVE LOUVER
- 8" STUCCO BAND
- TO METAL SCREEN HEIGHT
- CABLE RAIL SYSTEM
- 12" STUCCO BAND
- 5'-0" D.F.E. +13.0' NAVD
- 8'-6" = 12' +12.0' NAVD
- BASE FLOOD ELEV. +11.0' NAVD
- 0'-0" T.O. SLAB +8.0' NAVD
- 16"X16" LOUVERED FLOOD VENT
- THIS PORTION IS DEEP FLOODPROOFED TO A HEIGHT OF ABV. FIN. FLOOR

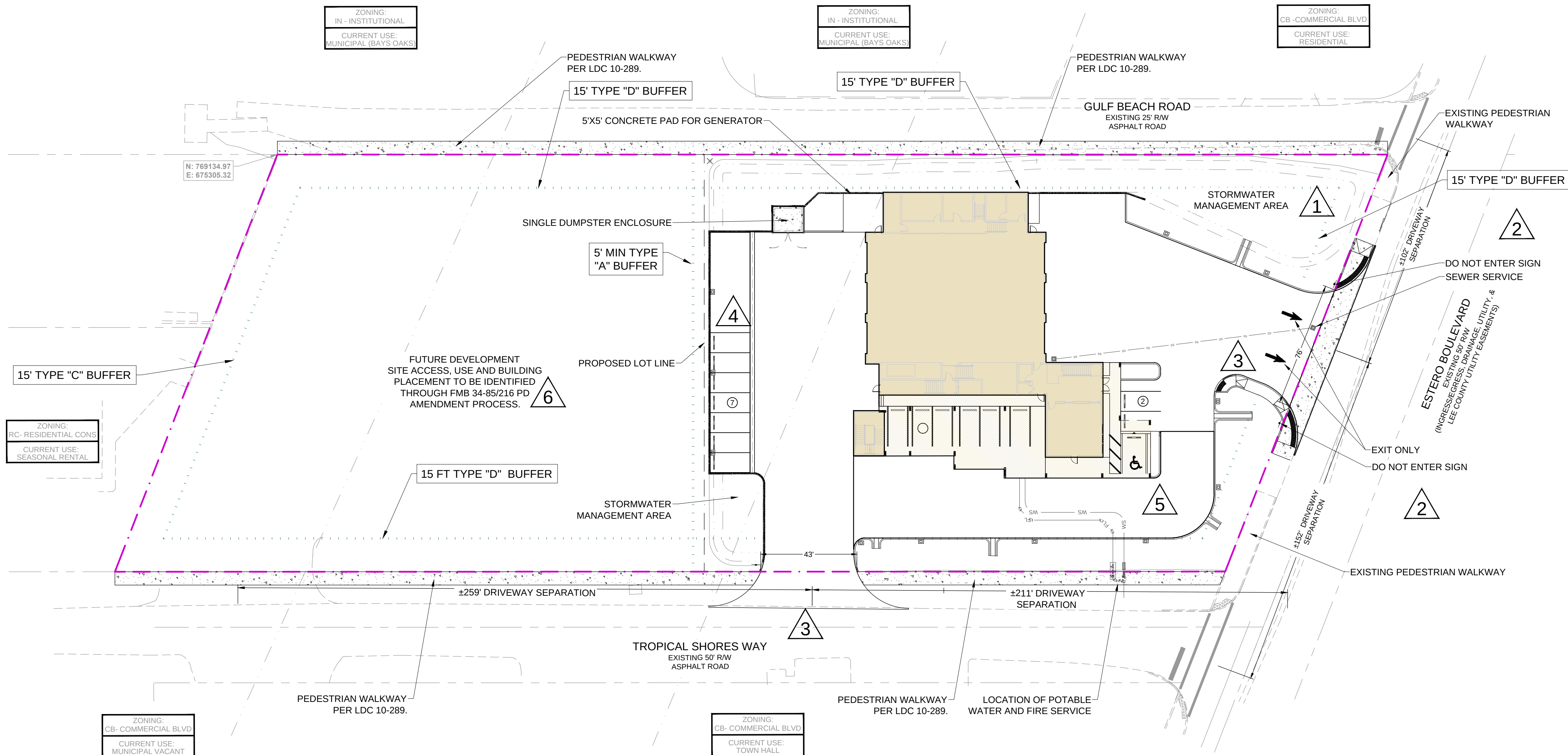
THE NORTH CANAL FACADE ELEVATION



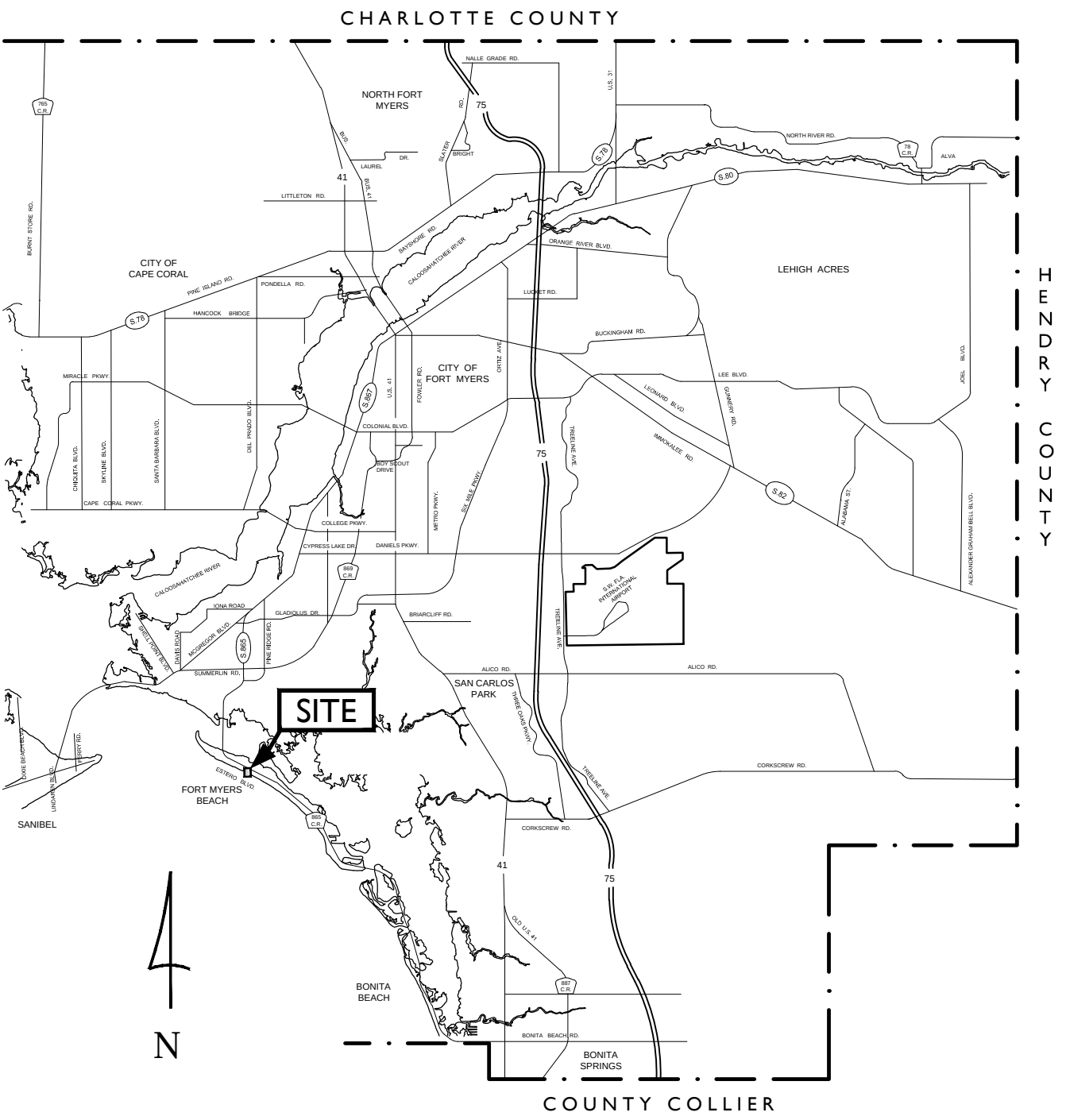
FMB FIRE STATION HEADQUARTERS

LOCATED IN SECTION 19, TOWNSHIP 46 -S, RANGE 24 -E, LEE COUNTY, FLORIDA

ZONING MCP



- DEVIATION SCHEDULE:**
- DEVIATION ONE LDC 10-416(D)(3) TYPE D SITE PERIMETER ROW BUFFER STANDARD, THAT REQUIRES A 15-FT LANDSCAPE BUFFER WITH 5 TREES PER 100 LF, A DOUBLE HEDGE AND NO WALL; FOR ESTERO BLVD. TO REQUIRE A 15-FT LANDSCAPE BUFFER WITH A DOUBLE HEDGE AUGMENTED WITH 18 SHRUBS PER 100 LF AND NO WALL.
- DEVIATION TWO LDC 10-285(A) MAJOR STREET ACCESS CONNECTION, THAT REQUIRES A 250-FT CENTERLINE CONNECTION SPACING, TO REQUIRE A 127-FT +/- FIRE STATION DRIVEWAY TO TROPICAL SHORES WAY CONNECTION SEPARATION, AND A 126-FT +/- GULF BEACH ROAD CONNECTION SEPARATION.
- DEVIATION THREE LDC 34-2013(A)(3) PARKING LOT ACCESS AISLE WIDTH, THAT REQUIRES A MAXIMUM 25-FT WIDTH AT THE PROPERTY LINE, TO ALLOW A 76-FT ACCESS AISLE WIDTH AT ESTERO BLVD. AS DEPICTED ON THE MCP, AND A MAXIMUM 43-FT ACCESS AISLE WIDTH AT TROPICAL SHORES WAY AS DEPICTED ON THE MCP.
- DEVIATION FOUR LDC 10-416(C)(2.A) PARKING LOT INTERNAL LANDSCAPING, THAT REQUIRES ONE TREE PLANTED PER 250 SF AND WITH ONE TREE FOR EACH PARKING SPACE PERMEABLE ISLAND; TO REQUIRE NO LANDSCAPED PERMEABLE ISLAND AND TREES FOR THE FIRE STATION'S NORTH ORIENTED PARKING LOT.
- DEVIATION FIVE LDC 10-416(C)(2.C) MIN. AVERAGE WIDTH OF PARKING LOT LANDSCAPING AREA, THAT REQUIRES A MINIMUM AVERAGE DIMINUTION OF 10-FT; TO REQUIRE A MINIMUM AVERAGE DIMENSION OF 5-FT FOR THE FIRE STATION'S ESTERO BLVD. ORIENTED PARKING LOT.
- DEVIATION SIX LDC 34-632(1) THAT REQUIRES COMPUTED DENSITY TO BE ROUND DOWN TO THE NEXT WHOLE NUMBER, WHICH WOULD ALLOW 5.94 UNITS, TO BE ROUNDED UP TO BUT NOT TO EXCEED 6 DWELLING UNITS FOR ANY COMBINATION OF USES FOR THE FUTURE DEVELOPMENT AREA.

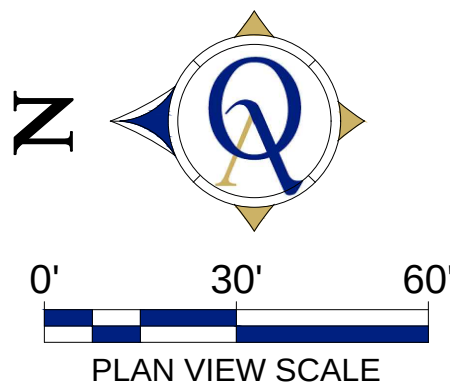


LOCATION MAP

(NOT TO SCALE)

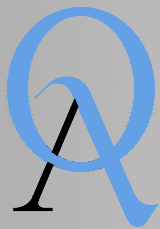
LAND USE & DEVELOPMENT STANDARD SUMMARY TABLE

Future Land Use	Boulevard
Zoning	CPD (LDB-08)
Parcel Number - 2545 Estero Blvd.	194624W3004580000
Parcel Number - 2555 Estero Blvd.	194624W3004580010
Project Site Area	2.16 ac. +/-
* Fire Station Site	1.17 ac. +/-
* North Site Future Phase	0.99 ac. +/-
Project Intensity -	
Fire Station	17,188 sf (1)
Fire Station FAR	33.7%
North Site Future Phase	10,000 sf
North Site Future Phase FAR	23.1%
* Future Phase Residential; or	6 units
* Future Phase Lodging;	15 rooms
Site Development Regulations -	
Min. Lot Area	30,000 sf
Min Lot Width	180 ft
Min Lot Depth	180 ft
Max. FAR	40%
Fire Station Building Height	30 ft/3 stories
Building Setback, Estero Blvd.	25 ft
Building Setback, Gulf Bch. Rd./Tropical Shores Way	15 ft
Building Setback, Rear/Waterbody	15-ft.
Flood Zone	AE13-ft
(1) Fire Station total FAR includes ground level, balcony, ancillary impervious pads and covered entrance at a 34% FAR. The heated and cooled Fire Station 14,800 sf intensity is equal to a 29% FAR.	



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PLOTTED BY: PAUL
FRI 8-2-2024 10:49 AM
210405-ZONING MCP.DWG



Quattrone & Associates, Inc.

Engineers, Planners, & Development Consultants

4301 Veronica Shoemaker Blvd. | Fort Myers, FL 33916 | 239.936.5222 | QAInc.net

210405-ZONING MCP.DWG



Town of Fort Myers Beach
Community Development Services - Planning Division
2731 Oak St,
Fort Myers Beach, FL 33931

NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

Notice is hereby given that the Local Planning Agency/Town Council of the Town of Fort Myers Beach will be conducting a public hearing at the Town Hall Council Chambers located at 2731 Oak St, Fort Myers Beach, Florida, 33931.

TIME: 9 AM/ 6PM

DATE: LPA September 3rd, 2024 (9AM) 1st Town Council September 23rd, 2024 (6PM) 2nd Town Council October 7th 2024 (9AM)

CASE: CPD20240155

ADDRESS: 2545 and 2555 Estero Blvd

APPLICANT: Fort Myers Beach Fire Department

REQUEST: Requesting a rezoning from CPD (Reso. 08-08) to CPD with a Fire Station

TOWN CONTACT: JUDITH FRANKEL [JFRANKEL@FMBGOV.COM](mailto:jfrankel@fmbgov.com)

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence. At this hearing, the **Local Planning Agency/ Town Council** will review the application materials and hear testimony to make a **recommendation/ decision**. Complete records or transcripts of the proceedings are not provided by the Town.

Copies of the application and staff report are available for viewing at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you need reasonable accommodation, contact Town Hall at 239-765-0202.



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Town of Fort Myers Beach
2731 Oak St,
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
2731 Oak St,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

Town of Fort Myers Beach
2731 Oak St,
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
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«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»



Business Impact Estimate

This form should be included in the agenda packet for the item under which the proposed ordinance is to be considered and must be posted on the Fort Myers Beach website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference: **AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 2545 AND 2555 ESTERO BLVD., GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-00458.0000; 19-46-24-W3-00458.0010 IN FORT MYERS BEACH, TO ALLOW A FIRE STATION AND A MIXED USE DEVELOPMENT INCLUDING CIVIC, RESIDENTIAL, LODGING, RETAIL, OFFICE AND MARINE USES; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

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

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

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

- d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

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

1. Summary of the proposed ordinance (must include a statement of the public purpose, such as serving the public health, safety, morals and welfare):

The proposed ordinance amends the zoning district map for the Town of Fort Myers Beach. This serves the public health, safety and orderly development of the Town. Fort Myers Beach Fire Control, the owner and applicant for 2545 and 2555 Estero Blvd., is requesting to rezone the subject parcels from CPD (governed by RES 08-08) to a CPD that allows the development of a new Fort Myers Beach Fire Station. The Fire Control district intends to divide the total site into two parts. They will develop 1.17 acres fronting Estero Boulevard with a new Fire Station shown on the Master Concept Plan (MCP) in the application packet. The remaining 0.99 acres is intended to be sold and later developed and an MCP is not provided for that portion of the tract. However, the applicant has requested a reduction in the number of uses for that portion of the tract with the aim of reducing the impact of any future development on neighboring properties.

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

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

There are unlikely to be direct compliance costs associated with Ordinance 24-27.

Ordinance 24-27 does not impose any new charge or fee on businesses.

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

The Town will not likely incur additional costs.

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

This rezoning does not increase restrictions on existing businesses. The schedule of allowed uses is altered for a .99 acre portion of the lot to be more compatible with the abutting neighborhood.

4. Additional information the governing body deems useful (if any):*[You may wish to include in this section the methodology or data used to prepare the Business Impact Estimate. For example: Fort Myers Beach staff solicited comments from businesses in the Fort Myers Beach as to the potential impact of the proposed ordinance by contacting the chamber of commerce, social media posting, direct mail or direct email, posting on Fort Myers Beach website, public workshop, etc. You may also wish to include efforts made to reduce the potential fiscal impact on businesses. You may also wish to state here that the proposed ordinance is a generally applicable ordinance that applies to all persons similarly situated (individuals as well as businesses) and, therefore, the proposed ordinance does not affect only businesses].*

Not applicable.

1. **Request:**

Meeting Date: September 23, 2024

Request to continue to a date certain of October 7, 2024 at 9:00 AM

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING A TOWN OF FORT MYERS BEACH ORDINANCE, AND APPROVING THE CONDITIONS FOR THE COMMERCIAL PLANNED DEVELOPMENT REZONING FOR THE PROPERTIES LOCATED AT 1836 AND 1840 ESTERO BLVD. (LESS THE AREA WITHIN THE ENVIRONMENTALLY CRITICAL ZONING DISTRICT), GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W4-03200.00CE AND 19-46-24-W4-03200.1010 FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

An ordinance must be approved to allow the applicant to re-develop their timeshare building, the number of units is being vested through the use of the Post Disaster Buildback policy, the CPD would allow them to propose deviations based on building design and inconsistencies with developing their building and having to meet some of the architectural standards.

What the action accomplishes:

Approval of the CPD ordinance and the requested deviations will allow for the rebuild of the 75 timeshare units that existed pre-storm.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Jason Smalley, Senior Planner

5. **Background:**

The applicant is requesting a Commercial Planned Development (CPD) ordinance for the re-development of a 75-unit timeshare condominium. The applicant is requesting four deviations: 1) an additional 46-feet in height above the Design Flood Elevation (DFE); 2) relief from the requirement to screen under-building parking areas; 3) relief from requirements that the building provide an entrance on Estero Blvd.; 4) relief from requirements that building with more than 50-feet of frontage on Estero Blvd. provide operable doors for public access no more than 50-feet apart, and; 5) a request to increase FAR from 1.4 to 1.67 if the deviation to remove the ground-floor area is not approved.

The LPA voted 5-2 to recommend that the Town Council approve the application and the addition of two Conditions of Approval.

Attachments:

1. Final 24-28, CPD EIBC CPD Ordinance (1) ns
2. TC Staff Report
3. Exhibit A - Schedule of Uses_Conditions of Approval
4. Exhibit B - Master Concept Plan
5. Comprehensive Plan_Applicant Narrative
6. Deviations_Applicant Narrative
7. Landscape Plan
8. EIBC Architectural Renderings

Financial Impact:

Unknown

6. **Alternative Action**

APPROVE WITH CONDITIONS or DENY

7. **Management Recommendations:**

Approve with conditions

8. **Recommended Approval:**

Kendra Rosa, Zoning Coordinator

Created/Initiated - 9/16/2024

ORDINANCE 24-28
(Estero Beach Club)

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING A REQUEST TO REZONE PROPERTY LOCATED AT 1836 AND 1840 ESTERO BLVD. (LESS THE AREA WITHIN THE ENVIRONMENTALLY CRITICAL ZONING DISTRICT), GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W4-03200.00CE AND 19-46-24-W4-03200.1010 FORT MYERS BEACH FROM DOWNTOWN DISTRICT TO COMMERCIAL PLANNED DEVELOPMENT; APPROVAL OF FIVE (5) DEVIATIONS FROM THE FORT MYERS BEACH CODE OF ORDINANCES, A SCHEDULE OF USES AND A MASTER CONCEPT PLAN; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, Estero Island Beach Club Association, Inc., owner, and Fred Drovdlc, AICP with RVi Planning & Landscape Architecture, as agents for the owner (collectively "Applicant") of property generally located 1836 and 1840 Estero Blvd, Fort Myers Beach and identified as STRAP numbers 19-46-24-W4-03200.00CE and 19-46-24-W4-03200.1010 ("the Property"), filed an application to rezone the Property from Downtown zoning district to Commercial Planned Development, with an attached Master Concept Plan (MCP) in order to redevelop a timeshare condominium and associated facilities, on the Property's 1.92+/- acres more or less; and

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

WHEREAS, the applicant has indicated the subject property is under common control and Estero Island Beach Club Association serves as the managing entity listed in the public records of Lee County Property Appraiser; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on June 11, 2024; and

WHEREAS, at the September 3, 2024 public hearing the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, as required by Section 34-85 of the Town of Fort Myers Beach Land Development Code ("LDC"); and

WHEREAS, at the September 3, 2024 public hearing the LPA recommended approval by

a ____ to ____ vote based on a finding that the approval is in compliance and consistent with the Town of Fort Myers Beach Comprehensive Plan and the LDC; and

WHEREAS, a Business Impact Estimate has been prepared and timely published on the Town's website; and

WHEREAS, on August __, 2024 the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Section 34-85 of the LDC; and

WHEREAS, the Town Council voted to have a second reading of the proposed Ordinance and a public hearing on this matter was legally advertised in on the ____ day of _____, 2024, which is 10 days prior to the Town Council second reading on the ____ day of _____, 2024; and

WHEREAS, at the _____, 2024 public hearing, the Town Council gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Section 34-85 of the LDC; and

WHEREAS, there are no outstanding fees associated with any notice, advertisement, and consulting services required by the Town; and

WHEREAS, Exhibit A contains a schedule of uses and development regulations and conditions associated with this proposed development and is incorporated by reference into the Ordinance; and

WHEREAS, Exhibit B contains a Master Concept Plan associated with this proposed development and is incorporated by reference into the Ordinance; and

WHEREAS, the Town Council finds that this request to APPROVE/ APPROVE WITH CONDITIONS/ DENY, is a unique and individual application which does not set precedent for future development or rezoning applications.

WHEREAS, approval of this request and Ordinance requires approval of the following deviations from the LDC:

Deviation #1

Deviate from LDC §34-675(b)(3)c that requires a maximum height of 40 feet above base flood elevation and no taller than three stories for properties on the south side of Estero Boulevard east of the main pedestrian crossing in the Downtown zoning district to allow a height of:

- 91 feet as measured from one foot over base flood elevation (BFE+1) or
- 87 feet above FDEP design flood elevation (DFE) and
- eight (8) stories (seven (7) stories over ground level parking).

Deviation #2

Deviate from LDC §34-992(c) requiring the principal facades of hotel buildings that will not contain commercial uses below base flood elevation to screen under-building parking areas in a manner acceptable to the town manager or designee to allow no screening of the parking area.

Deviation #3

Deviate from LDC §34-995(b)(1) regarding entrances requires a primary entrance and views into the first floor of commercial buildings to allow the primary entrance to all buildings to face the street.

Deviation #4

Deviate from LDC §34-995(b)(4) regarding entrances requires a primary entrance and views into the first floor of commercial buildings to allow where building frontages exceed 50 feet, operable doors or entrances with public access shall be provided along streets at intervals averaging no greater than 50 feet.

Deviation #5

Deviate from LDC §34-633 which requires the gross floor area to include the total floor area of all stories of a building within the surrounding exterior walls (whether the walls are solid or screened), plus all area below an elevated building that is six feet or more in height, plus all stories of covered parking to allow not counting the ground level covered parking area towards FAR and therefore meeting the required 1.4 FAR for this Property or approval of an increase of the FAR from 1.4 to 1.67.

WHEREAS, the Town Council considered all relevant factors and made the following formal findings of fact regarding the rezoning request before making its final decision on the Ordinance as required by Sections 34-85 and 34-216 of the LDC:

- a. Minor ambiguities were resolved through the deviation process.
- b. Long-standing blighted conditions on the subject property can be ameliorated through approval of this rezoning.
- c. The rezoning would carry out the policies and requirements of the Comprehensive Plan and LDC.
- d. The Town Council carefully considered the testimony of the Applicant, the recommendations of staff and of the LPA, and testimony from the public.
- e. The rezoning would be consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses in the Comprehensive Plan.
- f. The rezoning would meet or exceed all performance and locational standards set forth for the proposed use.
- g. Urban services are available and adequate to serve the proposed use.
- h. The rezoning would protect, conserve, or preserve environmentally critical areas and natural resources.
- i. The rezoning would be compatible with existing and planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- j. The rezoning would not place an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.

- k. The rezoning, with the mitigating factors volunteered by the Applicant and the special conditions imposed by the Town Council, is consistent with the Fort Myers Beach Comprehensive Plan, LDC, and other applicable town ordinances or codes.
- l. The proposed use or mix of uses is appropriate at the subject location.
- m. Sufficient safeguards to the public interest are provided by the recommended special conditions to the Master Concept Plan and by other applicable regulations.
- n. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.
- o. The rezoning meets all specific requirements of the Comprehensive Plan that are relevant to the request, including the following:
 - Policy 4-C-4 on building heights taller than the standard height limit
 - Policy 4-C-6 on hotel/motel densities
 - Policy 4-C-8 on density transfers
 - Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts

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

- 1. All aspects of the proposed development, as limited by the special conditions being imposed by the Town Council, are compatible with the surrounding area, including building height, traffic flow, and intensity of use.
- 2. The proposed development, as modified by these deviations, clearly exceeds all standards of the Fort Myers Beach Comprehensive Plan.
- 3. The proposed development, with the modified deviations being approved, does not exceed any maximum intensities contained in the Fort Myers Beach Comprehensive Plan.
- 4. Granting these deviations will enhance the achievement of the objectives of the proposed development.
- 5. The general intent of the LDC to protect public health, safety, and welfare will be preserved and promoted with these deviations.
- 6. These deviations operate to the benefit, or at least not to the detriment, of the public interest.
- 7. These deviations are consistent with the Fort Myers Beach Comprehensive Plan.

WHEREAS, the Town Council finds that this application to APPROVE/ APPROVE WITH CONDITIONS/ DENY Ordinance 24-__ as provided herein **consistent/ not consistent** with the Town of Fort Myers Beach Comprehensive Plan and LDC.

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

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

Section 2. The Town Council determines the Applicant did meet its burden of proof that the requested rezoning in Ordinance No. 24-__ **does/ does not** meet the requirements of the Town Comprehensive Plan and LDC. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council hereby **DENIES/ APPROVES/ APPROVES WITH CONDITIONS** the requested rezoning.

Section 3. Town Ordinance 24-__ is adopted subject to the Schedule of Uses and conditions of approval in Exhibit A and the Master Concept Plan in Exhibit B, both of which are attached hereto and incorporated herein by this reference.

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

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

Section 6. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

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

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

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

ADOPTED this ____ day of August 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

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

EXHIBITS

Exhibit A – Schedule of Uses and Conditions of Approval

Exhibit B – Master Concept Plan



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT

TYPE OF CASE: Commercial Planned Development (CPD)

CASE NUMBER: CPD20240015

CASE NAME: 1836 Estero Blvd (incl. all associated addresses) CPD rezoning request to develop a timeshare building with five (5) deviations from the Land Development Code.

TOWN COUNCIL HEARING DATE: September 23rd, 2024, at 6 PM

STAFF RECOMMENDATION: Approve with Conditions

**PREPARED/
SUBMITTED BY:** Jason Smalley- Senior Planner

I. LPA OUTCOME

Discussion during the meeting focused on the redesign of the building and pushing the mass of the building further towards to rear of the property. There were questions from LPA members and the public on whether the proposed building separation would cause loss of views across the property or create permanently shaded areas along the Town's beach access on Palm Ave.

The LPA voted 5-2 to recommend that the Town Council approve the application and the addition of two Conditions of Approval.

II. APPLICATION SUMMARY

Applicant/Owner: Estero Island Beach Club Association Timeshare

Request: A Commercial Planned Development (CPD) rezoning for the re-development of a 75-unit timeshare condominium. The applicant is requesting five deviations: 1) an additional 58-feet in height above the Design Flood Elevation (DFE); 2) relief from the requirement to screen under-building parking areas; 3) relief from requirements that the building

provide an entrance facing Estero Blvd.; 4) relief from requirements that buildings with more than 50-feet of frontage on Estero Blvd. provide operable doors for public access no more than 50-feet apart, and; 5) a request to remove the lowest floor area from FAR calculations.

Subject property: See attached Master Concept Plan

Physical Address: 1836 Estero Blvd; 1840 Estero Blvd (building address)

STRAP #: 19-46-24-W4-03200.00CE & 19-46-24-W4-03200.1010

FLU: Pedestrian Commercial + Recreation

Zoning: Downtown + Environmentally Critical (Not part of rezone)

Adjacent zoning and land uses:

North:	DOWNTOWN Temporarily Occupied Commercial
South:	ENVIRONMENTALLY CRITICAL AREA (EC) Beach
East:	DOWNTOWN Hotel
West:	DOWNTOWN Commercial/ Residential

III. BACKGROUND AND ANALYSIS

Background:

Estero Island Beach Club was originally developed in 1981 under Lee County. The building was developed with 75 units, across two buildings that were two and three stories tall. The northernmost building on the property appears to have been very minimally seaward of the CCCL. The site contained multiple recreation facilities, like swimming pools, one of which was originally developed seaward of the CCCL. The applicant states that they will need to apply later for a Special Exception to repair the remaining pool which appears to be seaward of the control-line. The proposal for redevelopment has been designed to ensure that all new structures will be constructed landward of the 1978 CCCL.

The applicant's lot is situated in the Downtown zoning district, surrounded by a multitude of uses, including resort uses which makes the redevelopment of the 75 timeshare units in-line with the other uses in the area.

Analysis:

Deviation #1: Deviate from LDC §34-675(b)(3)c that requires a maximum height of 40 feet above base flood elevation and no taller than three stories for properties on the south side of Estero Boulevard east of the main pedestrian crossing in the Downtown zoning district; to allow a height of:

- 102 feet as measured from one foot over base flood elevation (BFE+1) or
- 98 feet above FDEP design flood elevation (DFE) and
- ten (10) stories [nine (9) stories over ground level parking].

APPLICANT JUSTIFICATION: The permitted height in the Downtown District at this location is a maximum of 40 feet above base flood elevation per LDC [§34-675(b)(3)c. The BFE+1 at this location is 16 feet and the FDEP design flood elevation (DFE) to the Lowest Horizontal Structural Member (LHSM) is 20.3 feet. The proposed structure is a single building of 118 feet in total height from sea level.

The purpose of the Downtown zoning district is to create a desired quality and character of the center of the pedestrian-oriented commercial activities within the town. There is a mix of resort/hotel, rental and commercial properties that surround the subject property to the south and east with three (3) single-family homes to the north.

To the immediate south of the site is Beach Access #30 at the end of Palm Avenue and the Diamond Head Beach Resort – a 13-story resort that includes 121 hotel rooms, event space, commercial space, restaurant and bars, and other associated amenities.

Also, in the general vicinity are some of Fort Myers Beach's most high intensity establishments, including the Lani Kai Resort approximately 900 feet north of the site and the new Margaritaville Resort just ¼ mile north. 700 feet to the south of the subject property is the Neptune Resort, which recently filed for redevelopment of a 6-story structure and doubling the number of hotel rooms from 71 to 140 keys. Thus, the site is well located for redevelopment of timeshare resort uses in relation to similar uses, densities, and intensities in the Town's Downtown area.

Finally, the revised layout uses height to create a vertical development rather than sprawled horizontal layout that significantly increase the viewsheds to the Gulf of Mexico and the beach.

STAFF ANALYSIS: Staff recognizes that the location of the applicant's lot is adjacent and relatively close to multiple resorts which are both more intense and are taller than the proposed structure.

During review staff had recommended that the applicant consider redeveloping multiple buildings to avoid having to stack all 75 units within a taller, more intense structure. The applicant and the timeshare owners have priorities which include making the logistics of running the timeshare (housekeeping, maintenance etc.) easier if the staff of the complex doesn't have to move between separate building, and across the property. The applicant has also prioritized beach views for the owners—which is required in their HOA by-laws—but staff cannot review based on this requirement of their private deed restrictions and have noted that the open view requirements could be developed along with redevelopment of the 75 units while providing minimum landscaping and parking counts.

[*]To provide clarity regarding the overall height proposed, the building will be 112-feet above grade, not above sea level as was mentioned in the applicant's deviation justifications.

Deviation #2: Deviate from LDC §34-992(c) requiring the principal facades of hotel buildings that will not contain commercial uses below base flood elevation to screen under-building parking areas in a manner acceptable to the town manager or designee; to allow no screening of the parking area.

APPLICANT JUSTIFICATION: The use before the storm and the proposal is for timeshare units. Even though timeshare is categorized as hotel/motel and considered a commercial use, there is no storefront or retail/office uses on the ground floor. Because of the V-Zone screening is not desired. Moreover, because of the increased design flood elevations as determined by FEMA being nearly 21 feet from ground there is an opportunity to leave the parking under the first habitable floor unscreened to allow a view through the understory parking. Now, with that said, the property is proposing a 5-foot landscape buffer around the perimeter of the property, landscape islands in the new parking areas that will provide landscape-based improvements.

STAFF ANALYSIS: The applicant has proposed a series of plantings around the building which will partially obscure the ground-floor area, including parked vehicles. This requirement is somewhat at-odds with the LDC requirement that ground-floors on the beach-side of Estero be developed free of obstructions to mitigate risks during a storm event. Staff believes that with the proposed landscape

screening that the intent of the code has been respected, while at the same time meeting floodplain safety regulations.

Deviation #3: Deviate from LDC §34-995(b)(1) regarding entrances requires a primary entrance and views into the first floor of commercial buildings where:

- (1) The primary entrance to all buildings shall face the street

APPLICANT JUSTIFICATION: The use before the storm and the proposal is for timeshare units. Even though timeshare is categorized as hotel/motel and considered a commercial use, there is no storefront or retail/office uses on the ground floor that would dictate the needs for pedestrian interaction or entrances into storefronts.

STAFF ANALYSIS: The requirement to provide an entrance on Estero is less relevant when the proposed building is a condominium or timeshare since they do not plan to attract pedestrians or guests who are not renting/ occupying a unit. Not having an entrance on Estero will not largely affect their business or visitors to the island.

Deviation #4: Deviate from LDC §34-995(b)(4) regarding entrances requires a primary entrance and views into the first floor of commercial buildings where:

- (4) Where building frontages exceed 50 feet, operable doors or entrances with public access shall be provided along streets at intervals averaging no greater than 50 feet;

APPLICANT JUSTIFICATION & STAFF ANALYSIS: Please see Deviation #3

Deviation #5: Deviate from LDC §34-633 which requires the gross floor area include the total floor area of all stories of a building within the surrounding exterior walls (whether the walls are solid or screened), plus all area below an elevated building that is six feet or more in height, plus all stories of covered parking; to eliminate counting the ground level covered parking area towards FAR and meet the required 1.4 FAR for this subject property.

APPLICANT JUSTIFICATION: The LDC §34-675(c)(2) that limits the FAR of properties fronting on Estero Boulevard and fronting on the Bayfront pedestrian plazas to a maximum of 1.4.

The area of the subject property landward of the 1978 Lee County CCCL is 1.92 acres or 83,635.2 square feet. The land area used in the calculation is the gross

square footage within the site's private property line, minus wetlands, canals or other waterbodies, and minus any land designated "recreation" on the comprehensive plan's future land use map. Schedule of Deviations & Justifications Estero Island Beach Club CPD Page 2 of 3 The proposed building has an approximate footprint of 16,500 square feet on the parking level and a mix of floor areas on the 3-4 story building on Estero Boulevard and the nine (9) livable stories over 1st floor parking.

- The total proposed floor area is 120,000 square feet resulting in an FAR of 1.43.
- Approval of the deviation to eliminate counting the first-floor parking area in the FAR calculation reduces the floor area to 103,000 square feet. The result is an FAR of 1.23 in compliance with the maximum FAR of 1.4 permitted in the Downtown zoning district at this location.

It is our understanding that the Town staff, LPA and Council have moved towards future LDC amendments making this request permanent thus the request meets the intent of the will of the Town. If the deviation were to not be approved the project intends to comply with the maximum FAR of 1.4 by adjusting the building floor area.

STAFF ANALYSIS: Staff agrees that the Town uses a relatively unique method for determining the Floor Area Ratio (FAR) which includes the calculation of ground-floor area in the calculation of maximum development on a property. The Town Council has previously allowed for applicants to request, through deviation, that the ground-floor area be removed from the calculation.

Staff wishes to note that should the request to remove ground-floor area from the FAR calculation be denied by Council that the applicant must request a deviation from the LDC maximum FAR for the location in the Downtown zoning district, they would need to request an increase from 1.4 FAR to 1.43 FAR. Should the request to remove the ground-floor area from the calculation be approved then the plans would meet the maximum allowable development area for this portion of Downtown, 1.4 FAR.

IV. FINDINGS AND CONDITIONS

LDC Sec. 34-85(b) and (c) and 34-216(2) sets forth the required considerations and findings for the approval of a rezoning.

Considerations. In reaching its decision, the town council shall consider the following, whenever applicable:

(1) Whether there exists an error or ambiguity which must be corrected.

Staff response: No errors or ambiguities exist.

(2) Whether there exist changed or changing conditions which make approval of the request appropriate.

Staff response: The previous structure was destroyed by Hurricane Ian and redevelopment of the site makes the requests appropriate.

(3) The impact of a proposed change on the intent of this chapter.

Staff response: No impact on the intent of this chapter will occur.

(4) The testimony of any applicant.

(5) The recommendation of staff and of the local planning agency.

(6) The testimony of the public.

(7) Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.

Staff response: The proposed development is in compliance with the intensity of the district. If we were to apply density to the use, it would exceed the density without the Post Disaster-buildback that is requested. The new structure will be designed to current building and flood requirements which is supported by the comprehensive plan.

(8) Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.

Staff response: The proposed development will meet performance standards set forth in 34-2031. There are no special location standards for mixed use developments.

(9) Whether urban services are, or will be, available and adequate to serve a proposed land use change.

Staff response: The urban services exist in this location.

(10) Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

Staff response: The request will have no impact on environmentally critical areas and natural resources. The applicant may be required to request Special Exceptions at a later time to address at least one of the pools which existed pre-storm and which may extend further seaward of the 1978 CCCL.

(11) Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.

Staff response: The property has provided short-term rentals (timeshare) for a number of

years, without incident. The proposed redevelopment of the 75 units and the proposed site-changes to not present a hazard, nuisance or reasonably be a detriment to the wider area.

(12) Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.

Staff response: This use in this location will not place an additional burden on the transportation network or other facilities and services.

(13) For planned development rezonings, see [§ 34-216](#) for additional considerations.

(c) Findings. Before granting any rezoning, the town council shall find that the requested zoning district complies with:

(1) The Fort Myers Beach Comprehensive Plan.

Staff response: The proposed uses and requested deviations for the CPD comply with the Comprehensive Plan.

(2) This chapter.

Staff response: The proposed uses comply with this chapter except in regard to the deviations.

(3) Any other applicable town ordinances or codes.

Staff response: The proposed request complies with the town ordinances and codes, except in regard to the deviations.

(4) For planned development rezonings, see [§ 34-216](#) of this chapter for additional findings.

a. The proposed use or mix of uses is appropriate at the subject location;

Staff response: The proposed mix of uses is appropriate in this location, it is in the Boulevard Future land use and Civic Center Mixed-Use District.

b. Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations;

Staff response: Sufficient safeguards are provided for the public interest.

c. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development;

Staff response: All conditions are related to the impacts on the public interest.

d. The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:

1. Policies 4-B-4 and 4-C-3 on commercial uses in the "mixed residential" category.

Staff response: Not applicable.

2. Policies 4-B-5 and 4-C-3 on commercial rezonings in the "boulevard" category.

Staff response: The proposal is in compliance with these policies.

3. Policy 4-C-4 on building heights taller than the standard height limit.

Staff response: The request for additional height is proposed as part of the planned development rezoning process. The requested height appears to be appropriate for the location, providing a relatively open area, free from structures on the side of the building adjacent to a residential area.

4. Policy 4-C-8 on density transfers.

Staff response: Not applicable.

5. Policy 4-E-1 on pre-disaster build back.

Staff response: Not applicable.

6. Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts.

Staff response: The proposed development has a similar use to the previous development and, no adverse impact on traffic is anticipated.

Findings for Deviation Requests:

Per Sec. 34-216(4) all deviations must be approved, approved with modification, or rejected based upon a finding that:

a. Each item enhances the achievement of the objectives of the planned development; and

Staff response: The requested deviations allow the development of the site.

b. The general intent of this chapter to protect the public health, safety and welfare will be preserved and promoted; and

Staff response: The proposed deviations preserve public health.

c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and

Staff response: The deviations are not a detriment to the public interest, additional parking may need to be provided at a later date depending on impacts to surrounding uses.

d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.

Staff response: The deviations are consistent with the comprehensive plan.

V. CONDITIONS OF APPROVAL

1. Development shall provide signage warning exiting vehicles of pedestrian traffic within the Town's Palm Ave. and Palm Ave. beach accesses.
2. The final architectural design shall be substantially similar to the design approved by the Town Council.
3. The applicant shall provide a more detailed landscaping plan utilizing a type-B buffer and using largely 'Florida Friendly' species, or other salt-tolerant plants and trees.
4. Approval of this variance does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.

VI. STAFF RECOMMENDATIONS

Staff has reviewed the site plans, elevations and deviations for the redevelopment of Estero Island Beach Club

Staff recommends **APPROVAL** of Ord. 24-**XX** with the five (5) deviations contained therein.

VII. EXHIBITS

Exhibit A – Schedule of Uses

Exhibit B – Master Concept Plan

Exhibit A – Schedule of Uses and Conditions of Approval

Schedule of Uses

Principal:

- Administrative offices
- Beach access
- Essential services and essential service equipment
- Home occupation, no outside help
- Hotel/motel
- Hotel/condo
- Parking, surface and garage
- Recreational facilities –private on-site
- Rental of any permitted dwelling unit for periods of one day or longer
- Resort accessory uses
- Timeshare units (fractional ownership)
- Temporary uses

Accessory:

Resort accessory uses, including:

- Rental of beach furniture and cabanas
- Meeting space
- Signs
- Business center
- Subordinate commercial uses

Conditions of Approval

1. Development shall provide signage warning exiting vehicles of pedestrian traffic within the Town's Palm Ave. and Palm Ave. beach accesses.
2. Approval of this variance does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.

ESTERO ISLAND BEACH CLUB

MASTER CONCEPT PLAN

**RESIDENTIAL MEDIUM DENSITY (RM)
1836-1840 ESTERO BLV , FORT MYERS
Fort Myers Beach, FL 33931.**

JOB DESCRIPTION

ESTERO ISLAND BEACH CLUB SCOPE OF WORK AIMED AT CONSTRUCTING 75 TIMESHARE UNITS INCLUDING THE LANDSCAPING AND THE STORM WATER MANAGEMENT DEVICES PER THE INITIALLY PERMITTED SPECIFICATIONS.

AUTHORITY HAVING JURISDICTION

TOWN OF FORT MYERS BEACH

GOVERNING CODES

- FLORIDA BUILDING CODE - BUILDING - 8TH EDITION (2023)
FLORIDA BUILDING CODE - EXISTING - 8TH EDITION (2023)

DRAWING INDEX

SHEET #	Description
T-0	COVER SHEET
C-0	AERIAL MAP & SITE PLAN
C-1	MASTER CONCEPT PLAN
C-2	EMERGENCY ACCESS
C-3	ELEVATIONS



Location Map

SCALE: 1:300



Vicinity Map

SCALE: 1:300

**MECA Engineering
Corporation**

5237 Summerlin Commons Blvd., Suite 460
Fort Myers, FL 33907
T: (239) 275-2598 F: (219) 962-3969
www.mecaengineering.com



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SEALED BY

ON THE DATE
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SEAL.

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EXPIRES:
02/28/2025

ESTERO ISLAND BEACH CLUB
MASTER CONCEPT PLAN
1836-1840 ESTERO BLV, FORT MYERS
BEACH, FL 33931

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ESTERO ISLAND BEACH CLUB

MASTER CONCEPT PLAN

1836-1840 ESTERO BLV, FORT MYERS

BEACH, FL 33931

Project No.: FL-32-901

Drawn: Checked:

Date: 07/11/24

Scale: 1" = 30'

Sheet Title: AERIAL MAP & SITE PLAN

Sheet Number: C-0

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AUTHORIZATION NO. 3889

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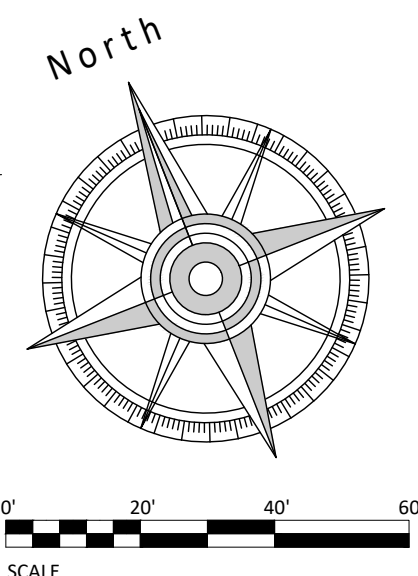
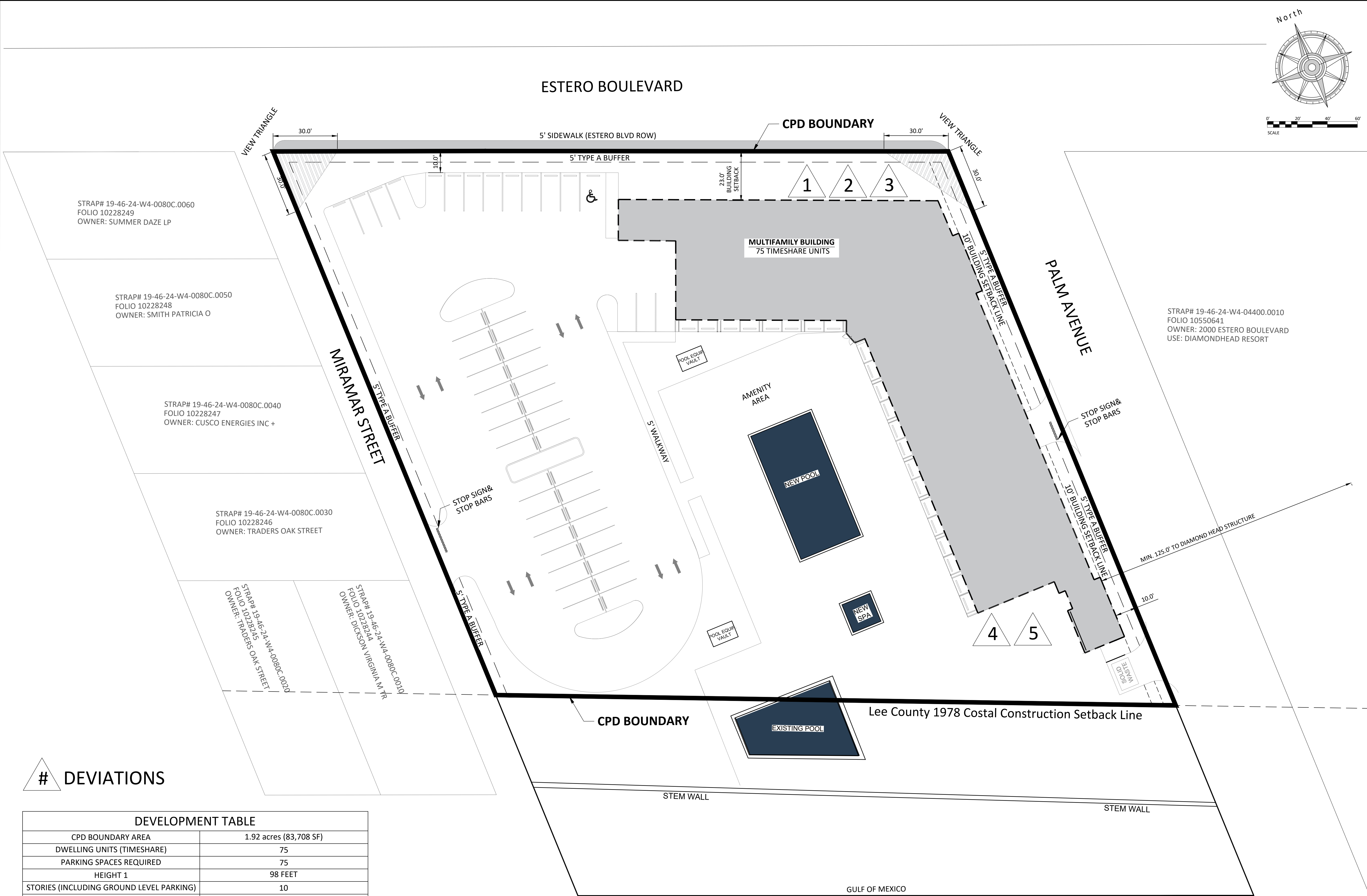
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Description

By

Revision

Page 322 of 673



DEVIATIONS

DEVELOPMENT TABLE	
CPD BOUNDARY AREA	1.92 acres (83,708 SF)
DWELLING UNITS (TIMESHARE)	75
PARKING SPACES REQUIRED	75
HEIGHT 1	98 FEET
STORIES (INCLUDING GROUND LEVEL PARKING)	10
SETBACK, STREET (ESTERO BOULEVARD)	23 FEET (BUILDING)
	10 FEET (PARKING)
SETBACK, STREET (PALM)	10 FEET
SETBACK, STREET (MIRAMAR)	50 FEET
REAR/1978 CCCL SETBACK	0 FEET
FLOOR AREA RATIO 2	1.23 (PENDING PER DEVIATION APPROVAL)

REVISION	
No.	Description
1	
2	
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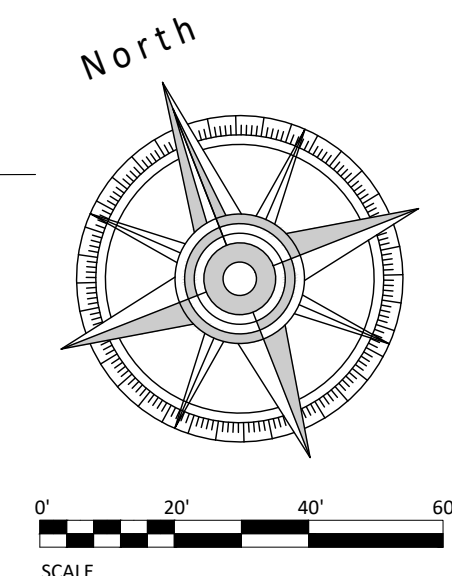


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SEAL

**ESTERO ISLAND BEACH CLUB
MASTER CONCEPT PLAN**
1836-1840 ESTERO BLV, FORT MYERS
BEACH, FL 33931

Project No.: FL-32-901	
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ESTERO ISLAND BEACH CLUB CPD Request Narrative & Comprehensive Plan Compliance

I. Request

Estero Island Beach Club Association, Inc. ("Applicant") is requesting approval to rezone two (2) parcels totaling 1.92+/-acres, from the Downtown zoning district to Commercial Planned Development (CPD), while maintaining 0.78+/-acres of land seaward of the 1978 Lee County Coastal Construction Control Line (CCCL) within the EC zoning district. The CPD will allow for the post-disaster redevelopment of the site with the 75 timeshare units, the same density existing prior to Hurricane Ian. Maximum building height requested is 118 feet over sea level and ten (10) stories [nine (9) stories of units over ground level of parking], for a height of 102 feet, as measured from one foot over base flood elevation (BFE+1), or 98 feet, as measured from FDEP design flood elevation (DFE) to the Lowest Horizontal Structural Member (LHSM). The site will connect to centralized utilities, provide on site parking on surface lots and under the building and move access points to secondary streets.

II. Property History & Existing Conditions

The subject property is generally located on the gulf side of Estero Boulevard approximately 1/2 mile southeast of Times Square. The location is the designated "Downtown" area with the heaviest concentration of resort-tourism and commercial businesses, as well as multi-story buildings, such as the Diamond Head Beach Resort to the immediate south.

Per the LDC requirements for height, stories and floor-to-area ratio (FAR) the project is located on the south side of Estero Boulevard east of the main pedestrian crossing fronting on Estero Boulevard.

The property was developed as the Estero Island Beach Club in 1981 with 75 timeshare units in two (2) buildings. The northern structure abutting Miramar Street was three stories tall, while the southern structure abutting Palm Avenue was two stories tall. These buildings were arranged perpendicular to the gulf with an "L" shape to the southern building that limited the view corridor to the Gulf to 40+/- feet from Estero Blvd. The property included three (3) pool areas serving as private, on-site amenities for the guests, including a pool located seaward of the 1978 Lee County CCCL, and beach access.

The site has two direct access points onto Estero Blvd., multiple access points from Miramar Street, and surface parking backing out onto Palm Avenue. The site provided 87 parking spaces with direct pull in spaces on Palm Avenue.

The existing site was permitted and built prior to the incorporation of the Town of Fort Myers Beach, which resulted in the property and its improvements being legal non-conforming, as the Town adopted a maximum building height of three stories and 40 feet in the Downtown District in this location, and a maximum density of 6 units per acre. The built site density was 39 du/ac (75 DUs on 1.92 acres landward of the CCCL).

Like much of Fort Myers Beach, the site was significantly impacted due to Hurricane Ian. The buildings are not habitable and must be demolished and rebuilt. The beachfront pool and pool deck are intact, a portion of which extends beyond the 1978 Lee County CCCL. The intention is to redevelop the entire property to the prior density to current Florida Building Code and FEMA standards, while resurfacing the pool that is mostly seaward of the 1978 Lee County CCCL and replacing the pool equipment, which is landside of the 1978 Lee County CCCL.

III. Surrounding Land Uses

The underlying future land use category ("FLU") is Pedestrian Commercial landward of the 1978 Lee County CCCL and Recreation seaward of the 1978 Lee County CCCL. The property is zoned Downtown landward of the CCCL and Environmentally Critical seaward of the 1978 Lee County CCCL. Likewise, all surrounding properties are in the Downtown zoning district, and the Pedestrian Commercial future land use category.

The purpose of the Downtown zoning district is to create a desired quality and character of the center of the pedestrian-oriented commercial activities within the town. There is a mix of resort/hotel, rental and commercial properties that surround the subject property to the south and east with three (3) single-family homes to the north.

To the immediate south of the site is Beach Access #30 at the end of Palm Avenue and the Diamond Head Beach Resort – a 13-story resort that includes 121 hotel rooms, event space, commercial space, restaurant and bars, and other associated amenities.

Also, in the general vicinity are some of Fort Myers Beach's most high intensity establishments, including the Lani Kai Resort approximately 900 feet north of the site and the new Margaritaville Resort just ¼ mile north. 700 feet to the south of the subject property is the Neptune Resort, which recently filed for redevelopment of a 6-story structure and doubling the number of hotel rooms from 71 to 140 keys. Thus, the site is well located for redevelopment of timeshare resort uses in relation to similar uses, densities and intensities in the Town's Downtown area.

Table 1 – Surrounding Land Uses

	Future Land Use	Zoning	Existing Land Uses
North	Pedestrian Commercial	Downtown	Single Family homes
South	Pedestrian Commercial	Downtown	Hotel / Resort (Diamond Head Beach Resort)
West	Recreation	Environmental Conservation	Gulf of Mexico
East	Pedestrian Commercial	Downtown	Commercial

IV. Proposed Development

The enclosed Master Concept Plan provides the proposed layout of the redesigned site. As noted above, the Applicant is requesting post-disaster buildback of the 75 units that existed prior to Hurricane Ian in a manner that is modern/marketable, attractive, and safe. The proposed redevelopment will provide a more resilient structure to protect public health, safety, and welfare, as well as property values amidst future storm-surge and wind events.

HEIGHT, STORIES and FAR

Per the LDC requirements for height, stories and floor-to-area ratio (FAR) the project is located on the south side of Estero Boulevard east of the main pedestrian crossing [§34-675(b)(3)c] fronting on Estero Boulevard [§34-675(c)(2)].

Height

The permitted height in the Downtown District at this location is a maximum of 40 feet above base flood elevation per LDC [§34-675(b)(3)c. The BFE+1 at this location is 16 feet and the FDEP LHSM is 20.3 feet.

The proposed structure is a single building of 118 feet in total height from sea level:

- 10 stories (9 stories over 1 story of ground-level structured parking)
- 102 feet measured from Base Flood Elevation plus 1-foot (16 feet)
- 98 feet measured from FDEP LHSM (20.3 feet)

Stories

Per LDC [§34-675(b)(3)c at this location in the Downtown District a building may be no taller than three (3) stories.

The proposed building is ten (10) stories with the bottom floor consisting of parking and the remaining nine (9) floors containing timeshare units, office, and accessory uses.

FAR

The FAR permitted at this location in the Downtown zoning district per LDC §34-675(c)(2) is 1.4. Per LDC §34-633 the gross floor area includes the total floor area of all stories of a building within the surrounding exterior walls (whether the walls are solid or screened), plus all area below an elevated building that is six feet or more in height, plus all stories of covered parking, but not including any area whose roof is screened rather than solid (such as swimming pool enclosures).

The land area used in the calculation is the gross square footage within the site's private property line, minus wetlands, canals or other waterbodies, and minus any land designated "recreation" on the comprehensive plan's future land use map. The area of the subject property landward of the 1978 Lee County CCCL is 1.92 acres or 83,635.2 square feet.

The proposed building has an approximate footprint of 16,500 square feet on the parking level and a mix of floor areas on the 3-4 story building on Estero Boulevard and the nine (9) livable stories over 1st floor parking.

- The total proposed floor area is 120,000 square feet resulting in an FAR of 1.43.
- Approval of the deviation to eliminate counting the first-floor parking area in the FAR calculation reduces the floor area to 103,000 square feet. The result is an FAR of 1.23 in compliance with the maximum FAR of 1.4 permitted in the Downtown zoning district at this location.

It is our understanding that the Town staff, LPA and Council have moved towards future LDC amendments making this request permanent thus the request meets the intent of the will of the Town.

If the deviation were to not be approved the project intends to comply with the maximum FAR of 1.4 by adjusting the building floor area.

DENSITY

The density of 75 dwelling units results in a density of 27.8 dwelling units per acre (du/ac) using the entire 2.7 acres or 39 du/ac using the 1.92 acres landward of the 1978 Lee County CCCL. This density is vested per the Post-Disaster Buildback provisions.

IMPROVED VIEW CORRIDOR

The view corridor created by the proposed building design is approximately 90+/- feet wide measured from the Miramar Street right-of-way to the proposed building edge. As noted above, the existing structures only provided a view shed of 40+/- feet in width. Thus, the CPD proposes a significant public benefit via enhanced Gulf of Mexico views from Estero Blvd. and adjoining properties by more than doubling the width of the view corridor the beach. The single building design will cluster the development towards Palm Avenue and the shared property line with Diamond Head, while maintaining expansive view corridors and mitigating impacts to the single-family uses along Miramar Street.

INGRESS/EGRESS

Access and circulation are accommodated as shown on the MCP to provide improved ingress and egress when compared to existing conditions by eliminating an access point onto Estero Blvd in compliance with LDC §34-676(d)(1). Access will no longer be permitted directly to parking spaces from Palm Avenue. A single access point from Palm Avenue is now proposed to reach internal parking spaces with parking block facing Palm Avenue. Finally, the access point on Miramar Street that was closest to the Estero Boulevard intersection has been removed creating greater intersection separation and improving safety.

PARKING

Parking will be improved. The major change is code compliance by not having parking spaces that back out into a right-of way on Palm Avenue.

The former site provided 87 parking spaces. The proposed site plan proposed 87. The parking requirements are determined in LDC §34-2020(d) for standard residential units, while timeshare units are under hotel parking in §34-1804 that requires for 1.5 spaces per unit larger than 450 square feet. The worst-case parking requirement would be 75 dwelling units x 1.5 spaces per unit = 112.5 spaces. §34-676(a) provides off-street parking reductions in the Downtown district, which in this location is by multiplying the requirement by 67 percent; therefore, the worst-case requirement would be 112.5 spaces x .67 = 75 spaces.

EXISINTG AMENITIES

The MCP proposes to maintain the existing pool that is seaward of the 1978 Lee County CCCL and only make minor cosmetic improvements such as painting, as the amenity remains structurally intact post-lan, in conformance with the LDC provisions governing post disaster buildback.

V. Infrastructure

The subject property was developed with 75 timeshare units since 1981 and has been adequately served by public utilities and services due to its urban location and general proximity to the Town's and County's investment in infrastructure. No increase in units is proposed through this CPD, thus additional evidence of infrastructure availability is not required by the application.

VI. Post-Disaster Buildback Compliance

Pursuant to LDC §34-3238(2), a property that is more than 50% damaged may be rebuilt according to the post-disaster buildback regulations in the Town's Land Development Code. Outlined below are the regulations pertaining to Post-Disaster Buildback and the CPD's compliance with the Town's requirements in LDC §34-3238(2).

A. The building must meet the floodplain regulations for new buildings, as provided in Article IV of Ch. 6 of this LDC.

To comply with local, state, and federal regulations the building will be constructed to meet or exceed modern floodplain regulations. The minimum finished floor of the building will be constructed to FDEP LHSM.

B. The building must meet the coastal construction requirements that apply to new structures and portions thereof, as provided in Article III of Ch. 6 of this LDC and in state regulations. Due to these requirements, habitable major structures and most minor structures that are damaged by more than 50 percent must be rebuilt landward of the 1978 coastal construction control line (CCCL).

The existing development placed all major structures landward of the 1978 Lee County CCCL, except for a beachfront pool that extends seaward of the CCCL. The proposed building will comply with this regulation and be placed entirely landward of the CCCL. The existing pool will be maintained seaward of the CCCL, as it was not damaged beyond 50 percent. Any improvements to this pool will be limited to "cosmetic" updates, pool equipment replacement and maintenance, such as repainting.

C. The building must comply with all current building, life safety, and accessibility codes.

As previously noted, the newly constructed building will comply with local, state, and federal regulations. This includes the Florida Building Code, safety, and accessibility requirements. All structural modifications to the site will obtain required permits and inspections from the Town and applicable agencies.

D. Residential buildings. A rebuilt residential building may exceed the density limits for new buildings on vacant land but cannot exceed the legally documented number of dwelling units in the building immediately before the natural disaster.

This does not directly apply as the former and proposed building is a timeshare building which is a commercial use. However, the plan proposes to develop the same density (75 units) that existing prior to Hurricane Ian as documented in the recorded Declaration of Condominium documents.

F. All buildings. The new building must comply with all other zoning and development regulations except where compliance with such regulations would preclude reconstruction otherwise intended by Policy 4-D-1 of the comprehensive plan.

The proposed request is to rezone the property from Downtown to a Commercial Planned Development (CPD) zoning category. The proposed development is to comply with the development regulations of the Downtown zoning district except for those identified in the deviations request for height, number of stories and design standards regarding primary entrance locations and screening of parking areas and to allow the density of the former

building. Through this rezoning petition the proposed building will comply with all LDC regulations as outlined in the development standards portion of this application. Further, §VII of this request narrative provides detailed consistency between the proposed project and the town's comprehensive plan.

VII. Decision-making Compliance

The following is an analysis of the CPD's consistency with the criteria for Rezoning in the LDC §34-85(b) in bold.

(1) Whether there exists an error or ambiguity which must be corrected.

The rezoning of the property does not create error or ambiguity but rather prevents future discrepancy issues. The CPD zoning district allows for with specific development regulations to meet unique site designs such as those constructing a legal non-conforming use using post disaster buildback in a restrictive zoning district. The CPD allows for a unique design to promote things such as larger view corridors through greater height and unique setbacks.

(2) Whether there exist changed or changing conditions which make approval of the request appropriate.

The Town of Fort Myers Beach and Estero Island have been changed by Hurricane Ian. Furthermore, the building code and flood zones have changed significantly since the site was first developed over 40 years ago. The proposed CPD will allow for development of a safe and modern structure, that complies with current development standards, and is more resilient to future weather events.

(3) The impact of a proposed change on the intent of this chapter.

N/A

(4) The testimony of any applicant.

As a quasi-judicial process, the CPD zoning will allow for substantive and competent evidence to be presented to and considered by the Local Planning Agency for recommendation and Town Council for a decision or conditions for approval. The testimony presented will conclude that the request is consistent with the goals, objective and policies of the Comprehensive Plan and all applicable development regulations.

(5) The recommendation of staff and of the local planning agency.

The Town Council will consider the staff report and recommendation as well as the report and recommendation of the LPA, which will be rendered after a public hearing where the staff and applicant will present evidence, the public will speak, and the LPA is permitted to ask questions of all parties.

(6) The testimony of the public.

During the quasi-judicial process, the public is invited to present evidence for support, concerns, or issues with the proposed development in an advertised forum according to Sunshine laws of Florida.

(7) Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.

The proposed development considers Fort Myers Beach Comprehensive Plan and does not seek to increase density or change use. The site will comply with modern post-disaster buildback policies in the Comprehensive Plan and LDC, by meeting flood regulations and life safety and ADA requirements. The requested height increases will be compatible with surrounding building heights in this intensive Downtown core of the Town, while providing increased view corridors to the Gulf of Mexico for the benefit of the public.

(8) Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.

The existing structures have been significantly damaged. With the ability to buildback the site under the same density and use, the development program will meet or exceed performance and locational standards. The newly constructed building will remove direct access onto Estero Boulevard helping with traffic flow and be served by the side streets as required by LDC 34-676(b)(1). It will also contribute to improved performance and functionality of the Downtown area by addressing safety, Gulf viewsheds, and an enhanced built form along Estero Blvd.

(9) Whether urban services are, or will be, available and adequate to serve a proposed land use change.

The proposed request does not increase density or intensity of the site. The 75 units have been served by adequate services and will continue to be served post-redevelopment.

(10) Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

The proposed development will occur on impacted portions of the site where development historically occurred. No new impacts to environmentally sensitive areas are proposed. The project will comply with all local and state regulations pertaining to the area seaward of the CCCL through compliance with the stringent EC zoning district.

(11) Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.

The proposed development is identical in use and density with the former use of the property. The increased height and stories will be designed in such a way to not create negative impacts to the surrounding land uses by locating the building closest to Diamond Head and maximizing the setback to the single-family uses to the north. The CPD will enhance compatibility in terms of public viewsheds based on the building location.

(12) Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.

The proposed development will serve to improve the vehicular and pedestrian access by eliminating curb cuts from Estero Boulevard improving circulation. The use will be identical to the existing density which already is served by Estero Boulevard. No TIS has been provided as the site will not generate more trips than the development that existed pre-Hurricane Ian.

According to LDC §34-216, Planned Development Rezonings must also comply with the following criteria:

a. The proposed use or mix of uses is appropriate at the subject location;

The use and location are appropriate for the proposed CPD, as the same use and density has existed on the site since 1981. It has long been a multifamily timeshare development with 75 units. The proposed request will not increase the density or intensity of the site. Additionally, the proposed development is similar in height and size to those in the surrounding area.

b. Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations;

The MCP, development standards and schedule of uses ensure there are sufficient safeguards to the public interest, relating to access, building placement, view corridors, and setbacks.

c. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development;

The Applicant will coordinate with Staff relating to appropriate conditions of approval for the CPD.

d. The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:

1. Policies 4-B-4 and 4-C-3 on commercial uses in the "mixed residential" category.

N/A

2. Policies 4-B-5 and 4-C-3 on commercial rezonings in the "boulevard" category.

N/A

3. Policy 4-C-4 on building heights taller than the standard height limit.

The proposed building height demonstrates consistency with the surrounding development patterns, both existing and proposed. The proposed eight (8) story structure will be located on the southernmost portion of the site adjacent to the 13-story Diamond Head Beach Resort. This

will maximize separation from nearby single-family homes and also significantly increase the public viewshed of the Gulf of Mexico from Estero Blvd. Surrounding heights are analyzed on the Surrounding Heights Map to further demonstrate the proposed height will be compatible with the built form in this Downtown core of the Town.

4. Policy 4-C-8 on density transfers.

N/A

5. Policy 4-E-1 on pre-disaster buildback.

N/A

6. Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts.

The CPD will not result in significant traffic impacts as the site's existing density and intensity will remain the same.

VII. Comprehensive Plan Consistency Narrative

The following is an analysis of how the proposed Comprehensive Plan Amendment is consistent with the goals, objectives, and policies (GOPs) of the Town of Fort Myers Beach Comprehensive Plan. The adopted GOP headings are listed below, and the Applicant's compliance analysis is shown in **bold**.

POLICY 1-A-1 Changes along Estero Boulevard should improve on the characteristics that make it a boulevard in character and not just in name: safe and interesting to walk along, impressive landscaping, and scaled to people rather than high-speed traffic.

The proposed CPD rezone includes enhanced pedestrian safety and streetscape aesthetics via building placement, in direct compliance with this policy, including the elimination of two driveways directly onto Estero Boulevard that have historically brought pedestrian and car traffic into conflict. The MCP will provide sidewalk connectivity throughout and increase views of the Gulf of Mexico that generally improve the aesthetics of Estero Boulevard.

POLICY 1-B-3 Identify potential mechanisms to implement and maintain special amenities such as entry features, monuments, or other special landscape projects.

The CPD proposes a widened view shed (90-feet-wide) to the Gulf and greater focus on the public beach access #30.

POLICY 4-A-1 Maintaining the town's current "human scale" is a fundamental redevelopment principle. Fort Myers Beach is best enjoyed from outside a car; new buildings should be designed to encourage use or admiration by people on foot or bicycle, rather than separating them with gates, walls, deep setbacks, or unnecessary building heights.

The MCP and development parameters propose ground floor parking and a narrow façade with the building arranged perpendicularly to the beach and Estero

Boulevard. In doing so, the pedestrian walkway along Estero boulevard will benefit from a larger view of the Gulf, which is increasing from 40 feet to 90+/- feet.

POLICY 4-A-5 The town contains many important natural resources despite its urbanized character. Preservation of those resources is of the highest importance and is a frequent theme throughout this plan.

Uses and development in the areas waterward of the 1978 Coastal Construction Control Line (CCCL) will continue to comply with the above policy. Minor cosmetic repair to the pool seaward of the CCCL is proposed in accordance with the provisions of the LDC. Other portions of the Property are disturbed/developed. The development program will be designed and constructed to the latest South Florida Water Management District and Department of Environmental Protection standards to ensure high-quality development that protects natural resources.

POLICY 4-B-8 "RECREATION": applied to public parks, schools, undevelopable portions of Bay Beach, and those parts of Gulf beaches that lie seaward of the 1978 coastal construction control line. Additional accretions of beach, whether by natural causes or through beach renourishment, will automatically be assigned to this category. No new residential development is permitted (although several existing buildings were legally constructed partially seaward of the 1978 control line). The maximum density of residential development here is 1 dwelling units per 20 acres, with all dwelling units to be constructed outside this category. Allowable uses are parks, schools, libraries, bathing beaches, beach access points, and related public facilities. Non-recreational uses (such as the elementary school) now comprise 2.7% of the land in this category; additional school sites and public buildings shall not increase this percentage beyond 6%.

The proposed request takes into consideration the Recreation portion of the site and is only requesting to rezone those areas within the Downtown district zoning category. Because the Recreation category will remain, the uses and development in this area will continue to comply with the above policy based on restriction.

The design and scale of the proposed development has been carefully planned to remain consistent with the surrounding developments and provides a new building with softened landscaping and architectural details.

OBJECTIVE 7-E UPGRADE ESTERO BOULEVARD.

The proposed development increases pedestrian safety on Estero Boulevard by proposing access points off side streets rather than by direct curb cuts on Estero Boulevard.

OBJECTIVE 6-E DUNES AND BEACHES

The proposed development will contribute to the beach renourishment efforts by the Town and state agencies, as well as implement localized dune renourishment, as required by the Town.

POLICY 6-H-5 WATER QUALITY

The proposed project will abide by any required reviews by the FDEP and SFWMD to ensure water quality is maintained and the project meet the current standards will be applied.

VIII. Conclusion

In sum, the CPD rezoning request will allow for the redevelopment of the Estero Island Beach Club with a modern, attractive and safe structure that enhances the property's and Town's resiliency in the long-term.

The CPD will not increase the site's established density and is primarily requested to allow specific site development regulations that do not meet the requirements under the conventional Downtown zoning district.

The newly constructed building will contribute to Fort Myers Beach's aesthetic character, including substantial increases to views of the Gulf, and improved community appearance and safety along Estero Blvd.

As proposed through the CPD request and the Master Concept Plan, the CPD rezoning will be consistent with the vision and implementing goals, objectives and policies of the Town's Comprehensive Plan and Land Development Code Regulations. For these reasons, the Applicant respectfully requests approval of this petition.



Estero Island Beach Club CPD

Schedule of Deviations and Justifications

1. Deviate from LDC §34-995(b)(1) and (4) regarding entrances requires a primary entrance and views into the first floor of commercial buildings where:

(1) The primary entrance to all buildings shall face the street and

(4) Where building frontages exceed 50 feet, operable doors or entrances with public access shall be provided along streets at intervals averaging no greater than 50 feet;

to allow the proposed timeshare residential building relief under the requirements.

JUSTIFICATION: The use before the storm and the proposal is for timeshare units. Even though timeshare is categorized as hotel/motel and considered a commercial use, there is no storefront or retail/office uses on the ground floor that would dictate the needs for pedestrian interaction or entrances into storefronts.

2. Deviate from LDC §34-992(c) requiring the principal facades of hotel buildings that will not contain commercial uses below base flood elevation to screen under-building parking areas in a manner acceptable to the town manager or designee; to allow no screening of the parking area.

JUSTIFICATION: The use before the storm and the proposal is for timeshare units. Even though timeshare is categorized as hotel/motel and considered a commercial use, there is no storefront or retail/office uses on the ground floor. Because of the V-Zone screening is not desired. Moreover, because of the increased design flood elevations as determined by FEMA being nearly 21 feet from ground there is an opportunity to leave the parking under the list habitable floor unscreened to allow a view through the understory parking. Now, with that said, the property is proposing a 5-foot landscape buffer around the perimeter of the property, landscape islands in the new parking areas that will provide landscape-based improvements.

3. Deviate from LDC §34-673(a)(1) that requires build to lines in the Downtown District in this location be from five feet to ten feet; to allow not require build to lines but rather minimum building setbacks for the building on Estero Boulevard to 23 feet, a minimum building setback of 10 feet from Palm Avenue, and a minimum building setback of 50 feet from Miramar Street.

JUSTIFICATION: The minimum 23-foot setback on Estero Boulevard is to provide for softening of the mass and height by providing distance from the right-of-way/property line. to be used for landscaping and shade enhancement.

The setback on Miramar ensures no buildings abutting the single-family homes on the other side of the street.

The setback on Palm allows for increased view corridor between the applicant's propose building and Diamondhead Resort and allows for flexibility for some of the façade to be greater than 10 feet from the right-of-way/property line.

4. Deviate from LDC §34-675(b)(3)c that requires a maximum height of 40 feet above base flood elevation and no taller than three stories for properties on the south side of Estero Boulevard east of the main pedestrian crossing in the Downtown zoning district; to allow a height of:
- 102 feet as measured from one foot over base flood elevation (BFE+1) or
 - 98 feet above FDEP design flood elevation (DFE) and
 - Ten (10) stories [nine (9) stories over ground level parking].

JUSTIFICATION: The permitted height in the Downtown District at this location is a maximum of 40 feet above base flood elevation per LDC [§34-675(b)(3)c. The BFE+1 at this location is 16 feet and the FDEP design flood elevation (DFE) to the Lowest Horizontal Structural Member (LHSM) is 20.3 feet. The proposed structure is a single building of 118 feet in total height from sea level.

The purpose of the Downtown zoning district is to create a desired quality and character of the center of the pedestrian-oriented commercial activities within the town. There is a mix of resort/hotel, rental and commercial properties that surround the subject property to the south and east with three (3) single-family homes to the north.

To the immediate south of the site is Beach Access #30 at the end of Palm Avenue and the Diamond Head Beach Resort – a 13-story resort that includes 121 hotel rooms, event space, commercial space, restaurant and bars, and other associated amenities.

Also, in the general vicinity are some of Fort Myers Beach's most high intensity establishments, including the Lani Kai Resort approximately 900 feet north of the site and the new Margaritaville Resort just ¼ mile north. 700 feet to the south of the subject property is the Neptune Resort, which recently filed for redevelopment of a 6-story structure and doubling the number of hotel rooms from 71 to 140 keys. Thus, the site is well located for redevelopment of timeshare resort uses in relation to similar uses, densities, and intensities in the Town's Downtown area.

Finally, the revised layout uses height to create a vertical development rather than sprawled horizontal layout that significantly increase the viewsheds to the Gulf of Mexico and the beach.

5. Deviate from LDC §34-633 where the gross floor area includes the total floor area of all stories of a building within the surrounding exterior walls (whether the walls are solid or screened), plus all area below an elevated building that is six feet or more in height, plus all stories of covered parking; to eliminate counting the ground level covered parking area towards FAR and meet the required 1.4 FAR for this subject property.

JUSTIFICATION: The LDC §34-675(c)(2) that limits the FAR of properties fronting on Estero Boulevard and fronting on the Bayfront pedestrian plazas to a maximum of 1.4.

The area of the subject property landward of the 1978 Lee County CCCL is 1.92 acres or 83,635.2 square feet. The land area used in the calculation is the gross square footage within the site's private property line, minus wetlands, canals or other waterbodies, and minus any land designated "recreation" on the comprehensive plan's future land use map.

The proposed building has an approximate footprint of 16,500 square feet on the parking level and a mix of floor areas on the 3-4 story building on Estero Boulevard and the nine (9) livable stories over 1st floor parking.

- The total proposed floor area is 120,000 square feet resulting in an FAR of 1.43.
- Approval of the deviation to eliminate counting the first-floor parking area in the FAR calculation reduces the floor area to 103,000 square feet. The result is an FAR of 1.23 in compliance with the maximum FAR of 1.4 permitted in the Downtown zoning district at this location.

It is our understanding that the Town staff, LPA and Council have moved towards future LDC amendments making this request permanent thus the request meets the intent of the will of the Town.

If the deviation were to not be approved the project intends to comply with the maximum FAR of 1.4 by adjusting the building floor area.



PALMS		SIZE	NATIVE	SALT TOLERANCE
Sabal palmetto / Cabbage Palm		10'-18' CT, Staggered Heights	Yes	High
Roystonea regia / Royal Palm		12' CT	Yes	Low
Ravenea madagascariensis / Travelers Palm		10'-12' OA	No	Low
Coccothrinax argentata / Silver Thatch Palm		5'-6' OA	Yes	High
Phoenix sylvestris / Sylvester Date Palm		10'-12' CT	No	Moderate
Wodyetia bifurcata / Foxtail Palm		10'-12' CT	No	Moderate
MIDSTORY			NATIVE	SALT TOLERANCE
Caesalpinia pulcherrima / Dwarf Poinciana		8' HT	No	Moderate
Coccoloba uvifera / Seagrape		8' HT	Yes	High
Conocarpus erectus / Green Buttonwood		8' HT	Yes	High
Conocarpus erectus sericeus / Silver Buttonwood		8' HT	Yes	High
Cordia sebestena / Orange Geiger		6' HT	No	High
Coccoloba diversifolia / Pigeon Plum		8' HT	Yes	Moderate
Capparis cynophallophora / Jamaican Caper		6' HT	Yes	High
SHRUBS & ACCENTS			NATIVE	SALT TOLERANCE
Chrysobalanus icaco 'Red Tip' / Red Tip Cocoplum		24"H x 18"S	Yes	High
Hibiscus rosa-sinensis / Hibiscus		36"H x 24"S	No	Low
Conocarpus erectus / Green Buttonwood		24"H x 18"S	Yes	High
Conocarpus erectus sericeus / Silver Buttonwood		24"H x 18"S	Yes	High
Chamaerops humilis / European Fan Palm		36" H	No	Low
Serenoa repens 'Silver' / Silver Saw Palmetto		24"x 24"S	Yes	High
Uniola paniculata / Sea Oats		24"H x 18"S	Yes	High
Chrysobalanus icaco 'Horizontal' / Horizontal Cocoplum		18H x 18"S	Yes	High
Pittosporum tobira 'Variegata' / Variegated Pittosporum		24"H x 18"S	No	High
GROUNDCOVER			NATIVE	SALT TOLERANCE
Ipomoea pes-caprae / Railroad Vine		15"H x 20"S	Yes	High
Helianthus debilis / Dune Sunflower		18"H x 15"S	Yes	High
Muhlenbergia capillaris / Pink Muhly Grass		24"H x 18"S	Yes	High
Tripsacum floridanum / Dwarf Fakahatchee Grass		24"H x 18"S	Yes	Moderate
Evolvulus glomeratus / Blue Daze		18"H x 18"S	No	High
Paspalum vaginatum / Seashore paspalum		18"H x 18"S	Yes	High
Panicum amarum / Bitter Panic Grass		4"	Yes	High
Sesuvium portulacastrum / Sea Purslane		6"	Yes	High
Phyla nodiflora / Frogfruit		4"	Yes	Moderate
Mimosa strigillosa / Sunshine Mimosa		6"	Yes	Moderate

CONCEPTUAL SPECIES LIST

PLAN

Disclaimer: The artistic renderings, specifications, and interpretation contained within are conceptual in nature and reflect development plans at various stages of completion. All graphical representations should be considered incomplete and subject to change. All presentation graphics, notes and narratives are part of larger presentations involving considerable oral commentary, and require intimate project knowledge for a thorough understanding. This is a conceptual landscaping plan being provided for illustrative purposes only. The conceptual species list is not intended to be all inclusive and is being provided for illustrative purposes only. The final landscaping plan, which is subject to approval by Florida Department of Environmental Protection (FDEP) and the Town of Fort Myers Beach, will be submitted for review at the time of the application for development order.

Aerial photography circa MM-DD-YYYY

PALMS



ROYAL PALM



SABAL PALM



TRAVELERS PALM



SILVER THATCH PALM

MIDSTORY



SILVER BUTTONWOOD



GEIGER



GREEN BUTTONWOOD



DWARF POINCIANA



SEAGRAPE

SHRUBS & ACCENTS



SEA OATS



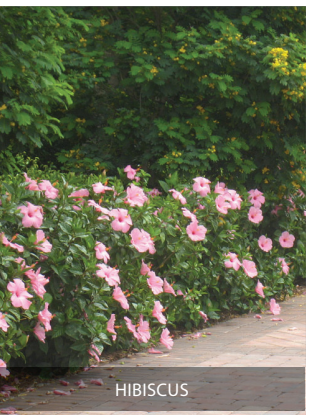
COCOPLUM



EUROPEAN FAN PALM



SILVER SAW PALMETTO



HIBISCUS

GROUND COVER



MUHLY GRASS



FAKAHATCHEE GRASS



RAILROAD VINE



DUNE SUNFLOWER



BLUE DAZE



SEASHORE PASPALUM

Copyright RVI

Aerial photography circa MM-DD-YYYY









DIAMONDHEAD BEACH RESORT

115'

PALM AVE. VIEW
CORRIDOR

ESTERO ISLAND BEACH CLUB

170'

MIRAMAR SIDE VIEW CORRIDOR

SINGLE FAMILY HOMES

A NEW REBUILD FOR ESTERO
ISLAND BEACH CLUB
FORT MYERS BEACH, FLORIDA

VIEW CORRIDORS FROM ESTERO BOULEVARD



1. **Request:**

Meeting Date: September 23, 2024

First reading and Public Hearing on a proposed ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING 1) TABLE 34-2 TITLED "USE SUB-GROUPS PERMITTED IN EACH ZONING DISTRICT" IN CHAPTER 34, ARTICLE III, DIVISION 2 TO AMEND THE ALLOWED SUB-GROUPS, FOR THE CB ZONING DISTRICT, FROM LIMITED TO OPEN FOR THE LODGING, OFFICE, AND RETAIL USE GROUPS; 2) THE LAND DEVELOPMENT CODE SUBDIVISION V. – CB ZONING DISTRICT FOUND IN CHAPTER 34, ARTICLE III, DIVISION 5. – REDEVELOPMENT ZONING DISTRICT TO PLACE LIMITATIONS ON NEW OUTDOOR DINING AND OUTDOOR ENTERTAINMENT USES; PROVIDING FOR SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS; CONFLICTS OF LAW; AND PROVIDING AN EFFECTIVE DATE. Open the public hearing and schedule for second reading and final adoption on October 7, 2024 at 9:00 a.m.

Why the action is necessary:

The Town Council approves LDC amendments.

What the action accomplishes:

The changes to the CB zoning district will allow for additional uses on commercial properties.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Sarah Propst, Community
Development, Planning
Manager

5. **Background:**

The CB zoning district has limitations on allowed uses based on what was previously developed on a parcel. This amendment allows all of the uses that were previously permitted prior to the implementation of the CB zoning district and includes limitations to reduce potential impacts of new uses on adjacent residential properties.

Attachments:

1. Ordinance 24-26 TC
2. TC Memo
3. Exhibit A CB Zoning Section language
4. Exhibit B Zoning Table with updates
5. Exhibit C Map of CB Zoned Properties

Financial Impact:

Unknown

6. **Alternative Action**

recommend changes and recommend approval

7. **Management Recommendations:**

Find that the proposed language is appropriate and meets the intent of the comprehensive plan and schedule a second hearing.

8. Recommended Approval:

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

Created/Initiated - 9/6/2024
Approved - 9/6/2024
Approved - 9/16/2024
Approved - 9/16/2024
Final Approval - 9/16/2024

ORDINANCE NO. 24-26

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING 1) TABLE 34-2 TITLED “USE SUB-GROUPS PERMITTED IN EACH ZONING DISTRICT” IN CHAPTER 34, ARTICLE III, DIVISION 2 TO AMEND THE ALLOWED SUB-GROUPS, FOR THE CB ZONING DISTRICT, FROM LIMITED TO OPEN FOR THE LODGING, OFFICE, AND RETAIL USE GROUPS; 2) THE LAND DEVELOPMENT CODE SUBDIVISION V. – CB ZONING DISTRICT FOUND IN CHAPTER 34, ARTICLE III, DIVISION 5. – REDEVELOPMENT ZONING DISTRICT TO PLACE LIMITATIONS ON NEW OUTDOOR DINING AND OUTDOOR ENTERTAINMENT USES; PROVIDING FOR SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS; CONFLICTS OF LAW; AND PROVIDING AN EFFECTIVE DATE.

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

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

WHEREAS, the Town recognizes that redevelopment of the Town, following hurricane Ian requires evaluation and updates to the Land Development Code; and

WHEREAS, the Town Council desires updates to the Fort Myers Beach Land Development Code to clarify, improve and create consistency among sections; and

WHEREAS, the proposed changes to the Land Development Code are not more restrictive or burdensome to development; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on September 3, 2024, at time which the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, and the LPA voted 7-0, to recommend approval of this Ordinance; and

WHEREAS, on September 23, 2024, the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons to adopt Ordinance 24-26 as provided herein and approved scheduling an adoption public hearing; and

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

WHEREAS, an advertisement of the public hearing for adoption of the Ordinance was published in the News-Press on the ____ day of ____, 2024, which is 10 days prior to the second reading of the proposed Ordinance as required by Section 166.041; and

WHEREAS, on the 7th day of October, 2024, the Town Council held a second reading of the Ordinance; at which time the Town Council gave full and complete consideration to the recommendations of staff and the LPA, and the testimony of all interested persons; and

WHEREAS, the Town finds that it is in the best interests of the health, safety, and welfare of the Town's business owners, residents, and visitors to adopt the proposed change.

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

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

Section 2. Table 34-2 Use Sub-Groups Permitted in Each Zoning Districts, in Chapter 34, Article III, Division 2 and Subdivision V. – CB Zoning District, Sections 34-702 through 34-705 are hereby amended to read as provided in Exhibits A and B.

Section 3. The Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

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

Section 5. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the ordinance, or any part thereof, other than the part so declared.

Section 6. This ordinance shall become effective upon adoption by the Town Council.

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

Dan Allers, Mayor _____
Jim Atterholt, Vice Mayor _____

John R. King, Council Member _____
Scott Safford, Council Member _____
Karen Woodson, Council Member _____

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

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

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

Attached Exhibits

Exhibit A – Subdivision V. – CB Zoning District

Exhibit B – Table 34-2



**Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT**

To: Town Council
From: Sarah Propst, Community Development
Date: October 23, 2024
Re: CB Zoning District Language

Background

When the Commercial Boulevard (CB) zoning district was developed, it was designed to disallow expansion of uses and many changes of use without a planned development rezoning. In 2021 the LDC was updated to allow the return of uses that had previously been approved on parcels but did not allow uses that had not previously been on those parcels.

It appears that originally this zoning district allowed full residential, lodging, office, and retail uses. When the Town incorporated, the CB district was changed to only allow continual downgrading of the uses to become less intense. The proposed amendment would eliminate the need for planned development rezonings in the CB district to allow all of the uses that are within the residential, lodging, office, and retail use categories. The primary limitation will be the intensity of these uses. The CB zoning district allows a maximum Floor Area Ratio (FAR) of 1.0 and the underlying Future Land Use District, Boulevard limits the Floor Area Ratio (FAR) to a maximum of 1.5. This makes it less intense than the zoning districts of Downtown and Santini, which have an underlying Future Land Use District of Pedestrian Commercial, which has a maximum FAR of 2.5.

The Comprehensive Plan was previously a limiting factor regarding changes to the CB zoning district because of Boulevard Future Land Use District policies. Previous policy 4-B-5 stated that to obtain approval for new or expanded commercial activities the proposal had to be evaluated through the planned development rezoning process.

The new **Policy FLU-1-B-6** says: *“BOULEVARD”: a mixed-use district along portions of Estero Boulevard, including less intense commercial areas, traditionally comprised of historic cottages, and mixed housing types. This category is not intended to allow commercial uses on all properties; its mixed-use nature is intended to remain permanently. To obtain approval for new or expanded commercial activities, proposals must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan,*

FORT MYERS BEACH ESTERO ISLAND

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



and meet the design concepts of this plan and the Land Development Code. The non-residential Floor Area Ratios (FAR) in the Boulevard shall not exceed 1.5.

Density: The maximum density is up to six (6) dwelling units per acre, except those developments previously vested with 10 units under the “platted overlay” may continue. Permitted new density may be increased up to ten (10) units per acre provided that at least 10% of the development is for affordable or workforce housing as covenanted for a minimum of 30 years. Those developments previously vested with 10 units under the “platted overlay” may continue.

Previous Policy 4-C-3-iv. Further explained that commercial uses could seek rezoning through the planned development process and prove they are sensitive to adjacent uses.

New Policy FLU-1-C-3.iv. says: *In the “Boulevard” and “Mixed-Use” category, mixed-use development including commercial and residential uses are permissible. Proposals must be sensitive to nearby residential uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code.*

Upon final adoption of the Comprehensive Plan changes, the CB zoning district can be updated.

Proposed Solution

At the initial hearing staff heard concerns regarding the potential for increase size of development and impacts to adjacent properties. Building size and placement regulations are not proposed to change. These regulations will remain as follows:

Front setback (min): 5-10 feet

Side setbacks (min): 5 feet

Height: 30 feet above BFE and 3 stories

Rear setback (min): 20 feet or if from waterbody per 34-638(d)(3)

FAR: 1.0

Staff has included language that would allow detached single-family and two-family residences to have a building setback line of 5-18 feet, rather than 5-10 feet that is required for other uses.

Staff proposes, and the LPA recommended approval of, the attached strike-through underline and change to the zoning table. These changes include allowing additional uses but limiting new uses that could most impact nearby residential properties, including outdoor seating, outdoor entertainment, and consumption on premises not related to a restaurant. These proposed changes are not more restrictive than the current allowed regulations and therefore do not run afoul of SB 250. These limitations would not impact any businesses that already have these uses.

Subdivision V. - CB Zoning District

Sec. 34-701. - Purpose.

The purpose of the CB (Commercial Boulevard) district is to provide standards for existing commercial uses and certain other uses along those portions of Estero Boulevard where the "boulevard" classification of the Fort Myers Beach Comprehensive Plan promotes a mixed-use development pattern.

Sec. 34-702. - Applicability.

- (a) The regulations of this code section allow for the continuation of existing uses, plus additional uses listed in Table 34-2 and further defined in Section 34-703.
- (b) The regulations of this code section allow for:
 - (1) Continuation of existing buildings and structures,
 - (2) Enlargement or expansion of existing structures, in compliance with all of the building placement, size, and design criteria of the CB zoning district regulations, and
 - (3) Replacement in compliance with the building placement, size, and design criteria of the CB zoning district regulations,

~~(a) *Continued use.* The regulations in this code section allow the continued use of existing buildings and structures for allowable uses as defined in [§ 34-703](#) below, on all properties zoned CB.~~

~~(b) *Enlarging or replacing buildings for existing commercial uses.* The regulations in this code section also allow the following activities:~~

~~(1) Physical enlargement of buildings or structures containing existing commercial uses, provided that the improvements do not constitute a "substantial improvement" as that term is defined in [§ 6-424](#) of this code, and~~

~~(2) Replacement buildings for existing commercial uses that will not increase the existing floor area ratio, as that term is defined in [§ 34-633](#) of this chapter.~~

~~(c) *Enlarging or replacing buildings for all other allowable uses.* The regulations in this code section also allow the physical enlargement of and replacement of buildings for all allowable uses, other than existing commercial uses (which are governed by subsection (b) of this section) or new or expanded commercial uses (which are governed by subsection (d) of this section).~~

~~(d) *New or expanded commercial uses.* In accordance with Policies 4-B-5 and 4-C-3-iv of the Fort Myers Beach Comprehensive Plan:~~

~~(1) New or expanded commercial uses in the "boulevard" category of the Fort Myers Beach Comprehensive Plan require rezoning as a commercial planned development (see [§ 34-951](#) of this chapter).~~

~~(2) Physical enlargements of existing commercial buildings, with an allowed use, as defined in Table 34-2, that constitute a "substantial improvement" as that term is defined in [§ 6-424](#) of this LDC also require rezoning as a commercial planned development.~~

~~(3) For purposes of this section only, the following types of re-use of existing floor area shall be deemed a continuation of an existing commercial use rather than a new or expanded commercial use.~~

~~a. Conversion of an existing space to office, retail, or restaurant use, when that use previously existed on that parcel;~~

~~b. An existing bar or cocktail lounge converted to another bar or cocktail lounge or to a restaurant, retail, or office use;~~

~~c. Existing areas of outdoor dining may be converted to another outdoor dining area;~~

~~d. Existing areas of outdoor display of merchandise may be converted to another outdoor display of merchandise area;~~

~~e. Conversion of existing space previously used as a financial institution with drive-through to small retail, with outdoor display. Outdoor display shall be located in the area previously utilized as a drive-through and shall not exceed 1,500 square feet under roof. Parking spaces may not be used for outdoor display.~~

~~(Ord. No. [21-07](#), § 2, 11-15-2021)~~

Sec. 34-703. - Allowable uUses.

(a) In the CB district, allowable uses are defined as any of the following:

(1) Those uses defined in Table 34-2 for the CB district, with additional regulations as defined in Sec. 34-703(b);

(2) Continuation of the commercial uses that were previously allowed on the site, prior to the permit request. Evidence of the previous use may include websites, pictures, pamphlets, permits, tax receipts or similar documentation; and were lawfully existing on March 3, 2003; and

~~(3) Those additional commercial uses of existing floor space as provided by [§ 34-702\(d\)\(3\)](#) of this chapter.~~

(b) Any landowner wishing to place other new or expanded commercial uses on property that is zoned CB must comply with the following:

(1) New outdoor entertainment is allowed with approval of a commercial planned development (CPD). Outdoor, for this section, includes any area that is not surrounded by permanent walls and windows;

(2) New live entertainment is not permitted without approval of a CPD;

(3) New outdoor seating areas must close at sunset unless approved by CPD. ~~rezone the property to commercial planned development.~~

(c) Any landowner wishing to subdivide land that is zoned CB into residential homesites must comply with all of the setback, lot size, intensity, and density regulations for the RC zoning district as described in Table 34-3. Compliance with these regulations shall substitute for the building placement standards that are found in [§ 34-704](#) below, and for the intensity standard found in [§ 34-705\(c\)](#) of this chapter.

Sec. 34-704. - Building placement.

(a) *Build-to lines established.*

- (1) Build-to lines for structures other than detached single-family and two family residences (see [§ 34-662](#) of this chapter) for Estero Boulevard are established at five to ten feet from front property lines. Awnings, canopies, and marquees over sidewalks and pedestrian walkways are encouraged by the commercial design standards (§§ [34-991](#)—34-1010 of this chapter).
- (2) Detached single-family and two-family residential structures build-to lines from Estero Boulevard are established at five feet to 18 feet to allow additional setback for a driveway, if desired.
- (b) *Setback lines established.* Setback lines (see [§ 34-662](#) of this chapter) are established as follows:
 - (1) For principal buildings:
 - a. Minimum street setbacks for all streets other than Estero Boulevard are ten feet.
 - b. Minimum rear setbacks are 20 feet from rear property lines.
 - c. Minimum side setbacks are five feet from side property lines.
 - d. Minimum setbacks from waterbodies are set forth in [§ 34-638](#)(d)(3) of this chapter.
 - (2) For accessory structures, minimum setbacks are set forth in §§ [34-1171](#)—34-1176.

Sec. 34-705. - Building size.

- (a) *Building frontage.* Building frontage limits (see [§ 34-663](#) of this chapter) are established as follows:
 - (1) For Estero Boulevard, building frontages shall be at least 50 percent of the lot frontage. This percentage may be reduced to 35 percent for properties between Estero Boulevard and the Gulf of Mexico provided that the open space thus created allows open views to the Gulf of Mexico.
 - (2) For multiple adjoining lots under single control, or for a single lot with multiple buildings, the percentages above apply to the combination of lot(s) and building(s).
- (b) *Building height.* Building heights (see [§ 34-631](#) of this chapter) shall be limited to:
 - (1) For properties that front on the bay side of Estero Boulevard and all streets other than Estero Boulevard, a maximum of 30 feet above base flood elevation and no taller than two three stories, ~~except that an elevated building without enclosed space on the first story may be three stories tall (but still limited to 30 feet above base flood elevation).~~
 - (2) For properties that front on the beach side of Estero Boulevard, a maximum of 40 feet above base flood elevation and no taller than three stories.
- (c) *Floor area ratio (FAR).* Floor area ratios (see [§ 34-633](#) of this chapter) shall not exceed 1.0 for all structures other than detached single-family and two-family homes.

Sec. 34-706. - Circulation and parking.

- (a) *Parking lot locations.* Off-street parking lots shall be placed in side or rear yards (see Figure 34-5). Off-street parking lots are not permitted in front yards.
- (b) *Under-building parking.* Off-street parking may be provided under commercial or mixed-use buildings provided that all under-building parking spaces are screened in accordance with [§ 34-693](#)(l) of this chapter.

- (c) *Parking lot interconnections.* Wherever physically possible, parking lots for abutting properties fronting along Estero Boulevard shall be interconnected to eliminate or minimize driveways to Estero Boulevard.
 - (1) To ensure the effective use of these connections, the first to develop shall be required to make an irrevocable offer of cross-access to the adjacent parcel (prior to issuance of a development order), and must design and build the parking lot to accommodate cross-access.
 - (2) When adjacent owners seek development orders, they will also be required to reciprocate with a similar cross-access agreements and then must complete the physical connection.
 - (3) Individual property owners shall control all rights to the use of their own parking spaces, but may choose to allow wider use of these spaces for a fee of their choosing or through reciprocal arrangements with other parties.
- (d) *Driveway connections for properties fronting on Estero Boulevard.* Existing driveways and parking spaces shall be relocated from Estero Boulevard to other streets and new driveways shall connect only to other streets, except where these requirements would prohibit all reasonable access to a property. When a driveway onto Estero Boulevard is unavoidable, the driveway shall be shared with an adjoining property if that property also has access only to Estero Boulevard. Otherwise, the driveway shall be spaced as far as practical from other driveways or intersections.

(Ord. No. [21-07](#), § 2, 11-15-2021)

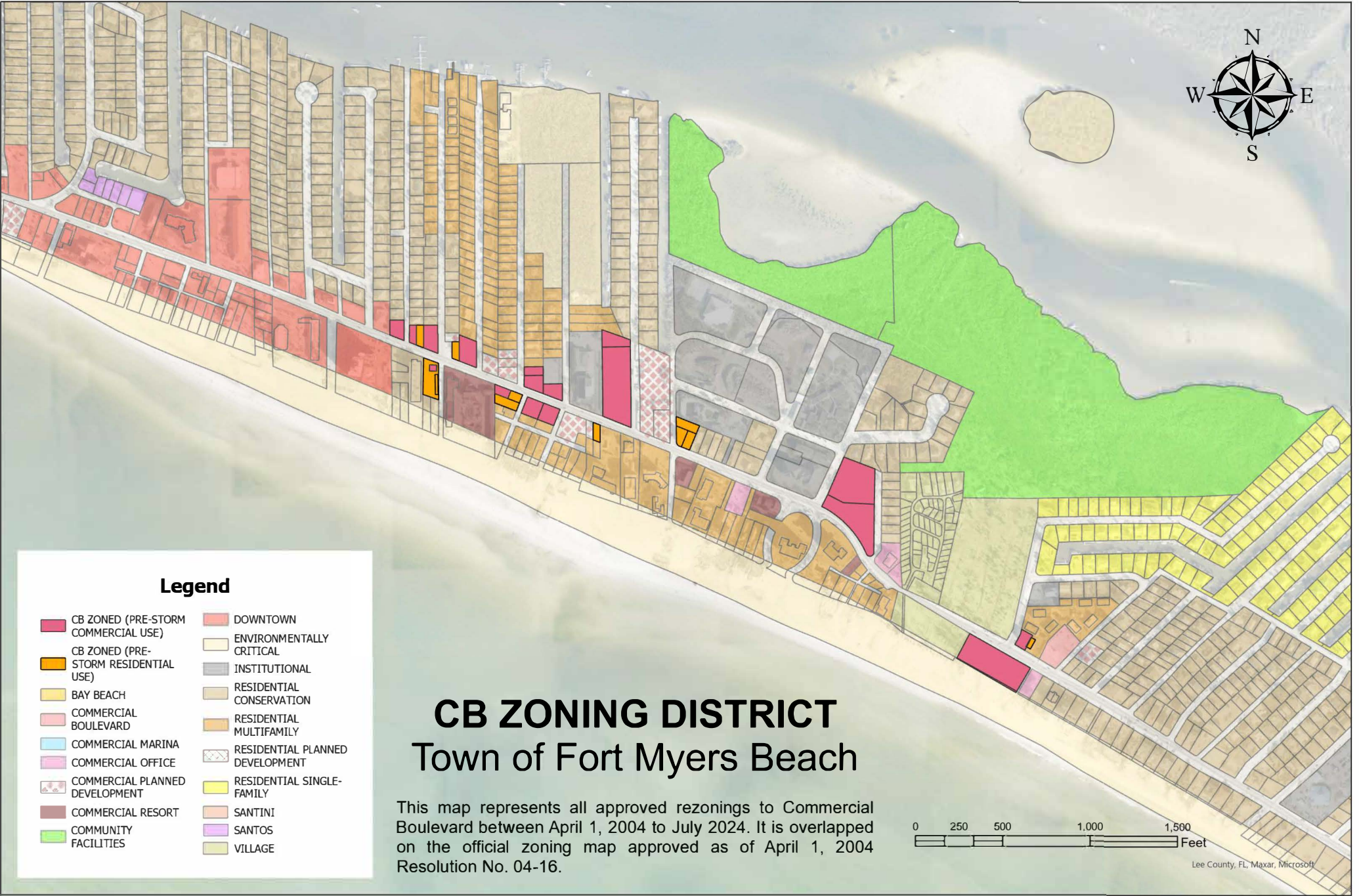
Sec. 34-707. - Commercial design standards.

The commercial design standards (§§ [34-991](#)—34-1010 of this chapter) shall apply to all commercial and mixed-use buildings, or portions thereof, that are being newly built, and to "substantial improvements" to such buildings as defined in [§ 6-424](#) of this LDC.

(Ord. No. [21-07](#), § 2, 11-15-2021)

Secs. 34-708—34-930. - Reserved.

Table 34-2 — Use Sub-Groups Permitted In Each Zoning District ¹						
	Residential	Lodging	Office	Retail	Marine	Civic
	Use Groups and Sub-Groups (Restricted, Limited, Open)					
RS Residential Single-family	(R)	(R)	(R)	—	(R)	(R)
RC Residential Conservation	(L)	(L)	(R)	—	(R)	(R)
RM Residential Multifamily	(O)	(L)	(L)	(R)	(R)	(L)
CR Commercial Resort	(O)	(O)	(O)	(L)	(L)	(L)
CM Commercial Marina	—	—	(L)	(L)	(O)	(L)
CO Commercial Office	(O)	(L)	(O)	(L)	(L)	(O)
SANTOS	(L)	(L)	(O)	(L)	(L)	(L)
IN Institutional	(L)	(L)	(L)	(R)	(L)	(O)
CF Community Facilities	(R)	(R)	(L)	(R)	(L)	(O)
BB Bay Beach	— see § 34-651(b) —					
EC Environmentally Critical	— see § 34-652(d) & (e) —					
DOWNTOWN	(O)	(O)	(O)	(O)	(L)	(O)
SANTINI	(O)	(O)	(O)	(O)	(O)	(O)
VILLAGE	(L) ²	(L) ²	(L) ²	(L) ²	—	(L)
CB Commercial Boulevard	(O)	(O)	(O)	(O)	(L)	(O)
RPD Residential Planned Dev. ⁴	(R)(L)(O)	(R)(L)	(R)(L)	(R)(L)	(R)(L)	(R)(L)
CPD Commercial Planned Dev. ⁴	(R)(L)(O)	(R)(L)(O)	(R)(L)(O)	(R)(L)(O)	(R)(L)(O)	(R)(L)(O)
Note 1: See Table 34-1 for a specific list of Use Groups (Residential, Lodging, Office, Retail, Marine, and Civic) and Sub-Groups of each (Restricted, Limited, and Open). Note 2: See § 34-692(3) which provides a pre-approved redevelopment option for the VILLAGE district that can also permit residential, lodging, office, and retail uses in the Open Sub-Group under specified conditions. Note 3: See § 34-702–703 for exceptions and limitations on new and expanded commercial uses. Note 4: See § 34-933. The resolution approving a planned development zoning district (RPD or CPD) will specify which of the use groups or sub-groups enumerated in Table 34-1 will be permitted on that parcel. Note that some potential use sub-groups are not listed above for the RPD zoning district because they may not be approved in any RPD zoning resolution.						



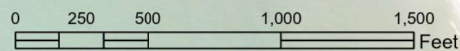
CB ZONING DISTRICT

Town of Fort Myers Beach

This map represents all approved rezonings to Commercial Boulevard between April 1, 2004 to July 2024. It is overlapped on the official zoning map approved as of April 1, 2004 Resolution No. 04-16.

Legend

 CB ZONED (PRE-STORM COMMERCIAL USE)	 COMMERCIAL PLANNED DEVELOPMENT	 RESIDENTIAL MULTIFAMILY
 CB ZONED (PRE-STORM RESIDENTIAL USE)	 COMMERCIAL RESORT	 RESIDENTIAL PLANNED DEVELOPMENT
 BAY BEACH	 COMMUNITY FACILITIES	 RESIDENTIAL SINGLE-FAMILY
 COMMERCIAL BOULEVARD	 DOWNTOWN	 SANTINI
 COMMERCIAL MARINA	 ENVIRONMENTALLY CRITICAL	 SANTOS
 COMMERCIAL OFFICE	 INSTITUTIONAL	 VILLAGE
	 RESIDENTIAL CONSERVATION	



Lee County, FL; Maxar, Microsoft

1. **Request:**

Meeting Date: September 23, 2024

Request to Continue to a date certain of October 7, 2024

First Reading and Public Hearing on a proposed ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING TOWN OF FORT MYERS BEACH ORDINANCE NO. 24-01, AND APPROVING DEVIATIONS FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 1170, 1180/1192, 1204/1206 ESTERO BLVD., 251 CRESCENT ST., 1150 FIFTH ST. AND UNADDRESSED PARCELS, PARCELS GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-00205.0070 (MCP PARCEL #3), 24-46-23-W3-00006.0000 (MCP PARCEL #1), 24-46-23-W3-00206.0060 (MCP PARCEL #1), 24-46-23-W3-00009.0000 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0494.2609 (MCP PARCEL #2), 24-46-23-W3-00205.0070, 19-46-24-W4-U0491.2610 (MCP PARCEL #2), 19-46-24-W4-0140B.0070 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0496.2608 (MCP PARCEL #2), AND 19-46-24-W4-U0498.2607 (MCP PARCELS #2 AND #6) FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE. Open the public hearing and schedule for second reading and final adoption on September 23, 2024 at 6:00 PM.

Why the action is necessary:

The signs as currently designed/ placed are not compliant with the LDC or the approved CPD, this request is to legalize both signs for setbacks and height, as well as sign-type deviation for the pole sign on the corner of Estero and Crescent.

What the action accomplishes:

Allows the existing, non-compliant signs to remain where they've been installed.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance to amend an existing
CPD

4. **Submitter of Information:**

Jason Smalley, Senior Planner

5. **Background:**

During the construction of the "Margaritaville" resort, a sign package was approved requiring standard 3' setbacks from the rear of a sidewalk, both signs in-question were constructed within the 3' setback. The pole sign on the corner of Estero and Crescent is also too tall, pole signs are not allowed as a sign-type and will require deviations for all three issues (sign-type, maximum height and setbacks); the monument sign across Estero at the entrance to the aquatic center also requires two deviations for setbacks from the sidewalk and maximum height.

Attachments:

1. 24-20; DCI20240130_MARGARITAVILLE SIGN (2)
2. TC #2 Staff Report
3. Narrative Statement
4. Comment Response Letter
5. Deviation Narrative
6. MCP_Deviations

Financial Impact:

N/A

6. **Alternative Action**

Approve with conditions

7. **Management Recommendations:**

N/A

8. **Recommended Approval:**

Jason Smalley, Senior Planner

Created/Initiated - 9/16/2024

ORDINANCE 24-20

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING TOWN OF FORT MYERS BEACH ORDINANCE NO. 24-01, AND APPROVING DEVIATIONS FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 1170, 1180/1192, 1204/1206 ESTERO BLVD., 251 CRESCENT ST., 1150 FIFTH ST. AND UNADDRESSED PARCELS, PARCELS GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-00205.0070 (MCP PARCEL #3), 24-46-23-W3-00006.0000 (MCP PARCEL #1), 24-46-23-W3-00206.0060 (MCP PARCEL #1), 24-46-23-W3-00009.0000 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0494.2609 (MCP PARCEL #2), 24-46-23-W3-00205.0070, 19-46-24-W4-U0491.2610 (MCP PARCEL #2), 19-46-24-W4-0140B.0070 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0496.2608 (MCP PARCEL #2), AND 19-46-24-W4-U0498.2607 (MCP PARCELS #2 AND #6) FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

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

WHEREAS, Ordinance 24-01 amended the existing CPD to remove limitations on development of the beachfront lot on 5.1+/- acres more or less property, located at 1170, 1180/1192, 1204/1206 Estero Boulevard in the Town of Fort Myers Beach; and

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

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

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on August 23, 2024; and

WHEREAS, at the August 23, 2024 public hearing the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, as required by Town Land Development Code (LDC) s. 34-85; and

WHEREAS, at the August 23, 2024 public hearing the LPA recommended approval by a **X-X** vote with one member abstaining; and

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

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

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

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

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

WHEREAS, Exhibit B is the approved Master Concept Plan, updated per the adopted Ordinance 24-01; and

WHEREAS, the Town Council finds that this request to amend existing ordinance 24-01 for a CPD, is a unique and individual application which does not set precedent for future development or rezoning applications.

Deviation #1

Deviation seeks relief from LDC Section 30-8 which prohibits pole signs, to allow for one (1) directional pole sign in the location shown on the MCP.

Deviation #2

Deviation seeks relief from LDC Section 30-5(a)(1)b.3.iii which requires freestanding signs in commercial districts not to exceed 5-feet in height above finished grade, to allow for one (1) directional pole sign to be a maximum height of 9-feet above finished grade in the location shown on the MCP.

Deviation #3 & 4

Deviation seeks relief from LDC Section 30-5(a)(1)b.3.iv, which requires freestanding signs in commercial districts to be setback at least 3-feet from any public right-of-way or easement, to allow for one (1) monument sign and one (1) directional pole sign to be setback a minimum of 6 inches from the public right-of-way in the locations shown on the MCP.

Deviation #5

Deviation seeks relief from LDC Section 30-5(a)(1)b.3.iii which requires monument signs not to exceed 5-feet in height above finished grade, to allow for one (1) monument sign to be a maximum height of 7.5-feet above finished grade in the location shown on the MCP.

Findings for the rezoning:

WHEREAS, the Town Council considered all relevant factors and made the following formal findings before making its final decision on the requested amendment to Commercial Planned Development (see LDC 34-85 and 34-216) ordinance 24-01:

- a. Minor ambiguities were resolved through the deviation process.
- b. Long-standing blighted conditions on the subject property can be ameliorated through approval of this rezoning.
- c. The rezoning would carry out the policies and requirements of the Comprehensive Plan and Land Development Code.
- d. The Town Council carefully considered the testimony of the applicant, the recommendations of staff and of the local planning agency, and testimony from the public.
- e. The rezoning would be consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses in the Comprehensive Plan.
- f. The rezoning would meet or exceed all performance and locational standards set forth for the proposed use.
- g. Urban services are available and adequate to serve the proposed use.
- h. The rezoning would protect, conserve, or preserve environmentally critical areas and natural resources.
- i. The rezoning would be compatible with existing and planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- j. The rezoning would not place an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.

- k. The rezoning, with the mitigating factors volunteered by the applicant and the special conditions imposed by the Town Council, is consistent with the Fort Myers Beach Comprehensive Plan, Land Development Code, and other applicable town ordinances or codes.
- l. The proposed use or mix of uses is appropriate at the subject location.
- m. Sufficient safeguards to the public interest are provided by the recommended special conditions to the master concept plan and by other applicable regulations.
- n. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.
- o. The rezoning meets all specific requirements of the Comprehensive Plan that are relevant to the request, including the following:
 - Policy 4-C-4 on building heights taller than the standard height limit
 - Policy 4-C-6 on hotel/motel densities
 - Policy 4-C-8 on density transfers
 - Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts

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

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

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

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

WHEREAS, the Town Council finds that this application to amend Ordinance 24-01 and amend conditions of approval of the commercial planned development zoning, **consistent/ not consistent** with the Town of Fort Myers Beach Comprehensive Plan and LDC and voted to **deny/ approve/ approve with conditions** the Application.

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

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

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

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

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

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

Section 6. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

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

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

DULY PASSED AND ADOPTED on this XX day of September 2024.

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

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Gretchen R. H. Vose, Town Attorney

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

Exhibit A CONDITIONS OF APPROVAL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- c. A detailed lighting plan, including any lit signage, must be provided with the development order application for the beach club; this plan must comply with LDC requirements in 10-154(8) and 14-76 for sea turtle conservation.
 - d. A detailed landscaping plan showing the location and type of all plantings, including beach plantings adjacent to the existing retaining wall, must be provided with the development order application for the beach club.
 - e. Directional signage approved by the Town as to design, installation methodology, and location shall be erected along Estero Boulevard that advises the public of both new public beach accesses.
 - f. The beach club and its ancillary uses may operate only from 7am to one hour after sunset, but never later than 9 pm. That is the Beach Clubs hours of operation unless otherwise temporarily altered in the Town's special event use regulations in Section 34-1264 of the LDC.
 - g. To implement the applicant's commitment to limit access to the beach club to 325 people per day who are not staying at the hotel, the resort will be required to submit monthly reports to the Town within 10 days after the end of each month showing the number of non-guest admissions for each day; and shall provide such information on demand and allow Town officials immediate access to this information for the current day at a designated location in the resort.
 - h. The beach club and aquatic venue shall provide no less than one security personnel per 200 guests.
 - i. All necessary dune plantings and walkovers shall be provided in compliance with Town codes and ordinances.
- 13** The following transportation and access features are shown on the Master Concept Plan and are an integral part of this approval:
- a. All existing vehicular access points on Estero Boulevard shall be closed except the access to the one new public street on Parcel 6.
 - b. The one and only access point on Crescent Street will be an entrance-only driveway near the intersection with Fifth Street, which will be the main entrance for resort guests.
 - c. Access points on Fifth Street are limited to the one main exit for resort guests and a separate entrance and exit for service vehicles on Parcel 1, plus two existing driveways to the surface parking lot on Parcel 3.
- ~~**14** Prior to the Town issuing any development orders for demolition, site work, or new buildings on Parcel 2, the landowner must execute and record a restrictive covenant in favor of and enforceable by the Town in perpetuity that acknowledges that this CPD approval has consumed all~~

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

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

Street.

- 17 Individual signs may be placed on this site during and after development as may be allowed by the LDC regulations that are in effect at that time. Murals are permitted in compliance with LDC regulations.
- 18 Service of alcoholic beverages for on-premises consumption is approved at the locations shown on Sheets X-505-COP.01 and X-506-COP.02 of the Master Concept Plan, subject to these limitations:
 - a. Service to outdoor seating is permitted on the second story outdoor terrace on Parcel 1, in the public restaurant on Parcel 2, and in the beach club on Parcel 2 provided service remains in substantial compliance with the COP diagrams on Sheets X-506-COP.01 and X-507-COP.02. Beverages purchased in approved indoor or outdoor service areas on Parcels 1 or 2 shall not be carried across the pedestrian bridge. The designated service areas shall be identified separately from areas where consumption is permitted, but not part of a service and/or seating area.
 - b. Alcoholic beverages and amplified music in the beach club are limited to 7:00 a.m. to one hour after sunset, but not later than 9:00 p.m. Expansion of COP onto the sandy beach seaward of the seawall is prohibited.
 - c. Amplified music on the outdoor terrace on Parcel 1 is limited 7:00 a.m. to one hour after sunset, but not later than 9:00 p.m.
 - d. Amplified music in unenclosed hotel restaurant and bar on Parcel 2 are limited to 7:00 a.m. to midnight.
 - e. Alcoholic beverages may not be served at locations other than those shown on the Master Concept Plan unless approved by special use permit, special exception or by administrative approval, as provided in 34-1264 of the LDC.
- 19 Prior to applying for a permit for the stormwater management system from the SFWMD, the landowner shall evaluate the receiving of drainage from the intersection of Crescent and Fifth for suitability and consistency with SFWMD requirements. Provided these two components can be combined under those requirements, the landowner will design and construct the project to receive stormwater from the intersection of Crescent Street and Fifth Street into and through the project's stormwater system, including cost of upsizing the project stormwater system. In order to be considered feasible, any routing of stormwater from the intersection of Crescent and Fifth Streets must accommodate the project's design as approved by this CPD and it shall be borne by the property owner. The property owner will provide copies of the SFWMD permit application, and all subsequent responses to requests for additional information, to the Town's stormwater consultant for review and concurrent with filing with the **SFWMD**.

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

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

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

Findings Regarding the Conditions

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



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT STAFF
REPORT

TYPE OF CASE: Commercial Planned Development Amendment

CASE NUMBER: PD Amendment, 20240130

CASE NAME: 251 Crescent Street (incl. all associated addresses) approving five (5) deviations for a pole sign and monument sign adjacent to Estero Blvd.

TOWN COUNCIL HEARING DATE: September 23, 2024 at 6 PM

STAFF RECOMMENDATION: APPROVE WITH CONDITIONS

**PREPARED/
SUBMITTED BY:** Jason Smalley; Senior Planner

I. LPA OUTCOME

Discussion of the signs mainly focused on what codes the signs had violated and whether an amendment to the existing CPD was absolutely necessary. It was noted by staff that if the signs had met minimum setbacks and dimensions then they would be eligible for an administrative amendment, but the signs did not meet code and thus must go through the full CPD amendment process. The LPA recommended approval by a vote of 7-0

TOWN COUNCIL OUTCOME #1

Discussion focused largely on the reasons for the requested deviations and a brief question about the maximum allowed sign dimensions. The final outcome from the first reading was 4-0 with one member abstaining.

II. APPLICATION SUMMARY

Applicant/Owner: Morris-Depew/ TPI-FMB LLC (TPI)

Request: CPD amendment approving deviations for a monument and pole sign; **1)** allow for a pole sign, **2)** allow for pole sign to be 9-feet tall and, **3)** allow sign to be less than 3-feet setback from the rear of a sidewalk or right-of-way; **4)** allow for monument sign to be 7.5-feet tall and, **5)** allow for monument sign to be setback a minimum of 6-inches from

the rear of a sidewalk or right-of-way.

Subject property: See attached site plan.

Physical Address: 251 Crescent St (incl. all associated addresses)

STRAP #: 24-46-23-W3-00205.0070 (MCP PARCEL #3), 24-46-23-W3-00006.0000 (MCP PARCEL #1), 24-46-23-W3-00206.0060 (MCP PARCEL #1), 24-46-23-W3-00009.0000 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0494.2609 (MCP PARCEL #2), 24-46-23-W3-00205.0070, 19-46-24-W4-U0491.2610 (MCP PARCEL #2), 19-46-24-W4-0140B.0070 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0496.2608 (MCP PARCEL #2), AND 19-46-24-W4-U0498.2607 (MCP PARCELS #2 AND #6)

FLU: Pedestrian Commercial

Zoning: Commercial Planned Development (CPD)

Adjacent zoning and land uses:

North: CPD; Resort

South: Environmentally Critical Area (EC)

East: Downtown; Commercial Office/ Multi-Use

West: Downtown; Public Park

III. BACKGROUND AND ANALYSIS

Background:

Morris-Depew, the contractor for TPI has applied to amend an existing CPD (24-01) to allow for five (5) deviations from the LDC to approve two existing signs, a pole sign and a monument sign. The signs have been installed at the corner of Estero Blvd and Crescent St., and the entrance to the applicant's aquatic center entrance on Estero Blvd.

A sign permit was applied for in August of 2022 and completed in November of 2022. In January of 2024 the Town received a signed Certificate of Completion from the applicant's inspector asserting that the signs had been installed to proper code. It was determined at the time that the signs had not met the minimum setback requirements of 3-feet from the rear of a sidewalk/ right-of-way. During the review of the non-compliant setbacks it was determined that the type of sign (pole sign) and heights of both the pole and monument signs were not compliant and that all deviations from the LDC should be approved through

the CPD amendment process.

Analysis:

The signs in-question have already been installed in their approved locations, the size and placement of the signs do not appear to be injurious to the wider neighborhood, nor present a risk to motorists or pedestrians. The right-of way adjacent to both signs are controlled by Lee County despite being within the Town's jurisdiction.

Five deviations from the Land Development Code are requested. Those are listed below and include the applicant's justification as well as a staff comment.

Requested Deviations:

1. Deviation seeks relief from LDC Section 30-8 which prohibits pole signs, to allow for one (1) directional pole sign in the location shown on the MCP.

Applicant Justification: As shown on the MCP, the location of the monument sign on Estero Blvd. provides pedestrians, the general public, and vehicular traffic with the ability to identify the location of the Margaritaville Beach Resort. As shown on the MCP, the location of the directional pole sign provides pedestrians with the ability to quickly navigate to other locations within the resort. Due to the location of the resort, bisecting Estero Blvd., the enhanced wayfinding signage is necessary for the traveling public to safely locate the resort while passing by in a generally congested area of Estero Blvd. Well-designed and strategically placed signage enhances navigation and improves the overall wayfinding experience by providing clear visual cues to help guide people to their destination.

Staff Comment: While pole signs are specifically disallowed in the Town's Land Development Code (LDC), the prohibition seems to be generally aesthetic in nature. Allowing the pole sign does not pose a risk to the wider community.

2. Deviation seeks relief from LDC Section 30-5(a)(1)b.3.iii which requires freestanding signs in commercial districts not to exceed 5-feet in height above finished grade, to allow for one (1) directional pole sign to be a maximum height of 9-feet above finished grade in the location shown on the MCP.

Applicant Justification: The heights and setbacks demonstrate a human-scale approach to wayfinding signage and works in concert with the other wayfinding resort signage to assist the user in orienting themselves and navigating to a specific destination within the resort campus. The monument sign provides the iconic brand identity for the Margaritaville Beach Resort brand, making it easy for pedestrians and the traveling public to safely locate while traveling along Estero Blvd. Relocating the signs would disrupt the established visual identity of the commercial development, which has been operating on Fort Myers Beach since December 2023

Staff Comment: The proposed heights are not out of scale for the size of the resort and the zone in which they are located, the signs do not appear to pose a risk to motorists or pedestrians wishing to cross Estero, or motorists driving north or south on Estero Blvd.

- 3. Deviation seeks relief from LDC Section 30-5(a)(1)b.3.iv, which requires freestanding signs in commercial districts to be setback at least 3-feet from any public right-of-way or easement, to allow for one (1) monument sign and one (1) directional pole sign to be setback a minimum of 6 inches from the public right-of-way in the locations shown on the MCP.**

Applicant Justification: The location of the directional pole sign provides pedestrians with the ability to quickly navigate to other locations within the resort. Due to the location of the resort, bisecting Estero Blvd., the enhanced wayfinding signage is necessary for the traveling public to safely locate the resort while passing by in a generally congested area of Estero Blvd. Well-designed and strategically placed signage enhances navigation and improves the overall wayfinding experience by providing clear visual cues to help guide people to their destination. The heights and setbacks demonstrate a human-scale approach to wayfinding signage and works in concert with the other wayfinding resort signage to assist the user in orienting themselves and navigating to a specific destination within the resort campus.

Staff Comment: The location of the monument sign placed closer to the sidewalk/ right-of-way may present a minor risk to bicyclists, but in the months that the signs have been present the Town is not aware of pedestrians/ bicyclists at risk from running into the signs.

- 4. Deviation seeks relief from LDC Section 30-5(a)(1)b.3.iii which requires monument signs not to exceed 5-feet in height above finished grade, to allow for one (1) monument sign to be a maximum height of 7.5-feet above finished grade in the location shown on the MCP.**

Applicant Justification: *The heights and setbacks demonstrate a human-scale approach to wayfinding signage and works in concert with the other wayfinding resort signage to assist the user in orienting themselves and navigating to a specific destination within the resort campus. The monument sign provides the iconic brand identity for the Margaritaville Beach Resort brand, making it easy for pedestrians and the traveling public to safely locate while traveling along Estero Blvd. Relocating the signs would disrupt the established visual identity of the commercial development, which has been operating on Fort Myers Beach since December 2023*

Staff Comment: The proposed heights are not out of scale for the size of the resort and the zone in which they are located, the signs do not appear to pose a risk to motorists or pedestrians wishing to cross Estero, or motorists driving north or south on Estero Blvd.

Neighborhood Compatibility:

Margaritaville resort is within the Town's Downtown zoning district and was previously

approved through a CPD, the request for deviations to sign size and placement are not likely to change the character of the neighborhood or constitute a nuisance to neighbors.

Findings and Conclusions:

LDC Sec. 34-85(b) and (c) and 34-216(2) sets forth the required considerations and findings for the approval of a rezoning.

(b) Considerations. In reaching its decision, the town council shall consider the following, whenever applicable:

(1) Whether there exists an error or ambiguity which must be corrected.

Staff response: No errors or ambiguities exist.

(2) Whether there exist changed or changing conditions which make approval of the request appropriate.

Staff response: The previous structure was destroyed by Hurricane Ian and redevelopment of the site makes the requests appropriate.

(3) The impact of a proposed change on the intent of this chapter.

Staff response: No impact on the intent of this chapter will occur.

(4) The testimony of any applicant.

(5) The recommendation of staff and of the local planning agency.

(6) The testimony of the public.

(7) Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.

Staff response: The proposed development is in compliance with the intensity of the previously approved CPD

(8) Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.

Staff response: The signs do not currently meet size, type or location requirements in the LDC, approval of the amendment would validate the deviations.

(9) Whether urban services are, or will be, available and adequate to serve a proposed land use change.

Staff response: The urban services exist in this location.

(10) Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

Staff response: The request will have no impact on environmentally critical areas and natural resources.

(11) Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.

Staff response: The signs are currently installed in the requested locations on-site, the signs do not appear to be a risk to health and safety of motorists and pedestrians.

(12) Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.

Staff response: The sign placement in these locations will not place an additional burden on the transportation network or other facilities and services.

(13) For planned development rezonings, see [§ 34-216](#) for additional considerations.

(c) Findings. Before granting any rezoning, the town council shall find that the requested zoning district complies with:

(1) The Fort Myers Beach Comprehensive Plan.

Staff response: The proposed uses and requested deviations for the CPD comply with the Comprehensive Plan.

(2) This chapter.

Staff response: The proposed uses comply with this chapter except in regard to the deviations.

(3) Any other applicable town ordinances or codes.

Staff response: The proposed request complies with the town ordinances and codes, except in regard to the deviations.

(4) For planned development rezonings, see [§ 34-216](#) of this chapter for additional findings.

a. The proposed use or mix of uses is appropriate at the subject location;

Staff response: The proposed mix of uses is appropriate in this location, it is in the Pedestrian Commercial Future land use and will be located in the Civic Center Mixed-Use District.

b. Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations;

Staff response: Sufficient safeguards are provided for the public interest.

c. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development;

Staff response: All conditions are related to the impacts on the public interest.

d. The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:

1. Policies 4-B-4 and 4-C-3 on commercial uses in the "mixed residential" category.

Staff response: Not applicable.

2. Policies 4-B-5 and 4-C-3 on commercial rezonings in the "boulevard" category.

Staff response: Not applicable

3. Policy 4-C-4 on building heights taller than the standard height limit.

Staff response: Not applicable

4. Policy 4-C-8 on density transfers.

Staff response: Not applicable.

5. Policy 4-E-1 on pre-disaster build back.

Staff response: Not applicable.

6. Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts.

Staff response: Not applicable

Findings for Deviation Requests:

Per Sec. 34-216(4) all deviations must be approved, approved with modification, or rejected based upon a finding that:

a. Each item enhances the achievement of the objectives of the planned development; and
Staff response: The requested deviations allow the development of the signage.

b. The general intent of this chapter to protect the public health, safety and welfare will be preserved and promoted; and

Staff response: The proposed deviations preserve public health.

c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and

Staff response: The deviations are not a detriment to the public interest, it will be the responsibility of the applicant to ensure that any signage does not interfere with official signage along Estero or Crescent.

d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.

Staff response: The deviations are consistent with the comprehensive plan.

IV. RECOMMENDATION

Staff finds that the CPD amendment meets the criteria set forth in Sec. 34-85(b) and (c) and 34-216(2) of the LDC and recommends approval of **DCI20240130** with the attached conditions.

V. CONDITIONS OF APPROVAL

1. All state and local permits, including but not limited to right of way and stormwater permits, must be applied for and received prior to site development.
2. All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131

Staff Report Exhibits:

A – Amended Master Concept Plan

Margaritaville Beach Resort
Commercial Planned Development Amendment
Request Narrative
July 31, 2024

I. PROPERTY INFORMATION & REQUEST

The 5.8+/-acre Subject Property is located at 251 Crescent Street, in the Town of Fort Myers Beach. It is located more specifically at the base of the Sky Bridge located on the north and south sides of Estero Blvd. and in between Crescent Street and Fifth Street. It is zoned Commercial Planned Development pursuant to Zoning Resolution #18-04 and is designated Pedestrian Commercial on the Future Land Use Map. Since the adoption of 18-04, amendments to the CPD were approved by Ordinances 23-09 and 24-01.

The applicant is requesting approval of a CPD amendment to allow for four (4) sign deviations. Approval of these deviation requests will allow for an existing 7.5 foot tall monument sign and an existing 9 foot tall directional pole sign to remain in their locations proximate to the intersection of Estero Blvd. and Crescent St. with 6-inch minimum setbacks.



Figure 1: Aerial Location Map

II. Background

Subsequent to sign permit approval (Permit 221492), the Applicant received notification that two (2) separate signs at the Resort do not comply with the Town's LDC. The Applicant is submitting this application to request relief from the strict requirements of the LDC in order to memorialize the approval of this signage and ensure that it will be allowed to remain as permitted.

One of the signs is a Monument Sign, shown in Figure 4 below, located on Estero Blvd. Deviations are being requested for this signage as follows:

- To provide relief from the maximum height requirement
- To provide relief from the minimum setback requirement

The other signage, shown in Figures 2 and 3 below, meets the definition of Directional Sign, pursuant to LDC 30-3:

Directional sign. Any sign which serves solely to designate the location of or direction to any place, activity, facility, or area.

The signs point to various destinations on the resort campus and do not contain any advertising. Additionally, as each of the individual sign arrows is less than 4 sq ft in area, this signage also qualifies as an Exempt Sign, pursuant to LDC 30-4(a):

The following signs do not require a sign permit... Directional or instructional signs or symbols, such as entrance, exit, caution, slow, direction arrows, etc. located on and pertaining to a parcel or development and not to exceed four square feet in area or containing any advertising.

However, Town planning staff is indicating that because this signage was already processed and approved as part of a larger sign permit package, it no longer qualifies as exempt, and deviations must be approved to allow it to remain. Staff indicated that it should be considered a "Pole Sign" and deviations should be requested as follows:

- To allow a pole sign which is not a permitted sign type.
- To provide relief from the maximum height requirement.
- To provide relief from the minimum setback requirement.

Please refer to the enclosed Deviations and Justifications narrative, which provides a detailed analysis of the deviation requests.



Figure 2: Margaritaville Directional Pole Sign



Figure 3: Margaritaville Directional Pole Sign



Figure 4: Margaritaville Monument Sign

Narrative Statements Per Supplement PH-D

A. Comprehensive Plan Amendments

There are no Comprehensive Plan Amendments pending that could affect the future use of this property.

B. Phasing of Construction

Not Applicable – the resort is entirely built out. This request is limited to signage deviations for an existing resort sign.

C. Comprehensive Plan Compliance - Explain how the proposed development complies with applicable Goals, Objectives, and Policies of the Fort Myers Beach Comprehensive Plan.

POLICY 4-B-6 "PEDESTRIAN COMMERCIAL": a primarily commercial district applied to the intense activity centers of Times Square (including Old San Carlos and nearby portions of Estero Boulevard) and the area around the Villa Santini Plaza. For new development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map's "platted overlay" indicates a maximum density of 10 units per acre for affordable units consistent with the

adopted redevelopment plan). Commercial activities must contribute to the pedestrian-oriented public realm as described in this comprehensive plan and must meet the design concepts of this plan and the Land Development Code. Where commercial uses are permitted, residential uses are encouraged in upper floors. All "Marina" uses in Policy 4-B-7 are also allowed on parcels that were zoned for marinas prior to adoption of this plan. Nonresidential uses (including motels and churches) now comprise 58.9% of the land in this category, and this percentage shall not exceed 90%.

The Applicant's request is in direct compliance with the Pedestrian Commercial FLU category. The established Margaritaville Beach Resort contributes significantly to the walkable and pedestrian-oriented nature of this area of Fort Myers Beach. The resort provides pedestrian connectivity along both sides of Estero Blvd. utilizing innovative design techniques including a pedestrian bridge and provides a beachfront destination for tourists and locals alike. The development has already been approved and this request is limited to signage deviations for existing resort signage.

D. Design Standards Compliance - For projects required to meet Commercial Design Standards, explain how the proposed development complies with the design standards set forth in LDC Sections 34-991 through 34-997.

The Margaritaville Beach Resort is an approved and fully developed and operational development on Fort Myers Beach. Thus, the CPD is in full compliance with the design standards as outlined in LDC Sec. 34-991 – 34-997 as this project was previously approved and this request is limited to four (4) signage deviations for two (2) signs.

E. Decision-making Compliance - Explain how the proposed development complies with the guidelines for decision-making embodied in LDC Section 34-85.

LDC Sec. 34-85. - Rezonings.

(b) Considerations. In reaching its decision, the town council shall consider the following, whenever applicable:

(1) Whether there exists an error or ambiguity which must be corrected.

There is no error or ambiguity which must be corrected. The request is limited to signage deviations for an existing and built sign at the previously approved and fully developed Margaritaville Beach Resort.

(2) Whether there exist changed or changing conditions which make approval of the request appropriate.

The location of the sign is a result of building setbacks that were approved previously through the planned development approval process, as well as coordination with Lee County Department of Transportation and utility providers that mandated avoidance of existing equipment. The area that was ultimately allotted for the placement of the subject monument sign is confined, leaving no other alternative than the location that is the subject of this request. Had the

directional pole sign been installed without a sign permit, it would be exempt and allowed. Because it was included in a larger sign permit package it is no longer considered exempt by reviewing staff and deviations are now being requested.

(3) The impact of a proposed change on the intent of this chapter.

There is no considerable impact the proposed change has on the intent of this chapter. The request is limited to signage deviations for existing signs at a fully operational resort in the heart of Fort Myers Beach. The signage is necessary and critical for wayfinding purposes and provides visibility and identification of the resort to the traveling public as well as the pedestrian traffic. The signage upholds the intent of the LDC by assisting pedestrians and motorists with navigation and safely locating the resort, which is located on an often congested stretch of Estero Blvd.

(4) The testimony of any applicant.

To be provided at the hearing for the Town Council to consider.

(5) The recommendation of staff and of the local planning agency.

To be provided prior to the hearing for the Town Council to consider.

(6) The testimony of the public.

To be provided at the hearing for the Town Council to consider.

(7) Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.

The request is consistent with the goals, objectives, policies, intent, and with the densities, intensities and general uses as set forth in the Fort Myers Beach Comprehensive Plan. The signs are located in the Pedestrian Commercial FLU, which encourages walkability and pedestrian-oriented design. The signs provide wayfinding for pedestrians and the traveling public and assist in identifying the resort. The request enhances the pedestrian orientation and aesthetic of the downtown area of the island as laid out in policy 4-B-6. Additionally, the development has already been approved and built and this amendment does not change the density, intensity, or any of the uses associated with the property.

(8) Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.

The CPD meets or exceeds all performance and locational standards set forth for the proposed use, which is a beachfront resort, except where deviations have been approved or requested.

(9) Whether urban services are, or will be, available and adequate to serve a proposed land use change.

The CPD is completely developed and has adequate access to available urban services and existing public infrastructure.

(10) Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

The site has been approved by FDEP through their permitting process and has already been developed. This request for signage deviations adjacent to the existing buildings and public rights-of-way does not change the site in any way that would cause harm to the environment.

(11) Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.

The request is compatible with existing and planned uses in the surrounding area, which consist mainly of tourist support uses such as restaurants, bars, retail shops, and other beach resorts. The CPD and the Applicant's sign deviation requests will not cause damage, hazard, nuisance, or other detriment, but in fact will serve as a net gain for the community and will provide the essential wayfinding necessary for a beach resort located in the Pedestrian Commercial FLU.

(12) Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.

The request will not place any undue burden upon existing transportation or other services as it only requests four (4) deviations from the sign code and does not change the density or intensity of the existing approved development.

(13) For planned development rezonings, see § 34-216 for additional considerations.

The Applicant is only requesting approval of sign deviations for an existing CPD, not a rezoning. Only 34-216(a)(4) is applicable.

LDC Sec. 34-216(a)(4), Deviations:

a. Each item enhances the achievement of the objectives of the planned development

LDC 34-612 states that the purpose of the planned development districts is to provide a degree of flexibility for a landowner to propose the development of land in a manner that differs from the specific provisions of this code. The requested deviations allow for signs to be located proximate to Estero Blvd. and Crescent St. with enhanced visibility to provide pedestrians and visitors to the resort with the ability to easily identify and locate the resort and be directed to various locations around the resort. Due to input from FDOT and Teco Gas, the

monument sign needed to be relocated closer to the right-of-way. The CPD allows for a beachfront resort that spans Estero Blvd. and requires enhanced visibility.

b. The general intent of this chapter to protect the public health, safety and welfare will be preserved and promoted

With safety at the forefront of this request, the deviation does not adversely impact the general public health, safety or welfare.

The location of the signs is also a result of building setbacks that were approved previously through the planned development approval process, as well as coordination with Lee County Department of Transportation and utility providers that mandated avoidance of existing equipment. The area that was ultimately allotted for the placement of the subject monument sign is confined, leaving no other alternative than the location that is the subject of this request. The location of the directional pole sign proximate to the intersection of Estero Blvd. and Crescent St. serves the purpose of that signage as a wayfinding tool.

c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest

The requested deviations are directly aligned with providing a benefit to the public interest. The monument sign in the current location will enhance the visibility of the resort and reinforces the pedestrian oriented nature of this area of Fort Myers Beach. The human-scale design of the monument sign and the placement of the directional pole sign in a key location work together to enhance the users experience with a scenic approach to wayfinding.

d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.

The requested deviations are consistent with the Pedestrian Commercial FLU, which encourages pedestrian-oriented design to improve walkability and wayfinding.

F. Schedule of deviations and written justification - Provide a list of the requested deviations keyed to the Master Concept Plan and provide a written justification for each deviation. The location of each deviation should be indicated on the Master Concept Plan.

Please see attached Schedule of Deviations and Justification Narrative, which outlines the requested deviations and their associated justifications. Please see attached revised Deviations sheet from the Master Concept Plan, which provides the locations that the requested deviations will be applied to.

G. Administrative amendments to approved Master Concept Plan - For amendments to an approved Master Concept Plan, indicate the specific amendments that could not be approved administratively as set forth in LDC Section 34-219.

LDC section 34-219(b)(1)b provides that the authority is granted to the Director to eliminate unnecessary processing delays for proposed changes that are in conformance with all Town regulations and plans. The request is seeking relief from the LDC through a deviation, so this request does not meet this criterion.

The deviations do not adversely impact public health, safety or welfare. For the reasons listed above, the Applicant respectfully requests approval of the four (4) sign deviations.

July 31, 2024

SENT VIA EMAIL

Kendra Rosa
Zoning Coordinator
Town of Fort Myers Beach
Community Development Department
zoningpermits@fmbgov.com

RE: 251 Crescent St, Fort Myers Beach, FL 33931 Strap # 244623W3000060000
PD Amendment -MCP # 20240130 – To allow signs deviations

Dear Kendra:

The purpose of this letter is to provide a response to the Community Development Department review comments dated July 17, 2024 for the above referenced application. We always appreciate interaction with Staff on matters related to this application and welcome additional calls and emails that will assist us to address all the concerns in the most efficient manner to the extent this request can be approved.

[Community Development Department](#)

Comment/Condition:

- 1. Narrative disputes that the applicant even needs approval for the revised “directional sign”, but staff has been clear that this sign was originally permitted as part of the larger sign package and its original approval wasn’t as a “directional sign”. Their narrative and request for administrative amendment of their existing MCP doesn’t address staff’s position that this sign should be approved as part of the deviation requests. The applicant has proposed a “pole sign” which is a disallowed type of sign, the deviation ask is to approve a pole sign, the height of the pole sign and allow for the reduced setbacks to a public right-of-way.*

Response: Please see attached revised narrative, revised schedule of deviations, and revised MCP Deviations sheet which have been updated to request deviations to allow a pole sign.

Comment/Condition:

- 2. “Revised MCP”: This document has deviations listed that aren’t relevant to this ask. “Meeting Building” and “Ancillary Retail” are noted on this MCP, those uses in those areas haven’t been approved and aren’t relevant. The deviations should be focused on just the locations of the two signs in question.*

Response: Please see attached revised MCP which is based on the most recently approved MCP.

Comment/Condition:

3. "Request Narrative": This document references "Zoning Resolution 18-04" but there was a newer, updated CPD ordinance and MCP approved through Ord. 24-01, you will be amending this CPD.

Response: Please see attached revised narrative which clarifies that since the adoption of 18-04, amendments to the CPD were approved by Ordinance 23-09 and 24-01.

Comment/Condition:

4. "Request Narrative": In this document it is noted that you are requesting an "administrative amendment" but that isn't correct, this will be a full MCP Amendment.

Response: Please see attached revised narrative which no longer requests or references an administrative amendment.

Please let us know if there is anything else needed for the approval of this request.

Sincerely,

MORRIS-DEPEW ASSOCIATES, INC.

Ben Smith
Director of Planning, Morris-Depew Associates Inc

Enclosure:
Revised Narrative
Revised Schedule of Deviations
Revised MCP Deviations Sheet

Cc: Jason Smalley, Senior Planner, Town of Fort Myers Beach

Margaritaville Beach Resort
Commercial Planned Development
Schedule of Deviations and Justifications
July 31, 2024

Deviation 5 seeks relief from LDC Section 30-5(a)(1)b.3.iii which requires monument signs not to exceed 5-feet in height above finished grade, to allow for one (1) monument sign to be a maximum height of 7.5-feet above finished grade in the location shown on the MCP.

Deviation 6 seeks relief from LDC Section 30-5(a)(1)b.3.iv, which requires freestanding signs in commercial districts to be setback at least 3-feet from any public right-of-way or easement, to allow for one (1) monument sign and one (1) directional pole sign to be setback a minimum of 6 inches from the public right-of-way in the locations shown on the MCP.

Deviation 7 seeks relief from LDC Section 30-5(a)(1)b.3.iii which requires freestanding signs in commercial districts not to exceed 5-feet in height above finished grade, to allow for one (1) directional pole sign to be a maximum height of 9-feet above finished grade in the location shown on the MCP.

Deviation 8 seeks relief from LDC Section 30-8 which prohibits pole signs, to allow for one (1) directional pole sign in the location shown on the MCP.

As shown on the MCP, the location of the monument sign on Estero Blvd. provides pedestrians, the general public, and vehicular traffic with the ability to identify the location of the Margaritaville Beach Resort. As shown on the MCP, the location of the directional pole sign provides pedestrians with the ability to quickly navigate to other locations within the resort. Due to the location of the resort, bisecting Estero Blvd., the enhanced wayfinding signage is necessary for the traveling public to safely locate the resort while passing by in a generally congested area of Estero Blvd. Well-designed and strategically placed signage enhances navigation and improves the overall wayfinding experience by providing clear visual cues to help guide people to their destination. The heights and setbacks demonstrate a human-scale approach to wayfinding signage and works in concert with the other wayfinding resort signage to assist the user in orienting themselves and navigating to a specific destination within the resort campus. The monument sign provides the iconic brand identity for the Margaritaville Beach Resort brand, making it easy for pedestrians and the traveling public to safely locate while traveling along Estero Blvd. Relocating the signs would disrupt the established visual identity of the commercial development, which has been operating on Fort Myers Beach since December 2023. As one of the first major developments to open on Fort Myers Beach post-Hurricane Ian, the resort offers

a beachfront venue attracting visitors from around the world. For first-time visitors to Fort Myers Beach the monument sign at this exact location is critical to locating the resort and making the left turn on Crescent Street to park or enter the resort, and the directional pole sign location is critical to navigating the resort campus. The placement of the signs has been carefully considered to maximize visibility and accessibility for both pedestrians and motorists and provides essential wayfinding for the general public, which is essential to a tourist-oriented destination. The monument sign aligns with the intent of the LDC, which permits monument signs within landscaped medians. By doing so, the code implicitly acknowledges the value of strategic placement in enhancing streetscape aesthetics and promoting effective wayfinding. The directional pole sign aligns with the intent of the LDC which allows for directional signs to be exempt from permitting. In this context, the requested deviations uphold the underlying principles of the code while accommodating the signage of the resort. With safety at the forefront of this request, the deviation does not adversely impact the general public health, safety or welfare.

The location of the signs is also a result of building setbacks that were approved previously through the planned development approval process, as well as coordination with Lee County Department of Transportation and utility providers that mandated avoidance of existing equipment. The area that was ultimately allotted for the placement of the subject monument sign is confined, leaving no other alternative than the location that is the subject of this request.

For these reasons, the Applicant respectfully requests approval of these deviation requests to allow the existing monument sign and the existing directional pole sign to remain in the locations shown on the MCP. Photographs of the existing signs and their exact locations are provided in the Figures below.



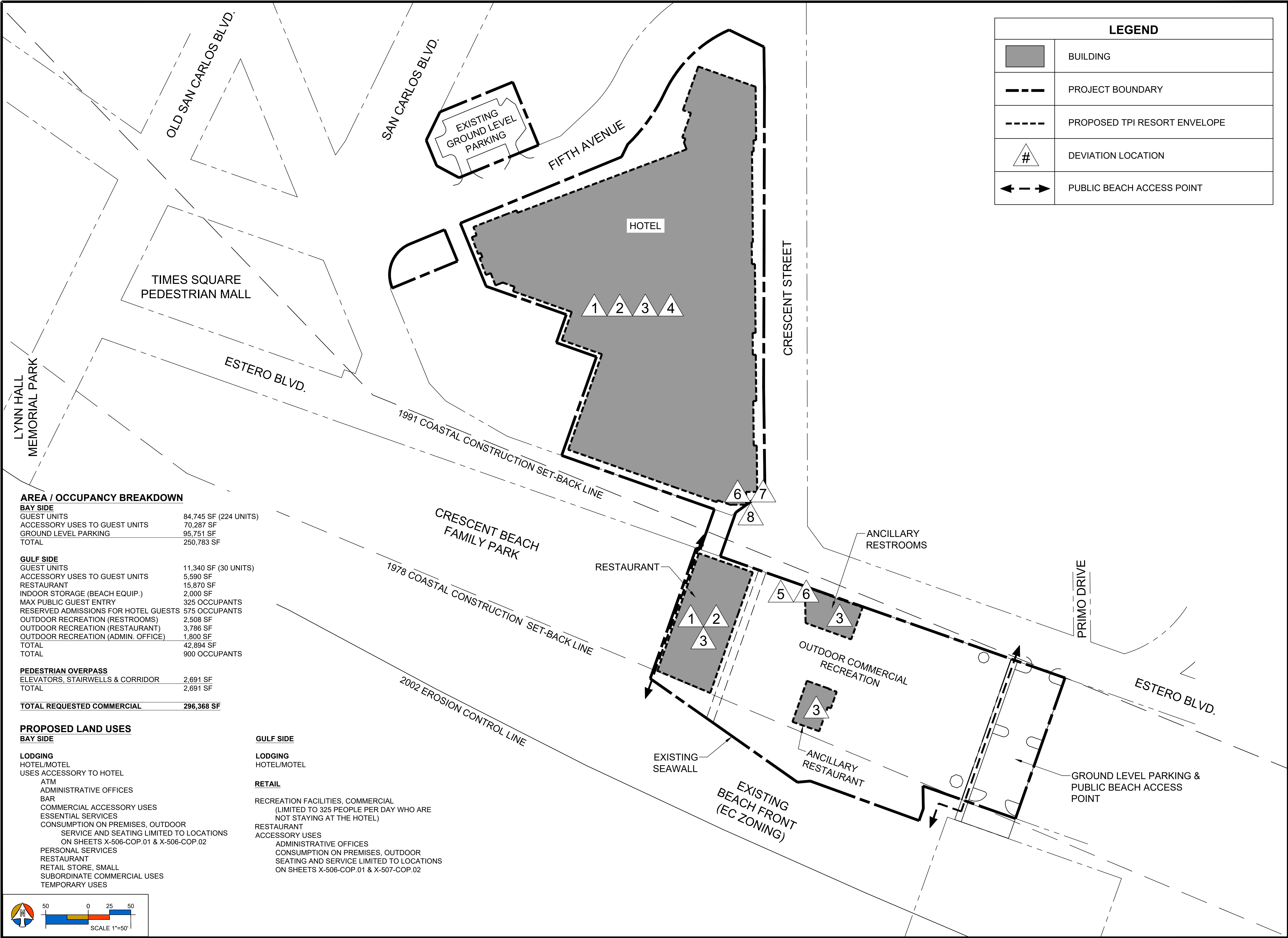
Figure 1: Existing Monument Sign



Figure 2: Existing Directional Pole Sign



Figure 3: Sign Location Map



LEGEND	
	BUILDING
	PROJECT BOUNDARY
	PROPOSED TPI RESORT ENVELOPE
	DEVIATION LOCATION
	PUBLIC BEACH ACCESS POINT

AREA / OCCUPANCY BREAKDOWN

BAY SIDE	
GUEST UNITS	84,745 SF (224 UNITS)
ACCESSORY USES TO GUEST UNITS	70,287 SF
GROUND LEVEL PARKING	95,751 SF
TOTAL	250,783 SF

GULF SIDE	
GUEST UNITS	11,340 SF (30 UNITS)
ACCESSORY USES TO GUEST UNITS	5,590 SF
RESTAURANT	15,870 SF
INDOOR STORAGE (BEACH EQUIP.)	2,000 SF
MAX PUBLIC GUEST ENTRY	325 OCCUPANTS
RESERVED ADMISSIONS FOR HOTEL GUESTS	575 OCCUPANTS
OUTDOOR RECREATION (RESTROOMS)	2,508 SF
OUTDOOR RECREATION (RESTAURANT)	3,786 SF
OUTDOOR RECREATION (ADMIN. OFFICE)	1,800 SF
TOTAL	42,894 SF
TOTAL	900 OCCUPANTS

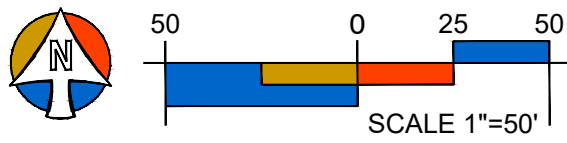
PEDESTRIAN OVERPASS	
ELEVATORS, STAIRWELLS & CORRIDOR	2,691 SF
TOTAL	2,691 SF

TOTAL REQUESTED COMMERCIAL	296,368 SF
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PROPOSED LAND USES

BAY SIDE	
LODGING	
HOTEL/MOTEL	
USES ACCESSORY TO HOTEL	
ATM	
ADMINISTRATIVE OFFICES	
BAR	
COMMERCIAL ACCESSORY USES	
ESSENTIAL SERVICES	
CONSUMPTION ON PREMISES, OUTDOOR	
SERVICE AND SEATING LIMITED TO LOCATIONS	
ON SHEETS X-506-COP.01 & X-506-COP.02	
PERSONAL SERVICES	
RESTAURANT	
RETAIL STORE, SMALL	
SUBORDINATE COMMERCIAL USES	
TEMPORARY USES	

GULF SIDE	
LODGING	
HOTEL/MOTEL	
RETAIL	
RECREATION FACILITIES, COMMERCIAL	
(LIMITED TO 325 PEOPLE PER DAY WHO ARE	
NOT STAYING AT THE HOTEL)	
RESTAURANT	
ACCESSORY USES	
ADMINISTRATIVE OFFICES	
CONSUMPTION ON PREMISES, OUTDOOR	
SEATING AND SERVICE LIMITED TO LOCATIONS	
ON SHEETS X-506-COP.01 & X-507-COP.02	



PROJECT:

TPI-FMB CPD

LOCATION:

FORT MYERS BEACH
FLORIDA

CLIENT:

TPI HOSPITALITY
100% Employee Owned

TPI HOSPITALITY
103 FIFTEEN AVE. NW
WILLMAR, MN 56201
PHONE (320) 235-7207, FAX (320) 235-5563

CONSULTANTS:

ARCHITECT
RAMAKER & ASSOCIATES, INC.
103 FIFTEEN AVE. NW
WILLMAR, MN 56201
PHONE (320) 235-7775, FAX (320) 235-8673

PLANNING, CIVIL, SURVEY & LANDSCAPE ARCHITECTURE
MORRIS-DEPEW ASSOCIATES, INC.
2914 CLEVELAND AVENUE
FORT MYERS, FL 33901
PHONE (239) 337-3993, FAX (239) 337-3994

TRANSPORTATION
DAVID PLUMMER & ASSOCIATES
2149 MCGREGOR BLVD.
FORT MYERS, FL 33901
PHONE (239) 332-2617, FAX (239) 332-2645

REVISIONS	DATE
PROJECT MANAGER:	TME
DRAWING BY:	DAL
JURISDICTION:	TOWN OF FORT MYERS BEACH
DATE:	07/31/2024
SHEET TITLE:	
MASTER CONCEPT PLAN DEVIATIONS AND NOTES	
SHEET NUMBER:	X-113-MCP.04
JOB/FILE NUMBER:	15069-14

1. **Request:**

Meeting Date: September 23, 2024

Request to continue to a date certain of October 7, 2024 at 9:00 AM

Second Reading and Final Public Hearing of an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 2-94 "QUALIFICATIONS AND APPOINTMENTS OF MEMBERS" AND SECTION 2-96 "REMOVAL OF AGENCY, BOARD, COMMITTEE OR COMMISSION MEMBERS" OF DIVISION 2 "PROCEDURES FOR THE ESTABLISHMENT OF BOARDS, COMMITTEES AND COMMISSIONS" OF ARTICLE IV "BOARDS, COMMISSIONS, COMMITTEES AND OTHER AGENCIES" OF CHAPTER 2 "ADMINISTRATION" AND SECTION 34-113 "COMPOSITION, APPOINTMENT AND COMPENSATION OF MEMBERS" OF DIVISION 3 "LOCAL PLANNING AGENCY" OF ARTICLE II "ZONING PROCEDURES" OF CHAPTER 34 "ZONING DISTRICTS, DESIGN STANDARDS AND NONCONFORMITIES" OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH, FLORIDA, REMOVING PROPERTY OWNERSHIP AS A QUALIFICATION REQUIREMENT FOR THE MEMBERS OF THE TOWN'S AGENCIES, BOARDS, COMMITTEES OR COMMISSIONS, INCLUDING THE TOWN'S LOCAL PLANNING AGENCY; ELIMINATING DUPLICATIVE LANGUAGE; ADDING A GRANDFATHER PROVISION FOR CURRENT NON-QUALIFYING MEMBERS OF THE TOWN'S BOARDS, AGENCIES, COMMISSIONS, AND COMMITTEES; ADDING A PROVISION TO SECTION 34-113, REGARDING THE MANDATORY ANNUAL FINANCIAL DISCLOSURE FORM AS REQUIRED BY THE FLORIDA COMMISSION ON ETHICS; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER'S ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

Why the action is necessary:

The passage of this ordinance is necessary to ensure only involved members of the community with a vested interest in the Town's operations (i.e. registered voters within the territorial boundaries of Fort Myers Beach) can be appointed to the Town's boards, agencies, commissions, and committees, including the Town's local planning agency; to streamline the Town Code by removing duplicative language; to add a grandfather provision to allow current non-qualifying members of the Town's boards, agencies, commissions or committees to keep their appointment; and to add a clause regarding the mandatory annual financial disclosure for the members of the Town's local planning agency as required by the Florida Commission on Ethics.

What the action accomplishes:

The ordinance restricts the appointment of individuals to the Town's boards, agencies, committees and commissions, including the Town's local planning agency, exclusively to registered voters within the Town's territorial boundaries, removes property ownership as a qualification criteria for appointment, adds a grandfather clause to allow current non-qualifying members to keep their appointment for the full term, eliminates duplicative language from the Code, and adds a reference to the mandatory annual financial disclosure required by Florida Commission on Ethics.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Nancy Stuparich, Town
Attorney

5. **Background:**

On June 17, 2024, the Town held a first reading of Ordinance 24-17. Following a discussion, the Town Council gave the Town Attorney a directive to research the requirements for the members of various committees and to revise Ordinance 24-17 to add a grandfather provision to the

Ordinance, which resulted in a substantial change to the title of that Ordinance, necessitating a second first reading of this proposed Ordinance at the August 5, 2024 Town Council meeting.

The proposed ordinance change would clarify that the criteria for appointment to the Town's committee, agency or boards is that the individual must be a registered voter and eliminates the requirement for property ownership and use of the ambiguous term "residency." Section 163.3174, Florida Statutes, discusses the formation and the functions of a local planning agency, and does not set out a residency or a property ownership requirement for the members of a local planning agency. Section 218.391, Florida Statutes, discusses the functions and operations of an auditor selection committee. This section, just like Section 163.3174, does not set forth residency or property ownership within the jurisdiction as a qualification requirement for the appointed members to serve on the committee.

Based on the Town Council's discussion and the Town Attorney's research, revisions have been made to the prior draft Ordinance to remove property ownership and residency as criteria for appointment to the Town's boards, agencies, commissions or committees. The term "residency" is ambiguous and raises questions regarding its application. Therefore, the revised draft ordinance provides that only individuals who are registered voters are eligible for appointment to the Town's boards, agencies, commissions or committees. Voter registration is easy to and limits appointment to those individuals who have a vested interest in the Town as a registered voter.

The Town Council further discussed the necessity for inclusion of a grandfather provision, to allow any current members of the Town's agencies, boards, commissions or committees, including the members of the Town's local planning agency, who may own property in the Town, but are not registered voters, to keep their appointment for the full term.

A question arose between the first and second reading regarding whether the grandfather provision would also apply to a current member of an appointed board or committee, who would no longer be eligible to serve based on the new language in the code but who would want to apply for reappointment when their term expires. Staff seeks clarification and direction regarding this question.

The proposed ordinance further adds a provision to Section 34-113 of the Town Code, obligating the members of the Town's local planning agency to comply with mandatory annual financial disclosure pursuant to the requirements set forth by the Florida Commission on Ethics.

Lastly, to ensure uniformity between the Town Code and the Town's procedural rules and policies, the Town's procedural rules and policies will require an amendment to Section 5 as it pertains to the residency requirements of the members of the Town's advisory boards, agencies, and committees. This amendment can be accomplished by a Resolution.

Attachments:

1. 24-17, Committee Member Reqs Ordinance (updated)
2. Business Impact Estimate (final) Committee Member Reqs
3. Fort Myers Beach, FL Code of Ordinances Sec. 2-94
4. Fort Myers Beach, FL Code of Ordinances Sec. 2-96
5. Fort Myers Beach, FL Code of Ordinances Sec. 34-113
6. Statutes & Constitution _View Statutes _ Online Sunshine Sec. 163.3174 FS
7. Statutes & Constitution _View Statutes _ Online Sunshine Sec. 218.391 FS

Financial Impact:

None

6. **Alternative Action**

7. **Management Recommendations:**

Approve the ordinance.

8. **Recommended Approval:**

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

Created/Initiated - 9/11/2024
Approved - 9/17/2024
Approved - 9/17/2024
Final Approval - 9/17/2024

ORDINANCE NO. 24-17

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 2-94 “QUALIFICATIONS AND APPOINTMENTS OF MEMBERS” AND SECTION 2-96 “REMOVAL OF AGENCY, BOARD, COMMITTEE OR COMMISSION MEMBERS” OF DIVISION 2 “PROCEDURES FOR THE ESTABLISHMENT OF BOARDS, COMMITTEES AND COMMISSIONS” OF ARTICLE IV “BOARDS, COMMISSIONS, COMMITTEES AND OTHER AGENCIES” OF CHAPTER 2 “ADMINISTRATION” AND SECTION 34-113 “COMPOSITION, APPOINTMENT AND COMPENSATION OF MEMBERS” OF DIVISION 3 “LOCAL PLANNING AGENCY” OF ARTICLE II “ZONING PROCEDURES” OF CHAPTER 34 “ZONING DISTRICTS, DESIGN STANDARDS AND NONCONFORMITIES” OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH, FLORIDA, REMOVING PROPERTY OWNERSHIP AS A QUALIFICATION REQUIREMENT FOR THE MEMBERS OF THE TOWN’S AGENCIES, BOARDS, COMMITTEES OR COMMISSIONS, INCLUDING THE TOWN’S LOCAL PLANNING AGENCY; ELIMINATING DUPLICATIVE LANGUAGE; ADDING A GRANDFATHER PROVISION FOR CURRENT NON-QUALIFYING MEMBERS OF THE TOWN’S BOARDS, AGENCIES, COMMISSIONS, AND COMMITTEES; ADDING A PROVISION TO SECTION 34-113, REGARDING THE MANDATORY ANNUAL FINANCIAL DISCLOSURE FORM AS REQUIRED BY THE FLORIDA COMMISSION ON ETHICS; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER’S ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

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

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

WHEREAS, on June 6, 2024, the Town Council held a discussion regarding the proposed changes to the Code of Ordinances of the Town of Fort Myers Beach, to eliminate property ownership within the Town’s territorial boundaries as a qualification requirement for the appointed members of the Town’s agencies, boards, committees or commissions, including the Town’s local planning agency; and

WHEREAS, the Town desires to amend the Town Code to remove property ownership as a criteria, qualifying individuals for the Town’s boards, agencies, commissions and committees; and

WHEREAS, the Town wishes to restrict the appointment to those individuals, who are registered voters within the territorial boundaries of the Town; and

WHEREAS, the reasons for removal of the appointed members from the Town's agencies, boards, committees or commissions are already addressed in Section 2-96 of the Town Code; and

WHEREAS, the Town desires to amend Section 2-94 to eliminate the duplicative language related to the removal of the Town's agency, board, committee or commission members; and

WHEREAS, the Town further wishes to add grandfather clauses to Sections 2-94 and 2-96, to allow current non-qualifying members of the Town's agencies, boards, committees or commissions to keep their appointment for the full term, regardless of whether such non-qualifying members meet the required criteria under the Town Code as of the effective date of this ordinance; and

WHEREAS, on the 17th day of June, 2024, the Town Council held a first reading of Ordinance 24-17 and gave direction to the Town Attorney to revise Ordinance 24-17 to add a grandfather clause; and

WHEREAS, the revisions proposed by the Town Council resulted in a substantial change to the title of Ordinance 24-17, necessitating a second first reading of the Ordinance; and

WHEREAS, on the 7th day of August, 2024, the Town Council held a second first reading of this Ordinance and gave full and complete consideration to the request of the proposed ordinance, the recommendation of staff, the documents in the record, and the testimony of all interested persons; and

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

WHEREAS, an advertisement of the public hearing for adoption of the Ordinance was published in the _____ on the ____ day of _____, 2024, which is 10 days prior to the second reading of the proposed Ordinance as required by Section 166.041, Florida Statutes; and

WHEREAS, on the 9th day of September, 2024, the Town Council held a second reading of the Ordinance; and

WHEREAS, the Town Council determined that adoption of the ordinance as provided herein is in the best interests of the health, safety, and welfare of the Town's residents.

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

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

Section 2. Section 2-94 “Qualifications and appointments of members” and Section 2-96 “Removal of agency, board, committee or commission members” of Division 2 “Procedures for the Establishment of Boards, Committees and Commissions” of Article IV “Boards, Commissions, Committees and Other Agencies” of Chapter 2 “Administration” of the Code of Ordinances of the Town of Fort Myers Beach, Florida, as well as Section 34-113 “Composition, appointment and compensation of members” of Division 3 “Local Planning Agency” of Article II “Zoning Procedures” of Chapter 34 “Zoning Districts, Design Standards and Nonconformities” of the Town’s Land Development Code, are hereby amended to read as follows:

Sec. 2-94. - Qualifications and appointments of members.

In addition to qualifications, which may be specified for membership by state statutes, Charter, ordinance, or resolution, a person appointed to an agency, board, committee, or commission after ____ day of _____, 2024, shall be given preference ~~to if that person is a registered voter within the town's jurisdiction the territorial boundaries of the Town of Fort Myers Beach, or a property owner within the town's jurisdiction.~~ Although no specific experience requirements shall be necessary as a prerequisite to appointment, consideration shall be given to applicants who have experience or who have shown interest in the subject matter. ~~If any member is no longer a qualified elector or is convicted of a felony, an offense involving moral turpitude while in office, or has unpaid fines or liens due the Town of Fort Myers Beach, the town council shall terminate the appointment of such person as a member of the agency, board, committee, or commission. Any member of the Town’s board, agency, commission or committee who holds office and who is not a registered voter within the Town’s jurisdiction as of ____ day of _____, 2024, shall keep his or her appointment for the full term.~~

(1) *Anchorage advisory committee.* The anchorage advisory committee shall advise the town council concerning all matters relevant to the management and use of the waters of the town for mooring and anchoring. The anchorage advisory committee shall prepare and submit the Matanzas Harbor Management Plan and any amendments thereto for review and approval by the town council and make recommendations for the establishment of managed municipal anchorages and mooring fields where warranted by objective evidence of environmental damage or user conflicts; or any other topics as assigned by the town council.

(2) *Audit committee.* All members of the audit committee shall be town residents who do not have any direct financial or business interests involving the town. The town council may waive the residency requirements by majority vote if there are an insufficient number of applicants who reside in the town. All members should, through education and experience, possess a basic understanding of governmental financial reporting and auditing. At least one member of the audit committee shall

have accounting, auditing, or related financial management expertise that is specifically relevant to the government sector. The audit committee shall advise the town council on these matters and other matters pursuant to F.S. § 218.391, or any other topics as assigned by the town council.

(3) ~~a.~~ *Bay Oaks Recreational Campus Advisory Board.* The purpose of BORCAB is to serve the town as a community center and recreational facility providing individuals and groups passive and active recreational, social and community activities and events for both residents and visitors. BORCAB members shall work closely and in cooperation with the parks and recreation director, and advise the town council regarding matters concerning the Bay Oaks Recreational Campus and the community pool; or any other topics as assigned by the town council.

~~b.~~ (4) *Community resource advisory board.* The broad objectives of CRAB are to further the welfare of the citizens of the town in the implementation of our community as a "living park" as defined in the comprehensive plan and make recommendations to the town council on acquisition and management of public areas including, but no limited to, pools, parks, beach accesses, streetscapes and other public easements and property to further the living park concept. The CRAB shall advise the town council on these matters or any other topics as assigned by the town council.

~~c.~~ (5) *Cultural and environmental learning center advisory board.* The broad objectives of CELCAB are to ensure and promote the mission of the Mound House and Newton Beach Park to be accomplished through stewardship, advocacy and oversight according to best practices of museums and the requirement as stated in the Florida Communities Trust Agreements for each property. The CELCAB shall advise the town council on these matters or any other topics as assigned by the town council.

(4) (6) *Marine and environmental resource and task force.* The broad objectives of MERTF are to further the welfare of the business owners, residents, and visitors of the town by helping to promote a better, more healthful, safe, and attractive community environment and to ensure that the unique and natural characteristics of our marine and environmental resources are preserved; or any other topics as assigned by the town council.

(5) (7) *Public safety committee.* The PSC shall address any safety and transportation issues specifically assigned to the committee by the town council for the purpose of the health, safety and welfare of the business owners, residents, and visitors to the town. The committee shall review, discuss, and evaluate the most significant safety and transportation issues within the town. The PSC shall advise the town council on these matters or any other topics as assigned by the town council.

(8) Local Planning Agency. Notwithstanding the criteria set forth herein, the criteria for the members of the Local Planning Agency of Fort Myers Beach as outlined in section 34-113 shall prevail.

Sec. 2-96. – Removal of agency, board, committee or commission members.

Unless otherwise precluded by state statutes, ordinance, or resolution, any member of an agency, board, committee or commission shall serve at the pleasure of town council and may be removed by town council with or without cause. In the event that any member is no longer a registered voter within the ~~town's jurisdiction~~ territorial boundaries of the Town of Fort Myers Beach ~~or a property owner within the town's jurisdiction~~, or is convicted of a felony, an offense involving moral turpitude, while in office or has unpaid fines or liens due the Town of Fort Myers Beach, the town council shall terminate the appointment of such person as a member of the agency, board, committee or commission. No member of the Town's agency, board, commission, committee, or local planning agency holding office as of _____ day of _____, 2024, may be removed for failure to meet the qualification criteria as set forth in section 2-94.

Sec. 34-113. - Composition, appointment and compensation of members.

(a) The local planning agency shall consist of up to seven members appointed by the town council. No members of the local planning agency shall be salaried officials of the town. Membership on the local planning agency shall not affect a person's eligibility for membership on any other advisory committee for the Town of Fort Myers Beach during his/her term of office. One spouse per household will be eligible for membership on the local planning agency during any given term of office. No current member of town council shall be eligible to serve on the local planning agency. Except for inclusion of members required under Florida law, all members must be ~~residents of, or owners of real property located within, the territorial limits of~~ registered voters within the territorial boundaries of the Town of Fort Myers Beach at the time of application for membership on the local planning agency and during the period of service on the local planning agency. All applicants must apply on or before October 1 of the appointment year. Each application must include a short biography and short explanation as to why the applicant wishes to serve on the local planning agency.

(b) The members of the local planning agency shall serve without compensation but may be reimbursed for expenses as are necessary to conduct the work of the agency from funds appropriated by the town council.

(c) In addition to the up to seven voting members, the local planning agency shall also include as a nonvoting member a representative of the Lee County School District, as designated by the Lee County School Board, to attend and participate in those meetings at which the local planning agency considers comprehensive plan amendments and rezonings that would, if approved, increase residential

density on the property that is the subject of the application (see F.S. 163.3174(1), 2002).

(d) All appointed members of the local planning agency must file an annual financial disclosure as required by the Florida Commission on Ethics.

Section 3. That the Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach, Florida, Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the town manager without further process.

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

Section 5. If any section, subsection, sentence, clause, word, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 6. This Ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the town council upon a motion by _____ and seconded by _____, and upon being put on a roll call vote, the results were as follows:

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

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

TOWN OF FORT MYERS BEACH

Dan Allers, Town Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

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

ORDINANCE NO. 24-17

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 2-94 “QUALIFICATIONS AND APPOINTMENTS OF MEMBERS” AND SECTION 2-96 “REMOVAL OF AGENCY, BOARD, COMMITTEE OR COMMISSION MEMBERS” OF DIVISION 2 “PROCEDURES FOR THE ESTABLISHMENT OF BOARDS, COMMITTEES AND COMMISSIONS” OF ARTICLE IV “BOARDS, COMMISSIONS, COMMITTEES AND OTHER AGENCIES” OF CHAPTER 2 “ADMINISTRATION” AND SECTION 34-113 “COMPOSITION, APPOINTMENT AND COMPENSATION OF MEMBERS” OF DIVISION 3 “LOCAL PLANNING AGENCY” OF ARTICLE II “ZONING PROCEDURES” OF CHAPTER 34 “ZONING DISTRICTS, DESIGN STANDARDS AND NONCONFORMITIES” OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH, FLORIDA, REMOVING PROPERTY OWNERSHIP AS A QUALIFICATION REQUIREMENT FOR THE MEMBERS OF THE TOWN’S AGENCIES, BOARDS, COMMITTEES OR COMMISSIONS, INCLUDING THE TOWN’S LOCAL PLANNING AGENCY; ELIMINATING DUPLICATIVE LANGUAGE; ADDING A GRANDFATHER PROVISION FOR CURRENT NON-QUALIFYING MEMBERS OF THE TOWN’S BOARDS, AGENCIES, COMMISSIONS, AND COMMITTEES; ADDING A PROVISION TO SECTION 34-113, REGARDING THE MANDATORY ANNUAL FINANCIAL DISCLOSURE FORM AS REQUIRED BY THE FLORIDA COMMISSION ON ETHICS; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER’S ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

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

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

WHEREAS, on June 6, 2024, the Town Council held a discussion regarding the proposed changes to the Code of Ordinances of the Town of Fort Myers Beach, to eliminate property ownership within the Town’s territorial boundaries as a qualification requirement for the appointed members of the Town’s agencies, boards, committees or commissions, including the Town’s local planning agency; and

WHEREAS, the Town desires to amend the Town Code to remove property ownership as a criteria, qualifying individuals for the Town’s boards, agencies, commissions and committees; and

WHEREAS, the Town wishes to restrict the appointment to those individuals, who are registered voters within the territorial boundaries of the Town; and

WHEREAS, the reasons for removal of the appointed members from the Town's agencies, boards, committees or commissions are already addressed in Section 2-96 of the Town Code; and

WHEREAS, the Town desires to amend Section 2-94 to eliminate the duplicative language related to the removal of the Town's agency, board, committee or commission members; and

WHEREAS, the Town further wishes to add grandfather clauses to Sections 2-94 and 2-96, to allow current non-qualifying members of the Town's agencies, boards, committees or commissions to keep their appointment for the full term, regardless of whether such non-qualifying members meet the required criteria under the Town Code as of the effective date of this ordinance; and

WHEREAS, on the 17th day of June, 2024, the Town Council held a first reading of Ordinance 24-17 and gave direction to the Town Attorney to revise Ordinance 24-17 to add a grandfather clause; and

WHEREAS, the revisions proposed by the Town Council resulted in a substantial change to the title of Ordinance 24-17, necessitating a second first reading of the Ordinance; and

WHEREAS, on the 5th day of August, 2024, the Town Council held a second first reading of this Ordinance and gave full and complete consideration to the request of the proposed ordinance, the recommendation of staff, the documents in the record, and the testimony of all interested persons; and

WHEREAS, an advertisement of the public hearing for adoption of the Ordinance was published in The News-Press on the 14th day of August 2024, which is 10 days prior to the second reading of the proposed Ordinance as required by Section 166.041, Florida Statutes; and

WHEREAS, on the 9th day of September 2024, the Town Council held a second reading of the Ordinance; and

WHEREAS, the Town Council determined that adoption of the ordinance as provided herein is in the best interests of the health, safety, and welfare of the Town's residents.

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

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

Section 2. Section 2-94 "Qualifications and appointments of members" and Section 2-96 "Removal of agency, board, committee or commission members" of Division 2 "Procedures

for the Establishment of Boards, Committees and Commissions” of Article IV “Boards, Commissions, Committees and Other Agencies” of Chapter 2 “Administration” of the Code of Ordinances of the Town of Fort Myers Beach, Florida, as well as Section 34-113 “Composition, appointment and compensation of members” of Division 3 “Local Planning Agency” of Article II “Zoning Procedures” of Chapter 34 “Zoning Districts, Design Standards and Nonconformities” of the Town’s Land Development Code, are hereby amended to read as follows:

Sec. 2-94. - Qualifications and appointments of members.

In addition to qualifications, which may be specified for membership by state statutes, Charter, ordinance, or resolution, a person appointed to an agency, board, committee, or commission after August 5, 2024, shall be given preference to if that person is a registered voter within the town's jurisdiction the territorial boundaries of the Town of Fort Myers Beach. or a property owner within the town's jurisdiction. Although no specific experience requirements shall be necessary as a prerequisite to appointment, consideration shall be given to applicants who have experience or who have shown interest in the subject matter. ~~If any member is no longer a qualified elector or is convicted of a felony, an offense involving moral turpitude while in office, or has unpaid fines or liens due the Town of Fort Myers Beach, the town council shall terminate the appointment of such person as a member of the agency, board, committee, or commission.~~ Any member of the Town’s board, agency, commission or committee who holds office and who is not a registered voter within the Town’s jurisdiction as of August 5, 2024, shall keep his or her appointment for the full term.

(1) *Anchorage advisory committee.* The anchorage advisory committee shall advise the town council concerning all matters relevant to the management and use of the waters of the town for mooring and anchoring. The anchorage advisory committee shall prepare and submit the Matanzas Harbor Management Plan and any amendments thereto for review and approval by the town council and make recommendations for the establishment of managed municipal anchorages and mooring fields where warranted by objective evidence of environmental damage or user conflicts; or any other topics as assigned by the town council.

(2) *Audit committee.* All members of the audit committee shall be town residents who do not have any direct financial or business interests involving the town. The town council may waive the residency requirements by majority vote if there are an insufficient number of applicants who reside in the town. All members should, through education and experience, possess a basic understanding of governmental financial reporting and auditing. At least one member of the audit committee shall have accounting, auditing, or related financial management expertise that is specifically relevant to the government sector. The audit committee shall advise the town council on these matters and other matters pursuant to F.S. § 218.391, or any other topics as assigned by the town council.

(3) ~~a.~~ *Bay Oaks Recreational Campus Advisory Board.* The purpose of BORCAB is to serve the town as a community center and recreational facility providing individuals and groups passive and active recreational, social and community activities and events for both residents and visitors. BORCAB members shall work closely and in cooperation with the parks and recreation director, and advise the town council regarding matters concerning the Bay Oaks Recreational Campus and the community pool; or any other topics as assigned by the town council.

~~b.~~ (4) *Community resource advisory board.* The broad objectives of CRAB are to further the welfare of the citizens of the town in the implementation of our community as a "living park" as defined in the comprehensive plan and make recommendations to the town council on acquisition and management of public areas including, but no limited to, pools, parks, beach accesses, streetscapes and other public easements and property to further the living park concept. The CRAB shall advise the town council on these matters or any other topics as assigned by the town council.

~~c.~~ (5) *Cultural and environmental learning center advisory board.* The broad objectives of CELCAB are to ensure and promote the mission of the Mound House and Newton Beach Park to be accomplished through stewardship, advocacy and oversight according to best practices of museums and the requirement as stated in the Florida Communities Trust Agreements for each property. The CELCAB shall advise the town council on these matters or any other topics as assigned by the town council.

~~(4)~~ (6) *Marine and environmental resource and task force.* The broad objectives of MERTF are to further the welfare of the business owners, residents, and visitors of the town by helping to promote a better, more healthful, safe, and attractive community environment and to ensure that the unique and natural characteristics of our marine and environmental resources are preserved; or any other topics as assigned by the town council.

~~(5)~~ (7) *Public safety committee.* The PSC shall address any safety and transportation issues specifically assigned to the committee by the town council for the purpose of the health, safety and welfare of the business owners, residents, and visitors to the town. The committee shall review, discuss, and evaluate the most significant safety and transportation issues within the town. The PSC shall advise the town council on these matters or any other topics as assigned by the town council.

(8) Local Planning Agency. Notwithstanding the criteria set forth herein, the criteria for the members of the Local Planning Agency of Fort Myers Beach as outlined in section 34-113 shall prevail.

Sec. 2-96. – Removal of agency, board, committee or commission members.

Unless otherwise precluded by state statutes, ordinance, or resolution, any member of an agency, board, committee or commission shall serve at the pleasure of town council and may be removed by town council with or without cause. In the event that any member is no longer a registered voter within the ~~town's jurisdiction~~ territorial boundaries of the Town of Fort Myers Beach ~~or a property owner within the town's jurisdiction~~, or is convicted of a felony, an offense involving moral turpitude, while in office or has unpaid fines or liens due the Town of Fort Myers Beach, the town council shall terminate the appointment of such person as a member of the agency, board, committee or commission. No member of the Town's agency, board, commission, committee, or local planning agency holding office as of August 5, 2024, may be removed for failure to meet the qualification criteria as set forth in section 2-94.

Sec. 34-113. - Composition, appointment and compensation of members.

(a) The local planning agency shall consist of up to seven members appointed by the town council. No members of the local planning agency shall be salaried officials of the town. Membership on the local planning agency shall not affect a person's eligibility for membership on any other advisory committee for the Town of Fort Myers Beach during his/her term of office. One spouse per household will be eligible for membership on the local planning agency during any given term of office. No current member of town council shall be eligible to serve on the local planning agency. Except for inclusion of members required under Florida law, all members must be ~~residents of, or owners of real property located within, the territorial limits of~~ registered voters within the territorial boundaries of the Town of Fort Myers Beach at the time of application for membership on the local planning agency and during the period of service on the local planning agency. All applicants must apply on or before October 1 of the appointment year. Each application must include a short biography and short explanation as to why the applicant wishes to serve on the local planning agency.

(b) The members of the local planning agency shall serve without compensation but may be reimbursed for expenses as are necessary to conduct the work of the agency from funds appropriated by the town council.

(c) In addition to the up to seven voting members, the local planning agency shall also include as a nonvoting member a representative of the Lee County School District, as designated by the Lee County School Board, to attend and participate in those meetings at which the local planning agency considers comprehensive plan amendments and rezonings that would, if approved, increase residential density on the property that is the subject of the application (see F.S. 163.3174(1), 2002).

(d) All appointed members of the local planning agency must file an annual financial disclosure as required by the Florida Commission on Ethics.

Section 3. That the Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach, Florida, Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the town manager without further process.

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

Section 5. If any section, subsection, sentence, clause, word, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 6. This Ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the town council upon a motion by _____ and seconded by _____, and upon being put on a roll call vote, the results were as follows:

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

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

TOWN OF FORT MYERS BEACH

Dan Allers, Town Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

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

Sec. 2-94. - Qualifications and appointments of members.

In addition to qualifications, which may be specified for membership by state statutes, Charter, ordinance, or resolution, a person appointed to an agency, board, committee, or commission shall give preference to a registered voter within the town's jurisdiction or a property owner within the town's jurisdiction. Although no specific experience requirements shall be necessary as a prerequisite to appointment, consideration shall be given to applicants who have experience or who have shown interest in the subject matter. If any member is no longer a qualified elector, or is convicted of a felony, an offense involving moral turpitude while in office, or has unpaid fines or liens due the Town of Fort Myers Beach, the town council shall terminate the appointment of such person as a member of the agency, board, committee, or commission.

- (1) *Anchorage advisory committee.* The anchorage advisory committee shall advise the town council concerning all matters relevant to the management and use of the waters of the town for mooring and anchoring. The anchorage advisory committee shall prepare and submit the Matanzas Harbor Management Plan and any amendments thereto for review and approval by the town council and make recommendations for the establishment of managed municipal anchorages and mooring fields where warranted by objective evidence of environmental damage or user conflicts; or any other topics as assigned by the town council.
- (2) *Audit committee.* All members of the audit committee shall be town residents who do not have any direct financial or business interests involving the town. The town council may waive the residency requirements by majority vote if there are an insufficient number of applicants who reside in the town. All members should, through education and experience, possess a basic understanding of governmental financial reporting and auditing. At least one member of the audit committee shall have accounting, auditing, or related financial management expertise that is specifically relevant to the government sector. The audit committee shall advise the town council on these matters and other matters pursuant to F.S. § 218.391, or any other topics as assigned by the town council.
- (3)
 - a. *Bay Oaks Recreational Campus Advisory Board.* The purpose of BORCAB is to serve the town as a community center and recreational facility providing individuals and groups passive and active recreational, social and community activities and events for both residents and visitors. BORCAB members shall work closely and in cooperation with the parks and recreation director, and advise the town council regarding matters concerning the Bay Oaks Recreational Campus and the community pool; or any other topics as assigned by the town council.
 - b. *Community resource advisory board.* The broad objectives of CRAB are to further the welfare of the citizens of the town in the implementation of our community as a "living park" as defined in the comprehensive plan and make recommendations to the town

council on acquisition and management of public areas including, but no limited to, pools, parks, beach accesses, streetscapes and other public easements and property to further the living park concept. The CRAB shall advise the town council on these matters or any other topics as assigned by the town council.

c. *Cultural and environmental learning center advisory board.* The broad objectives of CELCAB are to ensure and promote the mission of the Mound House and Newton Beach Park to be accomplished through stewardship, advocacy and oversight according to best practices of museums and the requirement as stated in the Florida Communities Trust Agreements for each property. The CELCAB shall advise the town council on these matters or any other topics as assigned by the town council.

(4) *Marine and environmental resource and task force.* The broad objectives of MERTF are to further the welfare of the business owners, residents, and visitors of the town by helping to promote a better, more healthful, safe, and attractive community environment and to ensure that the unique and natural characteristics of our marine and environmental resources are preserved; or any other topics as assigned by the town council.

(5) *Public safety committee.* The PSC shall address any safety and transportation issues specifically assigned to the committee by the town council for the purpose of the health, safety and welfare of the business owners, residents, and visitors to the town. The committee shall review, discuss, and evaluate the most significant safety and transportation issues within the town. The PSC shall advise the town council on these matters or any other topics as assigned by the town council.

(Ord. No. 18-06, § 2, 5-7-2018; Ord. No. 22-10, § 2, 6-6-2022)

Sec. 2-96. - Removal of agency, board, committee or commission members.

Unless otherwise precluded by state statutes, ordinance, or resolution, any member of an agency, board, committee or commission shall serve at the pleasure of town council and may be removed by town council with or without cause. In the event that any member is no longer a registered voter within the town's jurisdiction or a property owner within the town's jurisdiction, or is convicted of a felony, an offense involving moral turpitude while in office or has unpaid fines or liens due the Town of Fort Myers Beach, the town council shall terminate the appointment of such person as a member of the agency, board, committee or commission.

(Ord. No. 18-06, § 4, 5-7-2018)

Sec. 34-113. - Composition, appointment and compensation of members.

- (a) The local planning agency shall consist of up to seven members appointed by the town council. No members of the local planning agency shall be salaried officials of the town. Membership on the local planning agency shall not affect a person's eligibility for membership on any other advisory committee for the Town of Fort Myers Beach during his/her term of office. One spouse per household will be eligible for membership on the local planning agency during any given term of office. No current member of town council shall be eligible to serve on the local planning agency. Except for inclusion of members required under Florida law, all members must be residents of, or owners of real property located within, the territorial limits of the Town of Fort Myers Beach at the time of application for membership on the local planning agency and during the period of service on the local planning agency. All applicants must apply on or before October 1 of the appointment year. Each application must include a short biography and short explanation as to why the applicant wishes to serve on the local planning agency.
- (b) The members of the local planning agency shall serve without compensation but may be reimbursed for expenses as are necessary to conduct the work of the agency from funds appropriated by the town council.
- (c) In addition to the up to seven voting members, the local planning agency shall also include as a nonvoting member a representative of the Lee County School District, as designated by the Lee County School Board, to attend and participate in those meetings at which the local planning agency considers comprehensive plan amendments and rezonings that would, if approved, increase residential density on the property that is the subject of the application (see F.S. 163.3174(1), 2002).

The 2024 Florida Statutes

[Title XI](#)
COUNTY ORGANIZATION AND INTERGOVERNMENTAL
RELATIONS

[Chapter 163](#)
INTERGOVERNMENTAL
PROGRAMS

[View Entire
Chapter](#)

163.3174 Local planning agency.—

(1) The governing body of each local government, individually or in combination as provided in s. [163.3171](#), shall designate and by ordinance establish a “local planning agency,” unless the agency is otherwise established by law. Notwithstanding any special act to the contrary, all local planning agencies or equivalent agencies that first review rezoning and comprehensive plan amendments in each municipality and county shall include a representative of the school district appointed by the school board as a nonvoting member of the local planning agency or equivalent agency to attend those meetings at which the agency considers comprehensive plan amendments and rezonings that would, if approved, increase residential density on the property that is the subject of the application. However, this subsection does not prevent the governing body of the local government from granting voting status to the school board member. The governing body may designate itself as the local planning agency pursuant to this subsection with the addition of a nonvoting school board representative. All local planning agencies shall provide opportunities for involvement by applicable community college boards, which may be accomplished by formal representation, membership on technical advisory committees, or other appropriate means. The local planning agency shall prepare the comprehensive plan or plan amendment after hearings to be held after public notice and shall make recommendations to the governing body regarding the adoption or amendment of the plan. The agency may be a local planning commission, the planning department of the local government, or other instrumentality, including a countywide planning entity established by special act or a council of local government officials created pursuant to s. [163.02](#), provided the composition of the council is fairly representative of all the governing bodies in the county or planning area; however:

(a) If a joint planning entity is in existence on the effective date of this act which authorizes the governing bodies to adopt and enforce a land use plan effective throughout the joint planning area, that entity shall be the agency for those local governments until such time as the authority of the joint planning entity is modified by law.

(b) In the case of chartered counties, the planning responsibility between the county and the several municipalities therein shall be as stipulated in the charter.

(2) Nothing in this act shall prevent the governing body of a local government that participates in creating a local planning agency serving two or more jurisdictions from continuing or creating its own local planning agency. Any such governing body which continues or creates its own local planning agency may designate which local planning agency functions, powers, and duties will be performed by each such local planning agency.

(3) The governing body or bodies shall appropriate funds for salaries, fees, and expenses necessary in the conduct of the work of the local planning agency and shall also establish a schedule of fees to be charged by the agency. To accomplish the purposes and activities authorized by this act, the local planning agency, with the approval of the governing body or bodies and in accord with the fiscal practices thereof, may expend all sums so appropriated and other sums made available for use from fees, gifts, state or federal grants, state or federal loans, and other sources; however, acceptance of loans must be approved by the governing bodies involved.

(4) The local planning agency shall have the general responsibility for the conduct of the comprehensive planning program. Specifically, the local planning agency shall:

(a) Be the agency responsible for the preparation of the comprehensive plan or plan amendment and shall make recommendations to the governing body regarding the adoption or amendment of such plan. During the preparation of the plan or plan amendment and prior to any recommendation to the governing body, the local planning agency shall hold at least one public hearing, with public notice, on the proposed plan or plan amendment. The governing body in cooperation with the local planning agency may designate any agency, committee, department, or person to prepare the comprehensive plan or plan amendment, but final recommendation of the adoption of such plan or plan amendment to the governing body shall be the responsibility of the local planning agency.

(b) Monitor and oversee the effectiveness and status of the comprehensive plan and recommend to the governing body such changes in the comprehensive plan as may from time to time be required, including the periodic evaluation and appraisal of the comprehensive plan required by s. 163.3191.

(c) Review proposed land development regulations, land development codes, or amendments thereto, and make recommendations to the governing body as to the consistency of the proposal with the adopted comprehensive plan, or element or portion thereof, when the local planning agency is serving as the land development regulation commission or the local government requires review by both the local planning agency and the land development regulation commission.

(d) Perform any other functions, duties, and responsibilities assigned to it by the governing body or by general or special law.

(5) All meetings of the local planning agency shall be public meetings, and agency records shall be public records.

History.—s. 6, ch. 75-257; s. 1, ch. 77-223; s. 5, ch. 85-55; s. 2, ch. 92-129; s. 9, ch. 95-310; s. 9, ch. 95-341; s. 1, ch. 2002-296; s. 10, ch. 2011-139; s. 2, ch. 2012-99.

The 2024 Florida Statutes

[Title XIV](#)
TAXATION AND
FINANCE

[Chapter 218](#)
FINANCIAL MATTERS PERTAINING TO POLITICAL
SUBDIVISIONS

[View Entire
Chapter](#)

218.391 Auditor selection procedures.—

(1) Each local governmental entity, district school board, charter school, or charter technical career center, prior to entering into a written contract pursuant to subsection (7), except as provided in subsection (8), shall use auditor selection procedures when selecting an auditor to conduct the annual financial audit required in s. [218.39](#).

(2) The governing body of a county, municipality, special district, district school board, charter school, or charter technical career center shall establish an auditor selection committee.

(a) The auditor selection committee for a county must, at a minimum, consist of each of the county officers elected pursuant to the county charter or s. 1(d), Art. VIII of the State Constitution or their respective designees and one member of the board of county commissioners or its designee.

(b) The auditor selection committee for a municipality, special district, district school board, charter school, or charter technical career center must consist of at least three members. One member of the auditor selection committee must be a member of the governing body of an entity specified in this paragraph, who shall serve as the chair of the committee.

(c) An employee, a chief executive officer, or a chief financial officer of the county, municipality, special district, district school board, charter school, or charter technical career center may not serve as a member of an auditor selection committee established under this subsection; however, an employee, a chief executive officer, or a chief financial officer of the county, municipality, special district, district school board, charter school, or charter technical career center may serve in an advisory capacity.

(d) The primary purpose of the auditor selection committee is to assist the governing body in selecting an auditor to conduct the annual financial audit required in s. [218.39](#); however, the committee may serve other audit oversight purposes as determined by the entity's governing body. The public may not be excluded from the proceedings under this section.

(3) The auditor selection committee shall:

(a) Establish factors to use for the evaluation of audit services to be provided by a certified public accounting firm duly licensed under chapter 473 and qualified to conduct audits in accordance with government auditing standards as adopted by the Florida Board of Accountancy. Such factors shall include, but are not limited to, ability of personnel, experience, ability to furnish the required services, and such other factors as may be determined by the committee to be applicable to its particular requirements.

(b) Publicly announce requests for proposals. Public announcements must include, at a minimum, a brief description of the audit and indicate how interested firms can apply for consideration.

(c) Provide interested firms with a request for proposal. The request for proposal shall include information on how proposals are to be evaluated and such other information the committee determines is necessary for the firm to prepare a proposal.

(d) Evaluate proposals provided by qualified firms. If compensation is one of the factors established pursuant to paragraph (a), it shall not be the sole or predominant factor used to evaluate proposals.

(e) Rank and recommend in order of preference no fewer than three firms deemed to be the most highly qualified to perform the required services after considering the factors established pursuant to paragraph (a). If

fewer than three firms respond to the request for proposal, the committee shall recommend such firms as it deems to be the most highly qualified.

(4) The governing body shall inquire of qualified firms as to the basis of compensation, select one of the firms recommended by the auditor selection committee, and negotiate a contract, using one of the following methods:

(a) If compensation is not one of the factors established pursuant to paragraph (3)(a) and not used to evaluate firms pursuant to paragraph (3)(e), the governing body shall negotiate a contract with the firm ranked first. If the governing body is unable to negotiate a satisfactory contract with that firm, negotiations with that firm shall be formally terminated, and the governing body shall then undertake negotiations with the second-ranked firm. Failing accord with the second-ranked firm, negotiations shall then be terminated with that firm and undertaken with the third-ranked firm. Negotiations with the other ranked firms shall be undertaken in the same manner. The governing body, in negotiating with firms, may reopen formal negotiations with any one of the three top-ranked firms, but it may not negotiate with more than one firm at a time.

(b) If compensation is one of the factors established pursuant to paragraph (3)(a) and used in the evaluation of proposals pursuant to paragraph (3)(d), the governing body shall select the highest-ranked qualified firm or must document in its public records the reason for not selecting the highest-ranked qualified firm.

(c) The governing body may select a firm recommended by the audit committee and negotiate a contract with one of the recommended firms using an appropriate alternative negotiation method for which compensation is not the sole or predominant factor used to select the firm.

(d) In negotiations with firms under this section, the governing body may allow a designee to conduct negotiations on its behalf.

(5) The method used by the governing body to select a firm recommended by the audit committee and negotiate a contract with such firm must ensure that the agreed-upon compensation is reasonable to satisfy the requirements of s. ~~218.39~~ and the needs of the governing body.

(6) If the governing body is unable to negotiate a satisfactory contract with any of the recommended firms, the committee shall recommend additional firms, and negotiations shall continue in accordance with this section until an agreement is reached.

(7) Every procurement of audit services shall be evidenced by a written contract embodying all provisions and conditions of the procurement of such services. For purposes of this section, an engagement letter signed and executed by both parties shall constitute a written contract. The written contract shall, at a minimum, include the following:

(a) A provision specifying the services to be provided and fees or other compensation for such services.

(b) A provision requiring that invoices for fees or other compensation be submitted in sufficient detail to demonstrate compliance with the terms of the contract.

(c) A provision specifying the contract period, including renewals, and conditions under which the contract may be terminated or renewed.

(8) Written contracts entered into pursuant to subsection (7) may be renewed. Such renewals may be done without the use of the auditor selection procedures provided in this section. Renewal of a contract shall be in writing.

(9) If the entity fails to select the auditor in accordance with the requirements of subsections (3)-(6), the entity must again perform the auditor selection process in accordance with this section to select an auditor to conduct audits for subsequent fiscal years.

History.—s. 65, ch. 2001-266; s. 1, ch. 2005-32; s. 15, ch. 2019-15.

1. **Request:**

Meeting Date: September 23, 2024

Request to continue to a date certain of October 7, 2024

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTIONS 2 AND 5 OF THE TOWN'S POLICIES AND PROCEDURES MANUAL TO MAKE IT CONSISTENT WITH ELIGIBILITY REQUIREMENTS FOR MEMBERS OF THE TOWN'S AGENCIES, BOARDS, COMMITTEES AND COMMISSIONS AND TO UPDATE REFERENCE TO REQUIRED FINANCIAL DISCLOSURE FORMS; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The passage of this proposed Resolution is necessary to ensure the Town Council's Policies and Procedures manual is updated pursuant to the recent changes in the Florida law regarding mandatory financial disclosure forms required from the local government officials every year, and revised for uniformity and consistency with the newly amended Town Code, which removes property ownership within the Town's jurisdiction as a qualification requirement for an individual to serve on the Town's board, agency, committee or commission, only requiring voter registration within the Town's territorial boundaries as an eligibility criteria.

What the action accomplishes:

The proposed resolution updates the language of the Town Council's Policies and Procedures Manual by (1) replacing the reference to Form 6 with a reference to Form 1, in compliance with the recent change in the Florida law regarding the required annual financial disclosure forms from the members of the local government, and (2) deleting the reference to residency within the Town's jurisdiction as a qualification requirement to serve as a committee/commission/agency/board member of the Town from Section 5 to ensure uniformity and consistency with the recent changes to the Town's Code of Ordinances after adoption of Ordinance 24-17.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

nancy stuparich, Town Attorney

5. **Background:**

On June 6, 2024, the Town Council discussed proposed amendments to the Town Code, eliminating property ownership as a qualifying criteria for a member of the Town's board, agency, committee or commission, and leaving only voter registration within the Town's jurisdiction as a qualification criteria. The Town Council directed the Town Attorney to draft a corresponding Ordinance.

On June 17, 2024, the Town Council held a first reading of the proposed Ordinance (24-17) and discussed proposed revisions to the Ordinance. On September 9, 2024, the Town Council will hold a second reading of the Ordinance. If the Ordinance is not challenged at the second reading and no other changes are suggested by the members of the Town Council, the Ordinance will be adopted. Upon adoption of the Ordinance, the Town Council's Policies and Procedures Manual will require revisions to be consistent with the newly amended Town Code.

Additionally, on June 10, 2024, the US District Court for the Southern District of Florida held that elected officials were not required to file a Form 6 (Full and Public Disclosure of Financial Interests) and instead must file a Form 1 (Statement of Financial Interests).

For the foregoing reasons, the Town Council's Policies and Procedures Manual needs to be updated. This can be accomplished by passing a Resolution, which amends the relevant portions of the Town Council's Policies and Procedures Manual to be consistent with the updated language of the Town Code and the recent changes in the Florida law.

Attachments:

1. Resolution 24-178, Amending Sections 2 and 5 of Town's Manual 9-4-24 noon mrns
2. 23-182, Town Council PnP
3. 24-17, Committee Member Reqs Ordinance (updated) 9-4-24 12.15pm mr

Financial Impact:

None

6. Alternative Action

7. Management Recommendations:

Pass the Resolution.

8. Recommended Approval:

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

Created/Initiated - 9/11/2024
Approved - 9/17/2024
Approved - 9/17/2024
Final Approval - 9/17/2024

RESOLUTION NUMBER 24-178

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING RESOLUTION 23-182 TO AMEND SECTIONS 2 AND 5 OF THE TOWN'S POLICIES AND PROCEDURES MANUAL TO MAKE IT CONSISTENT WITH ELIGIBILITY REQUIREMENTS FOR MEMBERS OF THE TOWN'S AGENCIES, BOARDS, COMMITTEES AND COMMISSIONS AND TO UPDATE REFERENCE TO REQUIRED FINANCIAL DISCLOSURE FORMS; AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, on January 22, 2024, the Town Council amended its Policies and Procedures Manual by approval of Resolution 23-182; and

WHEREAS, on June 6, 2024, during the Town Council meeting, the Town Council discussed removal of property ownership within the Town's territorial boundaries as a qualification for an individual to serve on a Town board, agency, committee or commission, and considered amending sections 2-94 and 2-96 of the Town of Fort Myers Beach Code of Ordinances, and section 34-113 of the Town's Land Development Code; and

WHEREAS, shortly thereafter on June 10, 2024, a Federal Court granted a preliminary injunction that changed the form filing requirement for financial disclosures from a 2023 Form 6 back to a 2023 Form 1 for mayors and city/village/town governing board members, which was effective immediately; and

WHEREAS, following a first reading on August 7, 2024, on September 9, 2024 the Town Council adopted Ordinance 24-17, amending the noted sections of the Town Code of Ordinances to remove ambiguous language and property ownership as a qualification requirement to serve on the Town's board, agency, commission or committee, leaving only voter registration within the Town's territorial boundaries as a requirement for eligibility to serve the Town; and

WHEREAS, the Town Council desires to now amend and update Sections 2 and 5 of the Town's Council Policies and Procedures Manual, previously approved by Resolution 23-182, to ensure the Town's Manual is updated and consistent with the current financial disclosure requirements under Florida law for local government officials and the amended Town of Fort

Myers Beach Code of Ordinances as it pertains to the updated committee member eligibility.

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

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

Section 2. Revisions to sections 2 and 5 of the Town Council's Policies and Procedures Manual, as amended in Exhibit "A," are approved.

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

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

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

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

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

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

EXHIBIT “A”

2. Town Council Mission and Job Description

Mission:

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

Functions, Powers and Duties:

- Review and interpret the Comprehensive Plan and conduct public hearings as needed to make changes.
- Review and interpret the Land Development Code and conduct public hearings as needed to make changes.
- Conduct hearings regarding land use matters.
- Introduce and approve Charter Amendments for adoption by referendum.
- Appoint a Town Manager.
- Appoint a Town Attorney.
- Introduce and enact ordinances.
- Introduce and adopt resolutions.
- Review and adopt the Operations and Capital Improvement budgets.
- Review and approve budget amendments.
- Create Special Assessment Districts as may be needed.
- Establish advisory committees as needed.
- Review and approve inter-local agreements.
- Review and approve contracts with the Town above the threshold limit allowed to Town Manager.
- Elect a Mayor and Vice Mayor.
- Perform any other duties that are lawfully defined by the Charter and Florida statutes.

Council Member Requirements:

- Electronically file a Statement of Financial Interests and Ethics Training (Form 6 1) on the Florida Commission on Ethics website every year.
- Complete and file Form 1 6F – Final Statement of Financial Interest, within 60 days of leaving office.
- Pursuant to state law, all Council members must complete 4 hours of ethics training each calendar year, which addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of the State of Florida.

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

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

~~Residency: As provided by Sec 2-94 of the Town Code, committee members shall be a registered voter or a property owner in the Town's jurisdiction.~~

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

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

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

Voting:

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

Examples of voting procedure:

First Ballot:

Seats available – 9

Candidates – 15

Votes on First Ballot: Results of First Ballot

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

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

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

Effective Date of Appointment and Follow Up:

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

Ad Hoc Committees:

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

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

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

Outline of Committee Orientation Material:

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

RESOLUTION NUMBER 23-182

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

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

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

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

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

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

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

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

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

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

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

ADOPTED this 22nd day of January 2024, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers
Dan Allers (Mar 6, 2024 08:29 EST)
Dan Allers, Mayor

ATTEST:

Amy Baker
Amy Baker (Mar 6, 2024 15:53 EST)
Amy Baker, Town Clerk

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

Nancy March
Nancy March (Mar 5, 2024 09:52 EST)
Vose Law Firm LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 12th day of February 2024.

EXHIBIT “A”

Town of Fort Myers Beach Town Council Policies and Procedures Manual Table of Contents

1. Introduction	3
2. Town Council Mission and Job Description	3
Mission:	3
Functions, Powers and Duties:	3
Council Member Requirements:	4
3. How Town Council Will Operate	4
Code of Conduct:	4
Code of Ethics:	5
Assignment of a Town Council Representative:	7
Sunshine Issues:	7
Email and Texting Policy:	8
Public Records:	8
4. Training Materials and First Meeting	9
Training Materials:	9
Training Recommendations:	9
Election of Officers:	10
Outside Committee Representation:	10
5. Town Advisory Committees, Boards and Agencies Standing Advisory Committees	11
Council Selection of Advisory Board, Agency, and Committee Members:	11
Ad Hoc Committees:	13
6. Meeting Preparation and Planning	14
Meeting Schedule:	14
Source of Items:	14
Timetable and Preparation Process:	14
Continued Hearings and Legislative Issues:	15
Attendance Policy:	15
Participation by Videoconference:	15
7. Meeting Procedures	16
Generally, the Order of Agenda Items:	16
Conduct of Council Meetings:	16
Rules of Civility:	17
Minutes:	18

EXHIBIT “A”

Council Members Items and Reports:.....	19
Agenda Management:	19
Action List:	19
How Voting Order is Established for Roll Call Votes:.....	19
Voting Conflicts:.....	19
Guidelines for Legislative Hearing Procedures:	20
Guidelines for Quasi-Judicial Land Use Hearing:	21
8. Reimbursement Procedures	22
Travel Expenses:.....	22
Business Expenses:	22
Educational Reimbursement:	22
9. Council Communications Policy and Processing Procedures	22
Council Communications Policy:	22
Mail Processing Procedures:.....	23
Communications with Potential Applicants for Zoning and Communications with Vendors or Service Providers:	23
10. Non-Discrimination and Harassment.....	23
Policies:.....	23
11. Interview/Selection Process for Legal Services	24
12. Interview/Selection Process for Town Manager.....	27
13.Appointment to Vacant Council Seats	30

EXHIBIT “A”

1. Introduction

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

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

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

2. Town Council Mission and Job Description

Mission:

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

Functions, Powers and Duties:

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

EXHIBIT “A”

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

Council Member Requirements:

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

3. How Town Council Will Operate

Code of Conduct:

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

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

EXHIBIT “A”

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

Code of Ethics:

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

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

EXHIBIT “A”

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

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

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

EXHIBIT “A”

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

Assignment of a Town Council Representative:

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

Sunshine Issues:

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

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

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

EXHIBIT “A”

Email and Texting Policy:

Email and texting are convenient ways to communicate with staff, Town Council, residents, and others. However, it presents unique legal and ethical challenges. All email and texts regarding Town business must be properly retained as a public record. Furthermore, any email or text regarding an issue that will come before Council in a quasi-judicial hearing must be properly disclosed as an ex-parte communication as appropriate. Council members must be vigilant to not accidentally violate Sunshine Law requirements. Emailing or texting anyone stating a position on an issue that will come before Town Council is particularly risky. Email and text actions to avoid include:

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

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

Public Records:

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

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

Any use of personal electronic equipment or email accounts for government business is allowed, but for a council member’s own protection, it is suggested that a copy of any documents produced is sent to their Town email account for proper retention. Materials prepared for Town Council meetings, hearings, minutes, and workshop will already be managed by the custodian of public

EXHIBIT “A”

records and do not need to be retained by the Council member. If there are any questions on retention of a particular document, consult with the custodian of public records and/or the Town Attorney before destroying.

4. Training Materials and First Meeting

Training Materials:

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

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

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

Training Recommendations:

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

EXHIBIT “A”

Election of Officers:

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

Outside Committee Representation:

Charlotte Harbor National Estuary Program – www.chnep.org

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

Coastal Advisory Committee – <https://www.leegov.com/naturalresources/marine/beachmgmnt/CAC>

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

Horizon Council – <https://www.leecountybusiness.com/horizon-council/>

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

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

Human Services Council – <https://www.leegov.com/dhs>

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

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

EXHIBIT “A”

Metropolitan Planning Organization – <https://leempo.com/>

Meetings: Third Friday of each month at 9 am*

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

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

Southwest Florida Regional Planning Council – www.swfrpc.org

Meetings: Third Thursday of each month at 9 am*

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

Estero Bay Agency on Bay Management – <https://www.esterobayabm.org/contact>

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

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

*Meeting times are subject to change.

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

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

Residency: ~~Except as required by Town Charter, Town Ordinance or Florida statute, residency on Fort Myers Beach will not be a requirement for nomination or election to a committee, commission, or board of the Town.~~ As provided by Sec 2-94 of the Town Code, committee members shall be a registered voter or a property owner in the Town’s jurisdiction.

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

EXHIBIT “A”

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

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

Voting:

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

Examples of voting procedure:

First Ballot:

Seats available – 9

Candidates – 15

Votes on First Ballot: Results of First Ballot

3 get 5 votes apiece 3 are elected

3 get 4 votes apiece 3 are elected

4 get 3 votes apiece 4 go on a second ballot

3 get 2 votes apiece 3 are eliminated

2 get 0 votes apiece 2 are eliminated

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

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

EXHIBIT “A”

Effective Date of Appointment and Follow Up:

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

Ad Hoc Committees:

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

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

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

Outline of Committee Orientation Material:

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

EXHIBIT “A”

6. Meeting Preparation and Planning

Meeting Schedule:

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

Source of Items:

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

When an item arises that requires Town Council action either to make a decision or to direct staff or the Town Attorney how to proceed it will appear on the agenda identified as a Council member's request or as an item under the Town Manager's section of the agenda which is the “catch all” for miscellaneous items, or Town Attorney's section, as appropriate. For an item to appear on an agenda, at least two Council members must agree and shall direct the Town Manager to do so, provided time schedules allow. (Note the agenda preparation timetable below).

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

Timetable and Preparation Process:

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

The Council members' packets include complete documentation for agenda items (actions required, implications, backup information, memos, ordinances, resolutions, etc.). A sincere effort is made to see that Council packets are complete; if something is not available, a written

EXHIBIT “A”

explanation will be provided. Generally, items requiring documentation (recommendations, memos, ordinances, resolutions, etc.) will not be included on an agenda until the documentation is complete.

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

Continued Hearings and Legislative Issues:

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

Attendance Policy:

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

Participation by Videoconference:

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

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

EXHIBIT “A”

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

7. Meeting Procedures

Generally, the Order of Agenda Items:

1. Call to Order
2. Invocation
3. Pledge of Allegiance
4. Approval of Final Agenda
5. Public Comment (Any issue can be discussed, but if an agenda item is addressed, the speaker cannot comment at the time such agenda item comes up. For testimony to be considered for a public hearing, it must be made during the hearing).
6. Local Achievements and Recognitions
7. Advisory Committee Items / Reports / Appointments
8. Approval of Minutes
9. Consent Agenda
10. Items Removed from Consent Agenda
11. Public Hearings of proposed ordinances (At conclusion of hearing, requires motion and roll call vote)
12. Administrative Agenda
 - a. Introduction of proposed ordinances (Requires a motion and a majority vote for scheduling the hearing).
 - b. Resolutions (Requires a motion and vote for passage)
 - c. Unfinished business (Items from previous agendas scheduled by Town Manager – should be listed separately on the agenda)
13. Final Public Comment (not limited to agenda items)
14. Town Manager’s Items and Reports
15. Town Attorney’s Items and Reports
11. Council Members Items and Reports
17. Adjournment (Requires a motion and vote – no second is required. It is a privileged motion allowing no discussion before vote)

Conduct of Council Meetings:

- The Mayor will conduct Council meetings, and in the Mayor’s absence the Vice Mayor will do so.
- The Town Clerk shall deliver a nondenominational invocation.
- Robert’s Rules of Order shall be the reference for parliamentary procedure governing the conduct of Town Council meetings when not in conflict with the Town Charter, Town Ordinances, Florida Statutes or these Policies and Procedures. It is not intended that

EXHIBIT “A”

Council meetings be unnecessarily formalistic, but rather that parliamentary procedure will be invoked only when necessary to facilitate the business of the meeting.

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

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

Rules of Civility:

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

1. Speakers are permitted to deliver his or her comments without interruption, absent inappropriate language, conduct or personal attacks.
2. Speakers and debates should focus on issues, not on persons or personalities.
3. Persons are encouraged to participate in the governmental process.

EXHIBIT “A”

4. To allow time to hear all points of view, speakers are allotted 3 minutes.
5. Sidebar discussions while others are speaking are discouraged in Council Chambers. These discussions are to be removed from the chambers so as not to be disruptive to those conducting and following Council business.
6. Only the speaker recognized by the Chairperson has the floor. Speakers should identify themselves for the record. Speakers should utilize the microphone so that their comments can be recorded.
7. We seek to understand one another's points of view.
8. Anger, rudeness, ridicule, impatience, and lack of respect for others are not acceptable behavior. Demonstrations in support or opposition to a speaker or idea such as clapping, cheering, booing, or hissing or intimidating body language are not permitted in Council Chambers or workshop facilities.
9. We should all take initiative to make things better. Our goal is to foster an environment which encourages a fair discussion and exchange of ideas without fear of personal attacks.
10. No use of profanity will be tolerated.
11. Any email or other digital or internet platform used to communicate with the Town Council, individual members of the Town Council, Town Manager, Town Attorney, or Town staff that contain personal attacks, offensive language or slurs; that are belligerent, sarcastic, accusatory or unsigned shall be deemed by the Town Council as non-compliant with these “Rules of Civility.” Such communications place absolutely no obligation upon Town Council Members, the Town Manager, the Town Attorney or Town staff to respond.

Minutes:

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

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

EXHIBIT “A”

Video and/or audio recordings when made are available at the request of the public or anyone who wishes to listen to the meeting or a portion of the meeting. The original video and audio recordings are stored in a secured area for safekeeping. Any request for production of a verbatim transcript, in whole or in part, of any meeting, workshop or other function of the Town Council or any Town committee thereof by a member of the public shall be paid for by the member of the public. Any need for a verbatim transcript requested by Town staff shall require prior consent of payment by the Town Council, except when such requests are required by a court of competent jurisdiction or quasi-judicial officer in the proper exercise of its powers. Video and audio recordings are only the legal record in the absence of approved minutes.

Council Members Items and Reports:

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

Agenda Management:

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

Action List:

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

How Voting Order is Established for Roll Call Votes:

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

Voting Conflicts:

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

“(3)(a) No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or

EXHIBIT “A”

business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer’s interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.”

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

Guidelines for Legislative Hearing Procedures:

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

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

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

EXHIBIT “A”

Guidelines for Quasi-Judicial Land Use Hearing:

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

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

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

EXHIBIT “A”

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

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

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

8. Reimbursement Procedures

Travel Expenses:

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

Business Expenses:

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

Educational Reimbursement:

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

9. Council Communications Policy and Processing Procedures

Council Communications Policy:

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

EXHIBIT “A”

Mail Processing Procedures:

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

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

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

10. Non-Discrimination and Harassment

Policies:

These policies are documented in the Town Personnel Manual

EXHIBIT “A”

11. Interview/Selection Process for Legal Services

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

INTERVIEW PROCESS FOR LEGAL SERVICES

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

RFP#: _____ . Interview date: _____

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

Applicant 1: _____

Applicant 2: _____

Applicant 3: _____

Applicant 4: _____

Applicant 5: _____

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

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

TIME	Applicant Name
1:00 – 1:15	Applicant 1
1:20 – 1:35	Applicant 2
1:40 – 1:55	Applicant 3
2:00 – 2:15	Applicant 4
2:20 – 2:35	Applicant 5

EXHIBIT “A”

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

EXHIBIT “A”

TOWN COUNCIL RANKING SHEET FOR LEGAL SERVICES

RFP# _____

DATE: _____

Councilor Name:

Councilor Signature:

Ranking (#1 is top choice)

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

EXHIBIT “A”

12. Interview/Selection Process for Town Manager

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

INTERVIEW PROCESS FOR TOWN MANAGER

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

RFP# _____ Interview date: _____

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

Applicant

1: _____

Applicant

2: _____

Applicant

3: _____

Applicant

4: _____

Applicant

5: _____

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

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

EXHIBIT “A”

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

EXHIBIT “A”

TOWN COUNCIL RANKING SHEET FOR TOWN MANAGER

RFP# _____

DATE: _____

Councilor Name: _____

Councilor Signature: _____

Ranking (#1 is top choice)

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

EXHIBIT “A”

13.Appointment to Vacant Council Seats

In the event of a vacancy on the Town Council pursuant to Sec. 4-06 of the Town Charter, the Town Council shall:

- 1.Declare and announce at a public meeting the reason the vacancy has been created;
- 2.Direct the Town Manager or designee to notify the public as soon as reasonable by the most appropriate means, including but not limited to posting on the Town’s website, a press release, social media, advertisement, that a vacancy on the Town Council has occurred with instructions on how to apply to serve as a Town Council member and notice that a Form 6 must be filed with the Florida Commission on Ethics pursuant to Florida law.
- 3.Thereafter the Town Council shall appoint an individual, who is qualified as provided in Section 4.01(c) of the Town Charter, to serve as a Town Council member prior to the expiration of the term of the vacant seat.

ORDINANCE NO. 24-17

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 2-94 “QUALIFICATIONS AND APPOINTMENTS OF MEMBERS” AND SECTION 2-96 “REMOVAL OF AGENCY, BOARD, COMMITTEE OR COMMISSION MEMBERS” OF DIVISION 2 “PROCEDURES FOR THE ESTABLISHMENT OF BOARDS, COMMITTEES AND COMMISSIONS” OF ARTICLE IV “BOARDS, COMMISSIONS, COMMITTEES AND OTHER AGENCIES” OF CHAPTER 2 “ADMINISTRATION” AND SECTION 34-113 “COMPOSITION, APPOINTMENT AND COMPENSATION OF MEMBERS” OF DIVISION 3 “LOCAL PLANNING AGENCY” OF ARTICLE II “ZONING PROCEDURES” OF CHAPTER 34 “ZONING DISTRICTS, DESIGN STANDARDS AND NONCONFORMITIES” OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH, FLORIDA, REMOVING PROPERTY OWNERSHIP AS A QUALIFICATION REQUIREMENT FOR THE MEMBERS OF THE TOWN’S AGENCIES, BOARDS, COMMITTEES OR COMMISSIONS, INCLUDING THE TOWN’S LOCAL PLANNING AGENCY; ELIMINATING DUPLICATIVE LANGUAGE; ADDING A GRANDFATHER PROVISION FOR CURRENT NON-QUALIFYING MEMBERS OF THE TOWN’S BOARDS, AGENCIES, COMMISSIONS, AND COMMITTEES; ADDING A PROVISION TO SECTION 34-113, REGARDING THE MANDATORY ANNUAL FINANCIAL DISCLOSURE FORM AS REQUIRED BY THE FLORIDA COMMISSION ON ETHICS; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER’S ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

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

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

WHEREAS, on June 6, 2024, the Town Council held a discussion regarding the proposed changes to the Code of Ordinances of the Town of Fort Myers Beach, to eliminate property ownership within the Town’s territorial boundaries as a qualification requirement for the appointed members of the Town’s agencies, boards, committees or commissions, including the Town’s local planning agency; and

WHEREAS, the Town desires to amend the Town Code to remove property ownership as a criteria, qualifying individuals for the Town’s boards, agencies, commissions and committees; and

WHEREAS, the Town wishes to restrict the appointment to those individuals, who are registered voters within the territorial boundaries of the Town; and

WHEREAS, the reasons for removal of the appointed members from the Town's agencies, boards, committees or commissions are already addressed in Section 2-96 of the Town Code; and

WHEREAS, the Town desires to amend Section 2-94 to eliminate the duplicative language related to the removal of the Town's agency, board, committee or commission members; and

WHEREAS, the Town further wishes to add grandfather clauses to Sections 2-94 and 2-96, to allow current non-qualifying members of the Town's agencies, boards, committees or commissions to keep their appointment for the full term, regardless of whether such non-qualifying members meet the required criteria under the Town Code as of the effective date of this ordinance; and

WHEREAS, on the 17th day of June, 2024, the Town Council held a first reading of Ordinance 24-17 and gave direction to the Town Attorney to revise Ordinance 24-17 to add a grandfather clause; and

WHEREAS, the revisions proposed by the Town Council resulted in a substantial change to the title of Ordinance 24-17, necessitating a second first reading of the Ordinance; and

WHEREAS, on the 7th day of August, 2024, the Town Council held a second first reading of this Ordinance and gave full and complete consideration to the request of the proposed ordinance, the recommendation of staff, the documents in the record, and the testimony of all interested persons; and

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

WHEREAS, an advertisement of the public hearing for adoption of the Ordinance was published in the _____ on the ____ day of _____, 2024, which is 10 days prior to the second reading of the proposed Ordinance as required by Section 166.041, Florida Statutes; and

WHEREAS, on the 9th day of September, 2024, the Town Council held a second reading of the Ordinance; and

WHEREAS, the Town Council determined that adoption of the ordinance as provided herein is in the best interests of the health, safety, and welfare of the Town's residents.

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

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

Section 2. Section 2-94 “Qualifications and appointments of members” and Section 2-96 “Removal of agency, board, committee or commission members” of Division 2 “Procedures for the Establishment of Boards, Committees and Commissions” of Article IV “Boards, Commissions, Committees and Other Agencies” of Chapter 2 “Administration” of the Code of Ordinances of the Town of Fort Myers Beach, Florida, as well as Section 34-113 “Composition, appointment and compensation of members” of Division 3 “Local Planning Agency” of Article II “Zoning Procedures” of Chapter 34 “Zoning Districts, Design Standards and Nonconformities” of the Town’s Land Development Code, are hereby amended to read as follows:

Sec. 2-94. - Qualifications and appointments of members.

In addition to qualifications, which may be specified for membership by state statutes, Charter, ordinance, or resolution, a person appointed to an agency, board, committee, or commission after ____ day of _____, 2024, shall be given preference ~~to if that person is a registered voter within the town's jurisdiction the territorial boundaries of the Town of Fort Myers Beach, or a property owner within the town's jurisdiction.~~ Although no specific experience requirements shall be necessary as a prerequisite to appointment, consideration shall be given to applicants who have experience or who have shown interest in the subject matter. ~~If any member is no longer a qualified elector or is convicted of a felony, an offense involving moral turpitude while in office, or has unpaid fines or liens due the Town of Fort Myers Beach, the town council shall terminate the appointment of such person as a member of the agency, board, committee, or commission. Any member of the Town’s board, agency, commission or committee who holds office and who is not a registered voter within the Town’s jurisdiction as of ____ day of _____, 2024, shall keep his or her appointment for the full term.~~

(1) *Anchorage advisory committee.* The anchorage advisory committee shall advise the town council concerning all matters relevant to the management and use of the waters of the town for mooring and anchoring. The anchorage advisory committee shall prepare and submit the Matanzas Harbor Management Plan and any amendments thereto for review and approval by the town council and make recommendations for the establishment of managed municipal anchorages and mooring fields where warranted by objective evidence of environmental damage or user conflicts; or any other topics as assigned by the town council.

(2) *Audit committee.* All members of the audit committee shall be town residents who do not have any direct financial or business interests involving the town. The town council may waive the residency requirements by majority vote if there are an insufficient number of applicants who reside in the town. All members should, through education and experience, possess a basic understanding of governmental financial reporting and auditing. At least one member of the audit committee shall

have accounting, auditing, or related financial management expertise that is specifically relevant to the government sector. The audit committee shall advise the town council on these matters and other matters pursuant to F.S. § 218.391, or any other topics as assigned by the town council.

(3) ~~a.~~ *Bay Oaks Recreational Campus Advisory Board.* The purpose of BORCAB is to serve the town as a community center and recreational facility providing individuals and groups passive and active recreational, social and community activities and events for both residents and visitors. BORCAB members shall work closely and in cooperation with the parks and recreation director, and advise the town council regarding matters concerning the Bay Oaks Recreational Campus and the community pool; or any other topics as assigned by the town council.

~~b.~~ (4) *Community resource advisory board.* The broad objectives of CRAB are to further the welfare of the citizens of the town in the implementation of our community as a "living park" as defined in the comprehensive plan and make recommendations to the town council on acquisition and management of public areas including, but no limited to, pools, parks, beach accesses, streetscapes and other public easements and property to further the living park concept. The CRAB shall advise the town council on these matters or any other topics as assigned by the town council.

~~c.~~ (5) *Cultural and environmental learning center advisory board.* The broad objectives of CELCAB are to ensure and promote the mission of the Mound House and Newton Beach Park to be accomplished through stewardship, advocacy and oversight according to best practices of museums and the requirement as stated in the Florida Communities Trust Agreements for each property. The CELCAB shall advise the town council on these matters or any other topics as assigned by the town council.

(4) (6) *Marine and environmental resource and task force.* The broad objectives of MERTF are to further the welfare of the business owners, residents, and visitors of the town by helping to promote a better, more healthful, safe, and attractive community environment and to ensure that the unique and natural characteristics of our marine and environmental resources are preserved; or any other topics as assigned by the town council.

(5) (7) *Public safety committee.* The PSC shall address any safety and transportation issues specifically assigned to the committee by the town council for the purpose of the health, safety and welfare of the business owners, residents, and visitors to the town. The committee shall review, discuss, and evaluate the most significant safety and transportation issues within the town. The PSC shall advise the town council on these matters or any other topics as assigned by the town council.

(8) Local Planning Agency. Notwithstanding the criteria set forth herein, the criteria for the members of the Local Planning Agency of Fort Myers Beach as outlined in section 34-113 shall prevail.

Sec. 2-96. – Removal of agency, board, committee or commission members.

Unless otherwise precluded by state statutes, ordinance, or resolution, any member of an agency, board, committee or commission shall serve at the pleasure of town council and may be removed by town council with or without cause. In the event that any member is no longer a registered voter within the ~~town's jurisdiction~~ territorial boundaries of the Town of Fort Myers Beach ~~or a property owner within the town's jurisdiction~~, or is convicted of a felony, an offense involving moral turpitude, while in office or has unpaid fines or liens due the Town of Fort Myers Beach, the town council shall terminate the appointment of such person as a member of the agency, board, committee or commission. No member of the Town's agency, board, commission, committee, or local planning agency holding office as of _____ day of _____, 2024, may be removed for failure to meet the qualification criteria as set forth in section 2-94.

Sec. 34-113. - Composition, appointment and compensation of members.

(a) The local planning agency shall consist of up to seven members appointed by the town council. No members of the local planning agency shall be salaried officials of the town. Membership on the local planning agency shall not affect a person's eligibility for membership on any other advisory committee for the Town of Fort Myers Beach during his/her term of office. One spouse per household will be eligible for membership on the local planning agency during any given term of office. No current member of town council shall be eligible to serve on the local planning agency. Except for inclusion of members required under Florida law, all members must be ~~residents of, or owners of real property located within, the territorial limits of~~ registered voters within the territorial boundaries of the Town of Fort Myers Beach at the time of application for membership on the local planning agency and during the period of service on the local planning agency. All applicants must apply on or before October 1 of the appointment year. Each application must include a short biography and short explanation as to why the applicant wishes to serve on the local planning agency.

(b) The members of the local planning agency shall serve without compensation but may be reimbursed for expenses as are necessary to conduct the work of the agency from funds appropriated by the town council.

(c) In addition to the up to seven voting members, the local planning agency shall also include as a nonvoting member a representative of the Lee County School District, as designated by the Lee County School Board, to attend and participate in those meetings at which the local planning agency considers comprehensive plan amendments and rezonings that would, if approved, increase residential

density on the property that is the subject of the application (see F.S. 163.3174(1), 2002).

(d) All appointed members of the local planning agency must file an annual financial disclosure as required by the Florida Commission on Ethics.

Section 3. That the Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach, Florida, Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the town manager without further process.

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

Section 5. If any section, subsection, sentence, clause, word, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 6. This Ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the town council upon a motion by _____ and seconded by _____, and upon being put on a roll call vote, the results were as follows:

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

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

TOWN OF FORT MYERS BEACH

Dan Allers, Town Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

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

1. **Request:**

Meeting Date: September 23, 2024

Second and Final Reading of proposed Ordinance 24-19 entitled AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 28-30 "IMMOBILIZATION AND IMPOUNDING OF ILLEGALLY PARKED VEHICLES" OF DIVISION 1 "GENERALLY" OF ARTICLE II "STOPPING, STANDING AND PARKING" OF CHAPTER 28 "TRAFFIC AND VEHICLES" OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH, TO INCLUDE THE ACCEPTED METHODS OF PAYMENT OF ANY FINES AND CHARGES RELATED TO ILLEGAL PARKING AND IMMOBILIZATION OF ILLEGALLY PARKED VEHICLES; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER'S ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

Why the action is necessary:

The passage of this ordinance is necessary to prevent the owners of illegally parked and/or immobilized vehicles from disputing the transactions related to illegal parking/immobilization fines and charges with their financial institutions upon release of the vehicles by the Town.

What the action accomplishes:

The proposed ordinance amends the existing language of Section 28-30 "Immobilization and impounding of illegally parked vehicles" of Division 1 "Generally" of Article II "Stopping, Standing and Parking" of Chapter 28 "Traffic and Vehicles" of the Code of Ordinances of the Town of Fort Myers Beach, Florida, restricting the accepted methods of payment of any fines and charges related to illegal parking and immobilization of illegally parked vehicles to a cashier's check or a money order.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Thomas Yozzo, Operations & Compliance Manager

5. **Background:**

The Town staff has encountered an issue with collection of the fines and charges related to illegally parked and/or immobilized vehicles. Specifically, the Town staff noticed that some violators dispute the paid fines and charges with their financial institution as soon as the boot is removed from the vehicle and the vehicle is released to the violator. The Town staff is forced to engage in time- and resource-consuming battles over the funds that it is rightfully entitled to, rendering the enforcement process of the parking regulations within the Town ineffective. The Neighborhood Community Services Department worked with the Town Attorney to amend the Town's Code for the Town Council's consideration to address this issue.

The draft ordinance would amend Section 28-30 of the Town of Fort Myers Beach Code of Ordinances to limit acceptable forms of payment of any fines and charges related to illegally parked and/or immobilized vehicles to a cashier's check or a money order. This change would simplify the payment process and improve collection efforts. The Town Council held the first reading of this proposed ordinance at the August 19, 2024, Town Council meeting, and the Ordinance was approved and moved to a second and final reading.

Attachments:

1. 24-19, Business Impact Estimate Illegal Parking
2. 24-19, FMB Vehicle Immobilization Payments

Financial Impact:

None

6. Alternative Action

7. Management Recommendations:

Accept

8. Recommended Approval:

Rileigh Baker, Neighborhood Services Coordinator
Thomas Yozzo, Operations & Compliance Manager
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 9/13/2024
Approved - 9/13/2024
Approved - 9/13/2024
Approved - 9/16/2024
Approved - 9/16/2024
Final Approval - 9/16/2024



Business Impact Estimate

Proposed ordinance's title/reference:

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 28-30 "IMMOBILIZATION AND IMPOUNDING OF ILLEGALLY PARKED VEHICLES" OF DIVISION 1 "GENERALLY" OF ARTICLE II "STOPPING, STANDING AND PARKING" OF CHAPTER 28 "TRAFFIC AND VEHICLES" OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH, TO INCLUDE THE ACCEPTED METHODS OF PAYMENT OF ANY FINES AND CHARGES RELATED TO ILLEGAL PARKING AND IMMOBILIZATION OF ILLEGALLY PARKED VEHICLES; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER'S ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

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

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

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

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

1. Summary of the proposed ordinance (must include a statement of the public purpose, such as serving the public health, safety, morals and welfare):

The proposed ordinance amends the existing language of Section 28-30 "Immobilization and impounding of illegally parked vehicles" of Division 1 "Generally" of Article II "Stopping, Standing and Parking" of Chapter 28 "Traffic and Vehicles" of the Code of Ordinances of the Town of Fort Myers Beach, Florida, to restrict the accepted methods of payment of any fines and charges related to illegal parking and immobilization of illegally parked vehicles to a cashier's check or a money order, eliminating the violators' ability to later dispute the fines and charges paid to the Town with third party financial institutions. The proposed ordinance promotes the health, safety, welfare, and morals of the residents of the Town by allowing the Town to collect the fines and charges it is rightfully entitled to without engaging in disputes over the funds.

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

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

None.

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

None.

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

[You may wish to include in this section the methodology or data used to prepare the Business Impact Estimate. For example: Fort Myers Beach staff solicited comments from businesses in the Fort Myers Beach as to the potential impact of the proposed ordinance by contacting the chamber of commerce, social media posting, direct mail or direct email, posting on Fort Myers Beach website, public workshop, etc. You may also wish to include efforts made to reduce the potential fiscal impact on businesses. You may also wish to state here that the proposed ordinance is a generally applicable ordinance that applies to all persons similarly situated (individuals as well as businesses) and, therefore, the proposed ordinance does not affect only businesses].

Not applicable.

ORDINANCE NO. 24-19

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 28-30 “IMMOBILIZATION AND IMPOUNDING OF ILLEGALLY PARKED VEHICLES” OF DIVISION 1 “GENERALLY” OF ARTICLE II “STOPPING, STANDING AND PARKING” OF CHAPTER 28 “TRAFFIC AND VEHICLES” OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH, TO INCLUDE THE ACCEPTED METHODS OF PAYMENT OF ANY FINES AND CHARGES RELATED TO ILLEGAL PARKING AND IMMOBILIZATION OF ILLEGALLY PARKED VEHICLES; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER’S ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

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

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

WHEREAS, the Town desires to amend the Town Code to include the accepted methods of payment of any fines and charges related to illegal parking and immobilization of illegally parked vehicles; and

WHEREAS, the Town wishes to restrict the accepted methods of payment of any such fines and charges to a cashier’s check or a money order; and

WHEREAS, on the 19th day of August, 2024, the Town Council held a first reading of this Ordinance and gave full and complete consideration to the request of the proposed ordinance, the recommendation of staff, the documents in the record, and the testimony of all interested persons; and

WHEREAS, a Business Impact Estimate was prepared and posted on the Town’s website on the 13 day of September, 2024, as required by Section 166.041(4), Florida Statutes; and

WHEREAS, an advertisement of the public hearing for adoption of this Ordinance was published in the Fort Myers News-Press on the 13 day of September, 2024, which is 10 days prior to the second reading of this proposed Ordinance as required by Section 166.041, Florida Statutes; and

WHEREAS, on the 23 day of September, 2024, the Town Council held a second reading of this Ordinance; and

WHEREAS, the Town Council determined that adoption of the ordinance as provided herein is in the best interests of the health, safety, welfare, and morals of the Town's residents.

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

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

Section 2. Section 28-30 "Immobilization and impounding of illegally parked vehicles" of Division 1 "Generally" of Article II "Stopping, Standing and Parking" of Chapter 28 "Traffic and Vehicles" of the Code of Ordinances of the Town of Fort Myers Beach, Florida, is hereby amended to read as follows:

Sec. 28-30. – Immobilization and impounding of illegally parked vehicles.

- (a) The town is authorized to attach a device that is capable of immobilizing a motor vehicle so that it cannot be moved under its own power or have the vehicle towed at the owner's expense whenever such a vehicle is found upon a public street or highway, a public parking lot or other public property in the town or parked overnight on public property, provided there are five unpaid and outstanding parking tickets or one unpaid and outstanding disability violation issued to the vehicle.
- (b) The immobilizing device will be attached to the motor vehicle at the location where the vehicle is parked, except that no motor vehicle will be immobilized within the traveled portion of a street or on a portion of a street when immobilization at such location will create a hazard to the public or traffic on the street. At the time the immobilizing device is attached to a motor vehicle, a notice will be affixed to the windshield, the driver side window, or other prominent place on the motor vehicle, where the operator of the vehicle would reasonably be expected to observe it, stating the following:
 - (1) The immobilizing device has been so attached, that the operator should not attempt to operate the motor vehicle while the immobilizing device is attached;
 - (2) The total amount of fines and charges due for illegal parking and immobilization and the methods of payment accepted by the town; and
 - (3) Where the operator may pay the fines to have the immobilizing device removed from the motor vehicle.

Any attempt to remove or otherwise tamper with the immobilization device, or any attempt to threaten or otherwise harass a town representative will constitute an offense against the town.

- (c) The immobilizing device will be removed from the motor vehicle upon payment of the total fines due to the town. The town shall only accept a cashier's check or a

money order as a form of payment of any fines and charges due to the town. No other forms of payment will be accepted by the town. The town may also approve the removal of the immobilizing device upon obtaining a satisfactory arrangement for payment of the fines due. Written proof of the owner or operator's arrangement for payment must be shown to the town before the immobilization device may be removed. If the owner or operator has failed to pay or make a satisfactory arrangement for payment by the end of the next immediate business day after the date of the immobilization, then the immobilized vehicle will be referred to the county sheriff. The vehicle will then be towed by a designated town towing company and placed into the impound yard. The parking enforcement specialist on duty at the time of tow will ensure that the immobilization device is removed in order for the towing agency to safely remove the vehicle. If the immobilization device is damaged or tampered with by anyone other than the parking enforcement specialist, the owner of the vehicle is liable for any damage to the immobilization device or the vehicle. If the device is damaged beyond repair, the owner of the vehicle must replace the device.

- (d) The town is hereby vested with authority, and it will be their duty, to impound any unoccupied vehicle parked in violation of any of the parking regulations of the town and to move or cause to be moved any illegally parked vehicle by wrecker or otherwise. As an alternative to immobilizing a motor vehicle as provided herein, the town may immediately cause any illegally parked motor vehicle to be towed in accordance with this section. All expenses for towing and impoundment will be the responsibility of the owner of the vehicle. All towing and impoundment hereunder must be accomplished in accordance with this section and applicable state and federal law.
- (e) Upon being impounded, the towing company can only release the towed vehicle after full payment, excluding the amount of any ticket issued concurrently with the immobilization device, provided the owner or operator wishes to contest the newly-issued ticket, has been received by the town and a receipt of that payment is presented to the towing company.
- (f) Parking enforcement personnel must not accept any payments for violations.

Section 3. That the Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach, Florida, Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the town manager without further process.

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

Section 5. If any section, subsection, sentence, clause, word, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional

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

Section 6. This Ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the town council upon a motion by _____ and seconded by _____, and upon being put on a roll call vote, the results were as follows:

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

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

TOWN OF FORT MYERS BEACH

Dan Allers, Town Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

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

1. **Request:**

Meeting Date: September 23, 2024

Second Reading and Final Public Hearing on proposed Ordinance 24-25 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING CHAPTER 16, ARTICLE I OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH BY CREATING SECTION 16-1 "PUBLIC CAMPING OR SLEEPING ON ANY PUBLIC PROPERTY, PUBLIC BUILDING, OR PUBLIC RIGHT-OF-WAY PROHIBITED," AND AMENDING ARTICLE IV OF CHAPTER 32, TO REMOVE SECTIONS 32-70 "APPLICABILITY," 32-71 "INTENT," AND 32-72 "PROHIBITED"; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER'S ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

Why the action is necessary:

The passage of this ordinance is necessary to allow the Town to enforce the new Florida law, which goes into effect on October 1, 2024, and which regulates public sleeping and public camping. The passage of this Ordinance is necessary to ensure the Town can enforce the new law when it goes into effect and regulate public camping and sleeping within the Town's territorial jurisdiction as necessary.

What the action accomplishes:

The proposed ordinance amends Article I of Chapter 16 "Offenses" to adopt regulations pertaining to public sleeping and camping, and amends Article IV "Night Sleeping on Beach" of Chapter 32 to remove any inconsistencies with the new language of Article I of Chapter 16 as it pertains to sleeping on a public beach.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

nancy stuparich, Town Attorney

5. **Background:**

On March 20, 2024, Governor Ron DeSantis signed House Bill 1365, which has been codified as Chapter 2024-11, Laws of Florida. The new law will go into effect on October 1, 2024, and will create Section 125.0231, Florida Statutes.

The purpose of the law is to regulate public camping and public sleeping and is focused on Florida's homeless population, which is over 30,000 persons. While enacting House Bill 1365, the Florida Legislature considered evidence that approximately 50 percent of people experiencing homelessness in Florida were unsheltered, meaning their primary nighttime residence is a place not suitable for human habitation, such as sidewalks, vehicles, abandoned buildings or parks. Living unsheltered can have significant impacts on a person's health and safety.

The Town of Fort Myers Beach has a significant interest in providing a safe and pleasant environment and in eliminating public camping or sleeping on any public property, public building, or public right-of-way. As of the date of the first reading of this Ordinance, the Town Code only addresses night sleeping on the beach in Article IV "Night Sleeping on Beach" of Chapter 32. It is in the Town's and its residents' best interests to pass this Ordinance to ensure the Town can regulate and comply with the new Florida Law once the law goes into effect on October 1, 2024. Additionally, the Town Code should be amended to delete the existing language of Article IV of Chapter 32 addressing sleeping on the Town's beaches to prevent any potential conflict between the two provisions of the Town Code pertaining to sleeping in public areas.

The Town Council held the first reading of this proposed Ordinance at the September 9, 2024, Town

Council meeting, and the Ordinance was approved and moved to a second and final reading.

Attachments:

1. Final Second Reading 24-25, Prohibition against Public Sleeping and Camping 8-23-24
mrns
2. 24-25, Business Impact Estimate Public Sleeping and Camping (BIE) 8-23-24 mr

Financial Impact:

None

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

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

Created/Initiated - 9/11/2024
Approved - 9/11/2024
Approved - 9/12/2024
Approved - 9/13/2024
Final Approval - 9/13/2024

ORDINANCE NO. 24-25

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING CHAPTER 16, ARTICLE I OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH BY CREATING SECTION 16-1 “PUBLIC CAMPING OR SLEEPING ON ANY PUBLIC PROPERTY, PUBLIC BUILDING, OR PUBLIC RIGHT-OF-WAY PROHIBITED,” AND AMENDING ARTICLE IV OF CHAPTER 32, TO REMOVE SECTIONS 32-70 “APPLICABILITY,” 32-71 “INTENT,” AND 32-72 “PROHIBITED”; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER’S ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

WHEREAS, Chapter 166, Florida Statutes authorizes a municipality to enact regulations to protect the health, safety, welfare, and morals of its citizens; and

WHEREAS, On March 20, 2024, Governor Ron DeSantis signed House Bill 1365, which has been codified as Chapter 2024-11, Laws of Florida. The new law goes into effect on October 1, 2024, and creates Section 125.0231, Florida Statutes. The purpose of the law is to regulate public camping and public sleeping and is focused on Florida’s homeless population, which is over 30,000 persons; and

WHEREAS, while enacting House Bill 1365, the Florida Legislature considered evidence that approximately 50 percent of people experiencing homelessness in Florida were unsheltered, meaning their primary nighttime residence is a place not suitable for human habitation, such as sidewalks, vehicles, abandoned buildings or parks. Living unsheltered can have significant impacts on a person’s health and safety; and

WHEREAS, the Town of Fort Myers Beach has a significant interest in providing a safe and pleasant environment and in eliminating public camping or sleeping on any public property, public building, or public right-of-way; and

WHEREAS, the Town Council of the Town of Fort Myers Beach finds it is in the best interests and welfare of the citizens, business owners, visitors and the homeless population of the Town of Fort Myers Beach to enact this Ordinance; and

WHEREAS, on the 9th day of September 2024, the Town Council held a first reading of this Ordinance and gave full and complete consideration to the request of the proposed ordinance, the recommendation of staff, the documents in the record, and the testimony of all interested persons; and

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

WHEREAS, an advertisement of the public hearing for adoption of this Ordinance was

published in the _____ on the ____ day of _____, 2024, which is 10 days prior to the second reading of this proposed Ordinance as required by Section 166.041, Florida Statutes; and

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

WHEREAS, the Town Council determined that adoption of the ordinance as provided herein is in the best interests of the health, safety, welfare, and morals of the Town’s residents.

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

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

Section 2. Article I “In General” of Chapter 16 “Offenses” of the Code of Ordinances of the Town of Fort Myers Beach, Florida, is hereby amended to read as follows:

ARTICLE I. – ~~IN GENERAL~~ PUBLIC CAMPING AND SLEEPING

Sec. 16-1. – Public camping or sleeping on any public property, public building, or public right-of-way prohibited.

- (a) **Findings.** The Town of Fort Myers Beach has a significant interest in providing a safe and pleasant environment for its citizens, business owners, visitors and its homeless population by eliminating public camping or sleeping on any public property, public building, or public right-of-way. Public camping or public sleeping in a public place not suitable for human habitation, such as a sidewalk, vehicle, abandoned building, or park can have significant impacts on a person’s health and safety. The Town Council of the Town of Fort Myers Beach hereby determines that this Section fulfills an important Town purpose by ensuring the health, safety, welfare, quality of life, and aesthetics of the Town of Fort Myers Beach; and
- (b) **Intent.** The purpose and intent of this Section is to recognize the constitutional right of persons to gather in any lawful manner or place or time; however public sleeping and public camping constitutes a threat and danger to health, safety, security and welfare to the citizens, business owners, visitors and the homeless population of the Town of Fort Myers Beach. The goal of this Section is to ensure the foregoing constitutional rights while through reasonable regulation, acting to protect citizens, business owners, visitors and the homeless population.
- (c) **Definition.** The following definition is hereby adopted for this Section:
1. “Public camping or sleeping” means:

a. Lodging or residing overnight in a temporary outdoor habitation used as a dwelling or living space and evidenced by the erection of a tent or other temporary shelter, the presence of bedding or pillows, or the storage of personal belongings; or

b. Lodging or residing overnight in an outdoor space without a tent or other temporary shelter.

2. The term does not include:

a. Lodging or residing overnight in a motor vehicle that is registered, insured, and located in a place where it may lawfully be.

b. Camping for recreational purposes on property designated for such purposes.

(d) **Violations.** All Town code enforcement and law enforcement officers are hereby authorized to enforce this Section, as follows:

1. No person may engage in public camping or sleeping on any public property, including, but not limited to, any public building or its grounds or any public right-of-way.

2. The penalty for the first violation shall be no less than a \$50 fine; the penalty for a second offense shall be no less than a \$100 fine; and the penalty for all subsequent violations shall be no less than a \$200 fine for each and every offense thereafter. A warning notice may be issued in lieu of fine if no prior violations have occurred. In addition to any penalty mentioned herein, A law enforcement officer may issue a trespass warning, or any other penalty prescribed for a violation of any applicable section of Chapter 810, Florida Statutes.

3. All fines collected resulting from violations of this Section shall be held by the Town of Fort Myers Beach for the care of the homeless population to fund any non-profit organization that provides shelter, food, or medical care at the discretion and selection by majority vote of the Town Council.

4. Nothing within this Section precludes the Town of Fort Myers Beach from pursuing other remedies authorized in the Town of Fort Myers Beach Code of Ordinances or any civil or administrative remedies.

Secs. 16-12—16-18. – Reserved.

ARTICLE IV. – ~~NIGHT SLEEPING ON BEACH~~ RESERVED

Sec. 32-70. – ~~Applicability.~~

~~This article shall apply to all public beaches located in the town. For purposes of this article, the term "public beaches" means any beach within the territorial boundaries of the town which:~~

- ~~(1) Is below the mean high-water lines;~~
- ~~(2) Is owned by the county or the town;~~
- ~~(3) Has arisen upon it a right of customary use by the public;~~
- ~~(4) Has arisen upon it a public easement, prescriptive or otherwise; or~~
- ~~(5) Is the foreshore of tidal navigable waters, that is the land between the high-water and low-water marks, and is owned by the state.~~

~~Sec. 32-71. -- Intent.~~

~~It is the intent of the town council in the adoption of the ordinance from which this article is derived to preserve and protect the beauty of the public beaches since such beaches are invaluable natural assets which are held in trust by the town for recreational use by residents and visitors alike. The town council has made the following findings in reaching the determination that:~~

- ~~(1) Sleeping on the beaches during nighttime hours must be prohibited;~~
- ~~(2) The beaches are one of its most valuable natural assets;~~
- ~~(3) The beaches are intended to be used solely for recreational purposes and are not intended to be used for sleeping during nighttime hours;~~
- ~~(4) The town's economic well-being is substantially dependent upon tourism which is, in turn, dependent upon maintaining attractive and inviting beaches;~~
- ~~(5) Permitting persons to sleep upon the beaches during nighttime hours will negatively affect the appearance of the beaches, will have a deleterious effect upon the town's tourism industry and will require the unwarranted expenditure of funds in order to provide a reasonably safe and healthy sleeping environment for those who may choose to sleep upon the beaches during nighttime hours;~~
- ~~(6) Persons asleep on beaches during nighttime hours are exposed to the risk of harm from others or from the elements; and~~
- ~~(7) Prohibiting persons from sleeping upon the beaches during nighttime hours will promote the public health, safety and welfare.~~

~~Sec. 32-72. -- Prohibited.~~

~~It shall be unlawful for any person to sleep on any public beach within the town between the hours of 10:00 p.m. and 6:00 a.m. of the following day.~~

~~Secs. 32-730—32-100. - Reserved.~~

Section 3. That the Town Council intends that the provisions of this Ordinance be made a part of the Fort Myers Beach, Florida, Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

Section 4. Whenever the requirements or provisions of this Ordinance conflict with

the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

Section 5. If any section, subsection, sentence, clause, word, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 6. This Ordinance shall become effective immediately upon adoption by the Town Council.

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

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

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

TOWN OF FORT MYERS BEACH

Dan Allers, Town Mayor

ATTEST

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

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



Business Impact Estimate

This form should be included in the agenda packet for the item under which the proposed ordinance is to be considered and must be posted on the Fort Myers Beach website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference:

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING CHAPTER 16, ARTICLE I OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH BY CREATING SECTION 16-1 "PUBLIC CAMPING OR SLEEPING ON ANY PUBLIC PROPERTY, PUBLIC BUILDING, OR PUBLIC RIGHT-OF-WAY PROHIBITED," AND AMENDING ARTICLE IV OF CHAPTER 32, TO REMOVE SECTIONS 32-70 "APPLICABILITY," 32-71 "INTENT," AND 32-72 "PROHIBITED"; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER'S ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

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

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

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

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

1. Summary of the proposed ordinance (must include a statement of the public purpose, such as serving the public health, safety, morals and welfare):

Proposed Ordinance No. 24-25 serves to protect the public health, safety, morals, and welfare by prohibiting public camping and sleeping. While enacting House Bill 1365, the Florida Legislature considered evidence that approximately 50 percent of people experiencing homelessness in Florida were unsheltered, meaning their primary nighttime residence is a place not suitable for human habitation, such as a sidewalk, vehicle, abandoned building, or park. Living unsheltered can have significant impacts on a person's health and safety. The Town of Fort Myers Beach has a significant interest in providing a safe and pleasant environment and in eliminating public camping or sleeping on any public property, public building or public right-of-way.

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

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

None.

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

None.

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

[You may wish to include in this section the methodology or data used to prepare the Business Impact Estimate. For example: Fort Myers Beach staff solicited comments from businesses in the Fort Myers Beach as to the potential impact of the proposed ordinance by contacting the chamber of commerce, social media posting, direct mail or direct email, posting on Fort Myers Beach website, public workshop, etc. You may also wish to include efforts made to reduce the potential fiscal impact on businesses. You may also wish to state here that the proposed ordinance is a generally applicable ordinance that applies to all persons similarly situated (individuals as well as businesses) and, therefore, the proposed ordinance does not affect only businesses].

Not applicable.

1. **Request:**

Meeting Date: September 23, 2024

Request to continue to a date certain of October 21, 2024 at 9:00 a.m.

Second Reading and Final Public Hearing on proposed Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING: 1) DIVISION 3 "UNSAFE BUILDING ABATEMENT CODE" OF ARTICLE I "PROPERTY MAINTENANCE CODES"; AND 2) DIVISION 2 "LEE COUNTY'S BOARDS OF ADJUSTMENT AND APPEALS" OF ARTICLE II "BUILDING CODES" OF CHAPTER 6 "MAINTENANCE CODES, BUILDING CODES AND COASTAL REGULATIONS" OF THE LAND DEVELOPMENT CODE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, TO AMEND EXISTING PROVISIONS RELATED TO APPEALS OF THE BUILDING OFFICIAL'S DECISIONS; DIVESTING THE LEE COUNTY CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS OF THE RESPONSIBILITY FOR REVIEW OF APPEALS OF THE TOWN BUILDING OFFICIAL'S DECISIONS INCLUDING BUT NOT LIMITED TO DETERMINATION OF AN UNSAFE BUILDING; AUTHORIZING THE TOWN OF FORT MYERS BEACH SPECIAL MAGISTRATES TO HEAR APPEALS OF THE TOWN'S BUILDING OFFICIAL'S DECISIONS; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

Why the action is necessary:

The interlocal agreement between the Town of Fort Myers Beach and Lee County, stating that the appellate review of appeals of property owners regarding unsafe structures shall be deferred to Lee County Board of Adjustment and Appeals, expired in 2017. The passage of this ordinance is necessary to ensure that the Town has an adequate appeal process in place for those property owners, whose properties have been deemed unsafe and noticed for demolition by the Town Building Official, and to ensure that their due process rights are not violated.

What the action accomplishes:

This ordinance reassigns the responsibility of appellate review of the Town Building Official's decisions from Lee County Board of Adjustment and Appeals to the Town of Fort Myers Beach Special Magistrates.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Nancy Stuparich, Town
Attorney

5. **Background:**

Subsequent to the Town's incorporation, the Town and Lee County entered into an Interlocal Agreement, pursuant to which Lee County's Board of Adjustment and Appeals agreed to provide appellate review of the Town's Building Official's decisions. The Town has recently become aware that the Interlocal Agreement between the Town and the Lee County Board of Adjustment and Appeals related to the Board's appellate review of the Town Building Official's decisions regarding unsafe structures under Division 3 "Unsafe Building Abatement Code" of Article I "Property Maintenance Codes" of Chapter 6 "Maintenance Codes, Building Codes and Coastal Regulations" of the Town's Land Development Code expired in 2017. It would be in the Town's best interests to reassign the responsibility of appellate review of the Town Building Official's decisions from Lee County Board of Adjustment and Appeals to the Town of Fort Myers Beach Special Magistrates. The first reading of the proposed Ordinance was held on September 9, 2024. The Town Council approved the proposed reassignment of appellate review of the Town Building Official's decisions to the Town's special magistrates at the first reading and has moved this proposed Ordinance forward to a second and final reading on September 23, 2024.

Attachments:

1. Final 24-30, Unsafe Building Code Amendment Ordinance (2nd reading) 8-29-24 mrns
2. Art. 1, Div 3 Fort Myers Beach, FL Code of Ordinances
3. Art 11, Div 2 - Fort Myers Beach, FL Code of Ordinances
4. 24-30, Business Impact Estimate - Unsafe Building Code Amendment Appeals 9-3-24 mr

Financial Impact:

None

6. Alternative Action**7. Management Recommendations:**

Approve this ordinance.

8. Recommended Approval:

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

Created/Initiated - 9/11/2024
Approved - 9/17/2024
Approved - 9/17/2024
Final Approval - 9/17/2024

ORDINANCE NO. 24-30

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING: 1) DIVISION 3 “UNSAFE BUILDING ABATEMENT CODE” OF ARTICLE I “PROPERTY MAINTENANCE CODES”; AND 2) DIVISION 2 “LEE COUNTY’S BOARDS OF ADJUSTMENT AND APPEALS” OF ARTICLE II “BUILDING CODES” OF CHAPTER 6 “MAINTENANCE CODES, BUILDING CODES AND COASTAL REGULATIONS” OF THE LAND DEVELOPMENT CODE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, TO AMEND EXISTING PROVISIONS RELATED TO APPEALS OF THE BUILDING OFFICIAL’S DECISIONS; DIVESTING THE LEE COUNTY’S CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS OF THE RESPONSIBILITY FOR REVIEW OF APPEALS OF THE TOWN BUILDING OFFICIAL’S DECISIONS REGARDING UNSAFE BUILDINGS; AUTHORIZING THE TOWN OF FORT MYERS BEACH SPECIAL MAGISTRATES TO HEAR APPEALS OF THE TOWN’S BUILDING OFFICIAL’S DECISIONS; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

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

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

WHEREAS, on September 28, 2022, residences and businesses in the Town of Fort Myers Beach were destroyed by Hurricane Ian, resulting in the loss of lives, the displacement of lives and catastrophic financial losses; and

WHEREAS, although the Town, residents and businesses have engaged in recovery efforts to repair and rebuild structures in existence prior to Hurricane Ian, the Building Official has identified structures that have sustained significant damage and remain in an unsafe condition; and

WHEREAS, the Town’s “Unsafe Building Abatement Code” incorporates the 1985 Standard Unsafe Building Abatement Code to provide a procedure for the Building Official to follow if a structure is determined to be unsafe and requires demolition, with exceptions; and

WHEREAS, the Unsafe Building Abatement Code currently provides that any appeals of the Building Official decision would be reviewed by the Lee County's Construction Board of Adjustment and Appeals (the “Board”); and

WHEREAS, the Interlocal Agreement between the Town and the Lee County Board of County Commissioners related to the Board’s appellate review of the Town’s Building Official’s decisions has expired; and

WHEREAS, it is in the Town’s best interest to reassign the responsibility of appellate review of the Town’s Building Official’s decisions to the Town of Fort Myers Beach Special Magistrate; and

WHEREAS, on the 9th day of September, 2024, the Town Council held a first reading of the Ordinance and gave full and complete consideration to the request of the proposed ordinance to amend the Unsafe Building Abatement Code as provided herein; and

WHEREAS, a Business Impact Estimate was prepared and posted on the City’s website as required by Section 166.041(4), Florida Statutes; and

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

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

WHEREAS, the Town Council determined that adoption of the Ordinance as provided herein is in the best interest of the health, safety and welfare of the public.

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

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

Section 2. That Section 6-37 of Division 3 “Unsafe Building Abatement Code” of Article I “Property Maintenance Codes,” is hereby amended to read as follows:

DIVISION 3. - UNSAFE BUILDING ABATEMENT CODE

Sec. 6-37. - Exceptions and revisions.

a) Section 105 of Chapter I, Administration is hereby amended as follows:

Section 105, relating to the board of adjustment and appeals, is deleted, and replaced by the procedures set forth for the delegation of authority to the Town of Fort Myers Beach Special Magistrates Lee County's Construction Board of Adjustment and Appeals found in division 2 of article II of this chapter. Any reference to the board of adjustment and appeal as may be in other Chapters shall be amended as provided herein by reference.

b) Sections 302.1.1(4) and 302.1.2-302.1.4 in Chapter III, Inspection and Notice of Noncompliance are hereby amended as follows:

302.1.1(4) A statement advising that any person having any legal interest in the property may appeal the notice by the Building Official to the Town of Fort Myers Beach Special Magistrates Lee County Board of Adjustment and Appeals; and that such appeal shall be in writing and shall be filed with the Building Official within 30 days from the date of the notice in accordance with Division 2 of Article II of Chapter 6 of the Fort Myers Beach Code of Ordinances and that failure to appeal in the time specified will constitute a waiver of all rights to an administrative hearing.

302.1.2 The notice and all attachments thereto shall be served upon the property owner as identified on the records of the Lee County Property Appraiser and posted on the property. Failure of the building official to serve any person or entity other than the owner of record shall not invalidate any proceedings hereunder nor shall it relieve any other person or entity served from any obligation imposed on that person or entity.

302.1.3 The notice shall be served either personally by hand delivery by Town staff or a process server or by certified mail, postage prepaid, return receipt requested, to the owner of record at the address shown for the owner on the Lee County Property Appraiser's website. Notice shall also be mailed to the address of the building or structure involved in the proceedings. The failure of any person or entity to receive notice, either actual or constructive, other than the owner of record, shall not invalidate any proceedings under this section. Service by certified or registered mail as herein described shall be effective on the date the notice was received as indicated on the return receipt.

302.1.4 Proof of service of the notice shall be by written affidavit indicating the date, time and manner in which service was made. In the event service is not perfected by certified mailing or hand delivery, the property owner shall be subject to constructive service using the methods as provided in Chapter 49, Florida Statutes.

c) *Chapter VI, Implementation* is hereby amended as follows:

601.2.2 Subsequent to posting the building, the building official may cause the building to be repaired to the extent required to render it safe or if the notice required demolition, to cause the building or structure to be demolished and all debris removed from the premise. The cost of repair or demolition, and all reasonable attorney's fees and costs, and costs of notices related thereto, and all collection costs and expenses and the administrative fee as provided hereinafter, shall constitute a lien on the property and shall be collected in a manner provided by law.

d) *Chapter VII, Recovery of Cost of Repair or Demolition* is hereby amended as follows:

If the building official proceeds to demolish the building or structure as set forth herein, the town council shall, by proper resolution, assess the entire cost of such demolition and removal, and all reasonable attorney's fees and costs, and costs of notices related thereto, and all collection

costs and expenses plus an administrative fee in an amount as adopted by the town council by resolution, against the real property upon which such cost and fee was incurred, which assessment, when made, shall constitute a lien upon the property superior to all others except taxes. The lien shall be filed in the public land records of the county. The resolution of assessment and lien must indicate the nature of the assessment and lien, the lien amount, and an accurate description of the property affected. The lien becomes effective on the date of filing such notice of lien and shall bear interest from such date at the rate of ten percent per annum until paid. If the resulting lien remains unpaid the town may:

- (1) File suit to foreclose on the lien property as provided by law in suits to foreclose mortgages; or
- (2) Follow any other lawful process or procedure available for enforcement or collection of the lien, including, but not limited to, the Uniform Method of Collection in accordance with any general law of the state relating to the enforcement or collection of municipal liens.

Section 3. That Division 2 “Lee County’s Boards of Adjustment and Appeals” of Article II “Building Codes,” of Chapter 6 “Maintenance Codes, Building Codes and Coastal Regulations,” of the Land Development Code of the Town of Fort Myers Beach, Florida, are hereby amended to read as follows:

DIVISION 2. - LEE COUNTY'S BOARDS OF ADJUSTMENT AND APPEALS
APPEALS OF DECISIONS BY THE TOWN'S BUILDING OFFICIAL

Sec. 6-71. - Applicability of division.

This division shall include, but not be limited to, any contractor, owner, agent, manufacturer or supplier providing construction services or materials regulated by standard codes enforced by the Town of Fort Myers Beach.

Sec. 6-72. - Intent of division.

The town has adopted various standard codes relating to building, plumbing, mechanical, gas, electrical, unsafe buildings, housing and fire. This division is intended to be construed in conjunction with these codes.

Sec. 6-73. -- Boards established; jurisdiction.

Lee County has established a construction board of adjustment and appeals known as the Lee County Board of Adjustment and Appeals. The purpose of that board is to hear and decide appeals from the decision of the county's building official and fire official or their designees on any of the various standard codes regulated and enforced by the county except the plumbing code and mechanical code. Lee County has also established separate boards of adjustment and appeals to arbitrate matters involving the plumbing code and mechanical code.

~~Sec. 6-74. -- Delegation of authority to Lee County's Boards of Adjustment and Appeals.~~

~~(a) The Town of Fort Myers Beach hereby delegates to each of the three Lee County Boards of Adjustment and Appeals the authority to make decisions on appeals that may be filed in accordance with § 6-80 of this division.~~

~~(b) The town attorney will provide legal advice to each of the three Lee County Boards of Adjustment and Appeals when warranted.~~

~~Secs. 6-75—6-79. -- Reserved.~~

~~Secs. 6-73—6-79. - Reserved.~~

Sec. 6-80. - Right of appeal; notice of appeal.

(a) Whenever the building official or fire official or their designees shall reject or refuse to approve the mode or manner of construction to be followed or materials to be used, or when it is claimed that the provisions of a code do not apply, or that an equally good or more desirable form of construction can be employed in any specific case, or when it is claimed that the true intent and meaning of a code or any of the regulations thereunder have been misconstrued or wrongly interpreted, the owner of such building or structure, or his duly authorized agent, may appeal from the decision of the building official or fire official or their designees to the Town of Fort Myers Beach Special Magistrates Lee County's appropriate Board of Adjustment and Appeals. Notice of appeal shall be in writing and filed within 30 days after the decision is rendered by the building official or fire official or their designees. All requests for appeal shall be on forms provided by the building official with payment of the appropriate fee.

(b) In the case of a building or structure which in the opinion of the building official is unsafe or dangerous, the building official may, in his order, limit the time for such appeal to a shorter period.

Sec. 6-81. - Variations and modifications.

(a) Lee County's Boards of Adjustment and Appeals A Town of Fort Myers Beach Special Magistrate, pursuant to an appeal from a decision of the building official or fire official or their designees, may vary the application of a code to any particular case when, in its opinion and based upon sufficient evidence, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of a code or public interest, or when, in its opinion and based upon sufficient evidence to the contrary, the interpretation of the building official or fire official or their designees should be modified or reversed.

(b) Any decision of Lee County Boards of Adjustment and Appeals the Town of Fort Myers Beach Special Magistrate to vary the application of any provision of a code or to modify an order of the building official or fire official or their designees shall specify the variation or modification made, the conditions upon which it is made, and the reasons therefor.

(c) Variances to the floodplain regulations must meet the additional criteria in article IV of this chapter.

Sec. 6-82. - Decisions.

(a) Every decision of ~~Lee County's Boards of Adjustment and Appeals~~ the Town of Fort Myers Beach Special Magistrate shall be final; subject, however, to any remedy an aggrieved party might have at law or in equity. Every decision shall be in writing, ~~and shall indicate the vote upon the decision.~~ Every decision of Lee County's Boards of Adjustment and Appeals shall be signed and attested to by the chairman of the board.

(b) ~~Lee County's Boards of Adjustment and Appeals~~ The Town of Fort Myers Beach Special Magistrate shall, in every case, reach a decision without unreasonable or unnecessary delay.

(c) If a decision of any of ~~the Town of Fort Myers Beach Special Magistrates~~ Lee County's Boards of Adjustment and Appeals reverses or modifies a refusal, order or disallowance of the building official or fire official or their designees, or varies the application of any provision of a code, the appropriate official shall immediately take action in accordance with such decision.

(d) Any aggrieved person may obtain judicial review of the decision of ~~Lee County's Boards of Adjustment and Appeals~~ the Town of Fort Myers Beach Special Magistrate by filing a petition for writ of certiorari in the circuit court. Such petition must be filed within 30 calendar days after the ~~board of adjustment and appeals'~~ Special Magistrate's decision, but not thereafter, pursuant to the Florida Rules of Civil Procedure. The original petition for writ of certiorari must be filed with the clerk of the circuit court. Copies of the petition shall be filed with the building official for forwarding to the town attorney.

Secs. 6-83—6-110. - Reserved.

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

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

Section 6. If any section, subsection, sentence, clause, word, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 7. This Ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the town council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put on a roll call vote, the results were as follows:

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

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

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

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

Sec. 6-36. - Adoption; amendments.

The 1985 Standard Unsafe Building Abatement Code, as published by Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama 35213-1206, is hereby adopted by reference and made part of this article, with the exceptions and revisions set forth in section 6-37.

(Ord. No. 24-13, § 2, 6-3-2024)

Sec. 6-37. - Exceptions and revisions.

a) *Section 105 of Chapter I, Administration* is hereby amended as follows:

Section 105, relating to the board of adjustment and appeals, is deleted, and replaced by the procedures set forth for the delegation of authority to Lee County's Construction Board of Adjustment and Appeals found in division 2 of article II of this chapter. Any reference to the board of adjustment and appeal as may be in other Chapters shall be amended as provided herein by reference.

b) *Sections 302.1.1(4) and 302.1.2-302.1.4 in Chapter III, Inspection and Notice of Noncompliance* are hereby amended as follows:

302.1.1(4) A statement advising that any person having any legal interest in the property may appeal the notice by the Building Official to the Lee County Board of Adjustment and Appeals; and that such appeal shall be in writing and shall be filed with the Building Official within 30 days from the date of the notice in accordance with Division 2 of Article II of Chapter 6 of the Fort Myers Beach Code of Ordinances and that failure to appeal in the time specified will constitute a waiver of all rights to an administrative hearing.

302.1.2 The notice and all attachments thereto shall be served upon the property owner as identified on the records of the Lee County Property Appraiser and posted on the property. Failure of the building official to serve any person or entity other than the owner of record shall not invalidate any proceedings hereunder nor shall it relieve any other person or entity served from any obligation imposed on that person or entity.

302.1.3 The notice shall be served either personally by hand delivery by Town staff or a process server or by certified mail, postage prepaid, return receipt requested, to the owner of record at the address shown for the owner on the Lee County Property Appraiser's website. Notice shall also be mailed to the address of the building or structure involved in the proceedings. The failure of any person or entity to receive notice, either actual or constructive, other than the owner of record, shall not invalidate any proceedings under this section. Service by certified or registered mail as herein described shall be effective on the date the notice was received as indicated on the return receipt.

302.1.4 Proof of service of the notice shall be by written affidavit indicating the date, time and manner in which service was made. In the event service is not perfected by certified mailing or hand delivery, the property owner shall be subject to constructive service using the methods as provided in Chapter 49, Part 502 of the

c) *Chapter VI, Implementation* is hereby amended as follows:

601.2.2 Subsequent to posting the building, the building official may cause the building to be repaired to the extent required to render it safe or if the notice required demolition, to cause the building or structure to be demolished and all debris removed from the premise. The cost of repair or demolition, and all reasonable attorney's fees and costs, and costs of notices related thereto, and all collection costs and expenses and the administrative fee as provided hereinafter, shall constitute a lien on the property and shall be collected in a manner provided by law.

d) *Chapter VII, Recovery of Cost of Repair or Demolition* is hereby amended as follows:

If the building official proceeds to demolish the building or structure as set forth herein, the town council shall, by proper resolution, assess the entire cost of such demolition and removal, and all reasonable attorney's fees and costs, and costs of notices related thereto, and all collection costs and expenses plus an administrative fee in an amount as adopted by the town council by resolution, against the real property upon which such cost and fee was incurred, which assessment, when made, shall constitute a lien upon the property superior to all others except taxes. The lien shall be filed in the public land records of the county. The resolution of assessment and lien must indicate the nature of the assessment and lien, the lien amount, and an accurate description of the property affected. The lien becomes effective on the date of filing such notice of lien and shall bear interest from such date at the rate of ten percent per annum until paid. If the resulting lien remains unpaid the town may:

- (1) File suit to foreclose on the lien property as provided by law in suits to foreclose mortgages; or
- (2) Follow any other lawful process or procedure available for enforcement or collection of the lien, including, but not limited to, the Uniform Method of Collection in accordance with any general law of the state relating to the enforcement or collection of municipal liens.

(Ord. No. 24-13, § 2, 6-3-2024)

Secs. 6-38—6-40. - Reserved.

Sec. 6-71. - Applicability of division.

This division shall include, but not be limited to, any contractor, owner, agent, manufacturer or supplier providing construction services or materials regulated by standard codes enforced by the Town of Fort Myers Beach.

Sec. 6-72. - Intent of division.

The town has adopted various standard codes relating to building, plumbing, mechanical, gas, electrical, unsafe buildings, housing and fire. This division is intended to be construed in conjunction with these codes.

Sec. 6-73. - Boards established; jurisdiction.

Lee County has established a construction board of adjustment and appeals known as the Lee County Board of Adjustment and Appeals. The purpose of that board is to hear and decide appeals from the decision of the county's building official and fire official or their designees on any of the various standard codes regulated and enforced by the county except the plumbing code and mechanical code. Lee County has also established separate boards of adjustment and appeals to arbitrate matters involving the plumbing code and mechanical code.

(Ord. No. 21-01, § 2(Exh. A), 3-15-2021)

Sec. 6-74. - Delegation of authority to Lee County's Boards of Adjustment and Appeals.

- (a) The Town of Fort Myers Beach hereby delegates to each of the three Lee County Boards of Adjustment and Appeals the authority to make decisions on appeals that may be filed in accordance with § 6-80 of this division.
- (b) The town attorney will provide legal advice to each of the three Lee County Boards of Adjustment and Appeals when warranted.

Secs. 6-75—6-79. - Reserved.

Sec. 6-80. - Right of appeal; notice of appeal.

- (a) Whenever the building official or fire official or their designees shall reject or refuse to approve the mode or manner of construction to be followed or materials to be used, or when it is claimed that the provisions of a code do not apply, or that an equally good or more desirable form of construction can be employed in any specific case, or when it is claimed that the true intent and meaning of a code or any of the regulations thereunder have been misconstrued or wrongly interpreted, the owner of such building or structure, or his duly authorized agent, may appeal from the decision of the building official or fire official or their designees to Lee County's appropriate Board of Adjustment and Appeals. Notice of appeal shall be in writing and filed within 30 days after the decision is rendered by the building official or fire official or their designees. All requests for appeal shall be on forms provided by the building official with payment of the appropriate fee.

- (b) In the case of a building or structure which in the opinion of the building official is unsafe or dangerous, the building official may, in his order, limit the time for such appeal to a shorter period.

Sec. 6-81. - Variations and modifications.

- (a) Lee County's Boards of Adjustment and Appeals, pursuant to an appeal from a decision of the building official or fire official or their designees, may vary the application of a code to any particular case when, in its opinion and based upon sufficient evidence, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of a code or public interest, or when, in its opinion and based upon sufficient evidence to the contrary, the interpretation of the building official or fire official or their designees should be modified or reversed.
- (b) Any decision of Lee County Boards of Adjustment and Appeals to vary the application of any provision of a code or to modify an order of the building official or fire official or their designees shall specify the variation or modification made, the conditions upon which it is made, and the reasons therefor.
- (c) Variances to the floodplain regulations must meet the additional criteria in article IV of this chapter.

Sec. 6-82. - Decisions.

- (a) Every decision of Lee County's Boards of Adjustment and Appeals shall be final; subject, however, to any remedy an aggrieved party might have at law or in equity. Every decision shall be in writing and shall indicate the vote upon the decision. Every decision of Lee County's Boards of Adjustment and Appeals shall be signed and attested to by the chairman of the board.
- (b) Lee County's Boards of Adjustment and Appeals shall, in every case, reach a decision without unreasonable or unnecessary delay.
- (c) If a decision of any of Lee County's Boards of Adjustment and Appeals reverses or modifies a refusal, order or disallowance of the building official or fire official or their designees, or varies the application of any provision of a code, the appropriate official shall immediately take action in accordance with such decision.
- (d) Any aggrieved person may obtain judicial review of the decision of Lee County's Boards of Adjustment and Appeals by filing a petition for writ of certiorari in the circuit court. Such petition must be filed within 30 calendar days after the board of adjustment and appeals' decision, but not thereafter, pursuant to the Florida Rules of Civil Procedure. The original petition for writ of certiorari must be filed with the clerk of the circuit court. Copies of the petition shall be filed with the building official for forwarding to the town attorney.

Secs. 6-83—6-110. - Reserved.



Business Impact Estimate

This form should be included in the agenda packet for the item under which the proposed ordinance is to be considered and must be posted on the Fort Myers Beach website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference: **AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING DIVISION 3 "UNSAFE BUILDING ABATEMENT CODE" OF ARTICLE I "PROPERTY MAINTENANCE CODES" AND DIVISION 2 "LEE COUNTY'S BOARDS OF ADJUSTMENT AND APPEALS" OF ARTICLE II "BUILDING CODES" OF CHAPTER 6 "MAINTENANCE CODES, BUILDING CODES AND COASTAL REGULATIONS" OF THE LAND DEVELOPMENT CODE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, TO AMEND EXISTING PROVISIONS RELATED TO APPEALS OF THE BUILDING OFFICIAL'S DECISIONS; DIVESTING THE LEE COUNTY'S CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS OF THE RESPONSIBILITY FOR REVIEW OF APPEALS OF THE TOWN BUILDING OFFICIAL'S DECISIONS REGARDING UNSAFE BUILDINGS; AUTHORIZING THE TOWN OF FORT MYERS BEACH SPECIAL MAGISTRATES TO HEAR APPEALS OF THE TOWN'S BUILDING OFFICIAL'S DECISIONS; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.**

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

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☐ The proposed ordinance is enacted to implement the following:

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

- a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
- b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
- c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or
- d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

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

1. Summary of the proposed ordinance (must include a statement of the public purpose, such as serving the public health, safety, morals and welfare):

The interlocal agreement between the Town of Fort Myers Beach and Lee County, stating that the review of appeals of property owners whose properties have been deemed unsafe and noticed for a demolition by the Town Building Official shall be deferred to Lee County Board of Adjustment and Appeals, expired in 2017. This ordinance reassigns that responsibility from Lee County Board of Adjustment and Appeals to the Town of Fort Myers Beach Special Magistrates. This ordinance serves the health, safety, morals, and welfare of the Town's residents and safeguards their due process rights by ensuring that the affected property owners have an opportunity to challenge the Town Building Official's determination.

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

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

None.

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

None.

4. Additional information the governing body deems useful (if any):*[You may wish to include in this section the methodology or data used to prepare the Business Impact Estimate. For example: Fort Myers Beach staff solicited comments from businesses in the Fort Myers Beach as to the potential impact of the proposed ordinance by contacting the chamber of commerce, social media posting, direct mail or direct email, posting on Fort Myers Beach website, public workshop, etc. You may also wish to include efforts made to reduce the potential fiscal impact on businesses. You may also wish to state here that the proposed ordinance is a generally applicable ordinance that applies to all persons similarly situated (individuals as well as businesses) and, therefore, the proposed ordinance does not affect only businesses].*

Not applicable.

1. **Request:**

Meeting Date: September 23, 2024

Second Reading and Public Hearing of an ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING 1) TABLE 34-3 TITLED "DIMENSIONAL REGULATIONS IN CONVENTIONAL ZONING DISTRICTS" IN CHAPTER 34, ARTICLE III, DIVISION 4 TO CREATE NOTE (10) TO PROVIDE THAT DETACHED SINGLE-FAMILY AND TWO-FAMILY HOMES WITHOUT A COMMERCIAL USE, IN ANY CONVENTIONAL ZONING DISTRICT WHERE THAT USE IS ALLOWED, MAY BE EVALUATED BY BUILDING COVERAGE RATHER THAN FAR; 2) SECTION 34-675(C) IN CHAPTER 34, ARTICLE III, DIVISION 5 TO PROVIDE THAT BUILDING INTENSITY OF COMMERCIAL AND MIXED-USE BUILDINGS SHALL BE EVALUATED USING FLOOR AREA RATIO (FAR) AND DETACHED SINGLE-FAMILY AND TWO-FAMILY RESIDENCE INTENSITY SHALL BE EVALUATED USING BUILDING COVERAGE NOT TO EXCEED 40% IN THE DOWNTOWN ZONING DISTRICT; 3) SECTION 34-683 IN CHAPTER 34, ARTICLE III, DIVISION 5 RELATED TO THE CREATION OF NEIGHBORHOOD CENTERS IN THE SANTINI ZONING DISTRICT TO PROVIDE THAT DETACHED SINGLE-FAMILY AND TWO-FAMILY RESIDENCE BUILDING COVERAGE SHALL NOT EXCEED 40%; 4) SECTION 34-693 IN THE VILLAGE ZONING DISTRICT REGULATIONS TO PROVIDE THAT COMMERCIAL AND MIXED-USE BUILDING INTENSITY SHALL BE EVALUATED USING FLOOR AREA RATIO (FAR) AND DETACHED SINGLE-FAMILY AND TWO-FAMILY RESIDENCE INTENSITY SHALL BE EVALUATED USING BUILDING COVERAGE AND SHALL NOT EXCEED 40%; 5) SECTION 34-705 IN THE CB ZONING DISTRICT TO PROVIDE THAT FOR COMMERCIAL AND MIXED-USE DEVELOPMENTS FLOOR AREA RATIOS SHALL NOT EXCEED 1.0 AND BUILDING COVERAGE FOR DETACHED SINGLE-FAMILY AND TWO-FAMILY RESIDENCES, BUILDING COVERAGE SHALL NOT EXCEED 40%; PROVIDING FOR SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS; CONFLICTS OF LAW; AND PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

The Town Council makes final decisions regarding changes to the LDC.

What the action accomplishes:

This will allow single family and two family residential structures to be measured using the building coverage rather than floor area ratio measurement.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Sarah Propst, Community
Development, Planning
Manager

5. **Background:**

The Land Development Code (LDC) has two ways of measuring building intensity: building coverage or Floor Area Ratio (FAR). The RS zoning district and the RC zoning use building coverage and all of the other zoning districts use FAR. At the June 6, 2024 M & P meeting the Town Council discussed whether it was appropriate for residences to be measured by FAR, even in primarily commercial districts. The discussion ended with staff understanding that Single-Family and Two-Family residence intensity should be evaluated by building coverage, even in primarily commercial districts. Mixed use buildings and completely commercial buildings should be evaluated using the FAR regulations. Multifamily buildings were not discussed in this conversation

Attachments:

1. Ordinance 24-24
2. Memorandum to TC 2
3. Exhibit A - Amended Building Intesity for Detached
4. business-impact-estimate-24-24

Financial Impact:

Unknown

6. Alternative Action

Recommend changes

7. Management Recommendations:

Recommend approval

8. Recommended Approval:

Sarah Propst, Community Development, Planning Manager
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 9/13/2024
Approved - 9/13/2024
Approved - 9/13/2024
Approved - 9/13/2024
Final Approval - 9/13/2024

ORDINANCE NO. 24-24

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING 1) TABLE 34-3 TITLED “DIMENSIONAL REGULATIONS IN CONVENTIONAL ZONING DISTRICTS” IN CHAPTER 34, ARTICLE III, DIVISION 4 TO CREATE NOTE (10) TO PROVIDE THAT DETACHED SINGLE-FAMILY AND TWO-FAMILY HOMES WITHOUT A COMMERCIAL USE, IN ANY CONVENTIONAL ZONING DISTRICT WHERE THAT USE IS ALLOWED, MAY BE EVALUATED BY BUILDING COVERAGE RATHER THAN FAR; 2) SECTION 34-675(C) IN CHAPTER 34, ARTICLE III, DIVISION 5 TO PROVIDE THAT BUILDING INTENSITY OF COMMERCIAL AND MIXED-USE BUILDINGS SHALL BE EVALUATED USING FLOOR AREA RATIO (FAR) AND DETACHED SINGLE-FAMILY AND TWO-FAMILY RESIDENCE INTENSITY SHALL BE EVALUATED USING BUILDING COVERAGE NOT TO EXCEED 40% IN THE DOWNTOWN ZONING DISTRICT; 3) SECTION 34-683 IN CHAPTER 34, ARTICLE III, DIVISION 5 RELATED TO THE CREATION OF NEIGHBORHOOD CENTERS IN THE SANTINI ZONING DISTRICT TO PROVIDE THAT DETACHED SINGLE-FAMILY AND TWO-FAMILY RESIDENCE BUILDING COVERAGE SHALL NOT EXCEED 40%; 4) SECTION 34-693 IN THE VILLAGE ZONING DISTRICT REGULATIONS TO PROVIDE THAT COMMERCIAL AND MIXED-USE BUILDING INTENSITY SHALL BE EVALUATED USING FLOOR AREA RATIO (FAR) AND DETACHED SINGLE-FAMILY AND TWO-FAMILY RESIDENCE INTENSITY SHALL BE EVALUATED USING BUILDING COVERAGE AND SHALL NOT EXCEED 40%; 5) SECTION 34-705 IN THE CB ZONING DISTRICT TO PROVIDE THAT FOR COMMERCIAL AND MIXED-USE DEVELOPMENTS FLOOR AREA RATIOS SHALL NOT EXCEED 1.0 AND BUILDING COVERAGE FOR DETACHED SINGLE-FAMILY AND TWO-FAMILY RESIDENCES, BUILDING COVERAGE SHALL NOT EXCEED 40%; PROVIDING FOR SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS; CONFLICTS OF LAW; AND PROVIDING AN EFFECTIVE DATE.

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

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

WHEREAS, the Town recognizes that redevelopment of the Town, following hurricane Ian requires evaluation and updates to the Land Development Code; and

WHEREAS, the Town Council desires updates to the Fort Myers Beach Land Development Code to clarify, improve and create consistency among sections; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on August 23, 2024, at time which the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, and the LPA voted 7-0, to recommend approval of this Ordinance; and

WHEREAS, on September 9, 2024, the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons to adopt Ordinance 24-24 as provided herein and approved scheduling an adoption public hearing; and

WHEREAS, a Business Impact Estimate was prepared and posted on the City's website on the 30th day of August, 2024, as required by Section 166.041(4), Florida Statutes; and

WHEREAS, an advertisement of the public hearing for adoption of the Ordinance was published in the News-Press on the 31st day of August, 2024, which is 10 days prior to the second reading of the proposed Ordinance as required by Section 166.041; and

WHEREAS, on the 23rd day of September 2024, the Town Council held a second reading of the Ordinance; at which time the Town Council gave full and complete consideration to the recommendations of staff and the LPA, and the testimony of all interested persons; and

WHEREAS, the Town finds that it is in the best interests of the health, safety, and welfare of the Town's business owners, residents, and visitors to adopt the proposed change.

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

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

Section 2. Table 34-3 Dimensional Regulations in Conventional Zoning Districts, in Chapter 34, Article III, Division 4 and Sections 34-675, 34-683, 34-693, and 34-705 in Subdivisions in Division 5 are hereby amended to read as provided in Exhibit A.

Section 3. The Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

Section 4. Whenever the requirements or provisions of this ordinance conflict with the

requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

Section 5. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the ordinance, or any part thereof, other than the part so declared.

Section 6. This ordinance shall become effective upon adoption by the Town Council.

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

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

ADOPTED this 23rd day of September 2024, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

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



**Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT**

To: Town Council
From: Sarah Propst, Community Development
Date: September 23, 2024
Re: Building Coverage for Single-Family and Two-Family Residences

BACKGROUND

The Land Development Code (LDC) has two ways of measuring building intensity: building coverage or Floor Area Ratio (FAR). The RS zoning district and the RC zoning use building coverage and all of the other zoning districts use FAR. At the June 6, 2024 M & P meeting the Town Council discussed whether it was appropriate for residences to be measured by FAR, even in primarily commercial districts. The discussion ended with staff understanding that Single-Family and Two-Family residence intensity should be evaluated by building coverage, even in primarily commercial districts. Mixed use buildings and completely commercial buildings should be evaluated using the FAR regulations. Multifamily buildings were not discussed in this conversation

PROPOSED SOLUTIONS

To accomplish this amendment, several code sections would need to be amended in the LDC. Table 34-3— Dimensional Regulations in Conventional Zoning Districts currently only lists building coverage in the RS and RC zoning districts. 40% will be added to the building coverage column in all zoning districts in the table, other than EC, and a note will be added, stating: “Detached, single-family and two-family homes without a commercial use, in any conventional zoning district where that use is allowed, may be evaluated by building coverage rather than FAR.” The 40% building coverage option is not provided in the EC zoning district because a house is not an allowed use in the EC zoning district.

The Downtown, Commercial Boulevard, Village, and Santini zoning district sections also would need several minor amendments. All needed amendments are included as attachments in the agenda.

Residential multifamily development is not included in this change and will continue to be measured using FAR, per this proposed language. If the Town Council would like to see that changed, this will need to be amended in the proposed language for the second hearing.

FORT MYERS BEACH ESTERO ISLAND

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



At the LPA hearing the LPA recommended that the Town Council reconsider whether it would be appropriate to include the EC zoned portion of the property in the calculation for the allowable buildable coverage. This was discussed at the LPA but it was not recommended as a change at that hearing.

At the LPA hearing Jim Dunlap made motion to recommend approval of the proposed changes and the motion was seconded by James Boan. The LPA voted unanimously in favor.

Table 34-3— Dimensional Regulations in Conventional Zoning Districts														
	street	side - waterfront lot	side - non-waterfront	rear	water body (1)	Gulf of Mexico (2)	area	width	depth	ratio	percentage		feet	stories
ZONING DISTRICT	Setbacks (see § 34-638 for explanations and exceptions)						Lot size (see § 34-637 for explanations and exceptions)			F.A.R. §34-633	Building Coverage § 34-634	Density § 34-632	Height (see § 34-631)	
<i>RS Residential Single-family</i>	25(8)	<u>6.5</u> , 7.5 or 10 (9)	<u>6.5</u> , 7.5 or 10 (9)	20	25	50	7,500	75	100	-	40%	(3), (4)	30	3
<i>RC Residential Conservation</i>	25(9)	<u>6.5</u> , 7.5 or 10 (9)	<u>6.5</u> , 7.5 or 10 (9)	20	25	50	4,000	45	80	-	40%	(3), (4), (5)	30	3
<i>RM Residential Multifamily</i>	25(8)	20 (6)	20 (6)	20	25	50	7,500	75	100	1.2	40% (10)	(3), (4), (5)	35	3

Exhibit A - Amended Setback Regulations

<i>CR Commercial Resort</i>	10	20	15	20	25	50	20,000	100	100	1.2	<u>40%</u> <u>(10)</u>	(3)	30	3
<i>CM Commercial Marina</i>	20	20	20	20	0	50	20,000	100	100	1.0	<u>40%</u> <u>(10)</u>	-	35	3
<i>CO Commercial Office</i>	10	10	7	20	25	50	7,500	75	100	1.2	<u>40%</u> <u>(10)</u>	(3), (4), (5)	30	3
<i>Santos</i>	10	7	5	20	25	50	5,000	50	100	0.6	<u>40%</u> <u>(10)</u>	(3), (4), (5)	25	3
<i>IN Institutional</i>	20	10	7	20	25	50	7,500	75	100	0.8	<u>40%</u> <u>(10)</u>	(3)	35	3
<i>CF Community Facilities</i>	20	15	10	20	25	50	N/A	N/A	N/A	0.1	<u>40%</u> <u>(10)</u>	(3)	35	3
<i>BB Bay Beach</i>	— see § 34-651(b) —													
<i>EC Environmenta lly Critical</i>	20	25	-	25	20	50	(7)	N/A	N/A	0.01	-	(3), (7)	25	2

Note (1): An additional wetland buffer is required for new development; see § 34-638(c).

Note (2): See § 34-638(d)(3)a.

Note (3): Maximum densities are established by the Fort Myers Beach Comprehensive Plan; see Section 34-632

Note (4): Accessory apartments are allowed in owner-occupied homes under certain conditions; see Section 34-1178.

Note (5): A second dwelling unit or accessory apartment may be allowed on larger lots; for details, see Section 34-632, 34-1177, and 34-1178

Note (6): Single-family and two-family homes in the RM zoning district must maintain a 6.5-foot side setback for lots less than 50 feet wide, 7.5-foot side setback for lots 50 feet wide up to 75 feet wide, and 10 feet for lots wider than 75 feet.

Note (7): See Section 34-652(e)(3).

Note (8): Maximum 65 feet of house may be built to the 25-foot front setback. Any house frontage exceeding 65 feet in length shall be subject to additional setbacks from the street property line. See Section 34-638(d)(5)a.

Note (9): Each side setback shall be 6.5 feet for lots less than 50 feet wide, 7.5 feet for lots 50 feet wide to 75 feet or less wide, and 10 feet for lots wider than 75 feet.

Note (10): Detached single-family and two-family homes without a commercial use, in any conventional zoning district where that use is allowed, may be evaluated by building coverage rather than FAR.

Sec. 34-675. - Building size.

- (a) Building *frontage*. Building frontage limits (see [§ 34-663](#) of this chapter) vary according to the street types designated on Figure 34-7:
- (1) For pedestrian plazas and primary streets except for Crescent Street and for Fifth Avenue east of the Sky Bridge, building frontages shall be at least 70 percent of the lot frontage.
 - (2) For all other streets, building frontages shall be at least 35 percent of the lot frontage.
 - (3) For multiple adjoining lots under single control, or for a single lot with multiple buildings, the percentages above apply to the combination of lot(s) and building(s).
 - (4) *Exception for properties between Estero Boulevard and the Gulf:* The required building frontage percentage may be reduced to 35 percent for properties between Estero Boulevard and the Gulf of Mexico provided that the open space thus created allows open views to the Gulf of Mexico.
- (b) Building *height*. Building heights (see [§ 34-631](#) of this chapter) shall be limited to:
- (1) For properties that front on the following streets, a maximum of 30 feet above base flood elevation and no taller than three stories:
 - a. Times Square and Bayfront pedestrian plazas (see Figure 34-7);
 - b. North side of First Street;
 - c. South side of Estero Boulevard between Old San Carlos Boulevard and the main pedestrian crossing;
 - d. Carolina Avenue.
 - (2) For properties that front on the following streets, a maximum of 30 feet above base flood elevation and no taller than three stories, elevated building are encouraged to limit enclosed space on the first story:
 - a. Lagoon Street;
 - b. Crescent Street;
 - c. First, Second, Third, and Fifth (east of the Sky Bridge only);
 - d. North side of Estero Boulevard west of Old San Carlos Boulevard and east of Crescent Street;
 - e. Primo Drive;
 - f. Palermo Circle;

Downtown Zoning

- g. Miramar Street, north of Estero;
- h. Ohio Avenue;
- i. Virginia Avenue.

(3) For properties that front on the following streets, a maximum of 40 feet above base flood elevation and no taller than three stories:

- a. Old San Carlos Boulevard between Fifth and First Streets;
- b. South side of First and both sides of Second and Third (west of the Sky Bridge only);
- c. South side of Estero Boulevard east of the main pedestrian crossing;
- d. Canal Street;
- e. Avenues A, C, E, and I;
- f. Alva Drive;
- g. Miramar Street, south of Estero;
- h. Palm Avenue.

- (c) *Building intensity. Commercial and mixed-use building intensity shall be evaluated using floor area ratio (FAR). Detached single-family and two-family residence intensity shall be evaluated using building coverage (see § 34-634 of this chapter).*

(1) Floor area ratio (FAR). Floor area ratios (see [§ 34-633](#) of this chapter) shall not exceed:

- a.* 1.8 for properties fronting on Old San Carlos between Fifth and First Streets and fronting on the Times Square pedestrian plaza (see Figure 34-7).
- b.* 1.4 for properties fronting on Estero Boulevard and fronting on the Bayfront pedestrian plazas.
- c.* 1.0 for all other properties in the Downtown district.

(2) Building coverage. Building coverage (See § 34-634 of this chapter) for detached single-family and two-family residences shall not exceed 40%.

- (d) *Hotel rooms.*

(1) Along both sides of Old San Carlos Boulevard (properties between Fifth and First Streets that lie within 200 feet east and west of the centerline of Old San Carlos only), a property owner may substitute hotel rooms for allowable office space on upper floors without the limitations otherwise provided by the hotel-room

Downtown Zoning

equivalency factor found in [§ 34-1802](#) of this chapter. However, these hotel rooms must have at least 250 square feet per rentable unit.

(2) In all other properties in the Downtown district, the number of hotel rooms are limited by the hotel-room equivalency factor found in [§ 34-1802](#) of this chapter.

(Ord. No. [24-08](#), § 2(Exh. A), 5-6-2024)

Sec. 34-683. - Creation of neighborhood center.

- (a) *Purpose.* This section provides detailed regulations for the transformation of existing businesses into a neighborhood center.
 - (1) This transformation may be required by § 34-682(3) of this chapter or may be chosen by any landowner in the Santini district.
 - (2) Once this option is chosen or required, all subsections of this § 34-683 become mandatory requirements, except where they are clearly inapplicable to a given portion of the property.
- (b) *Agreement for streetscape improvements.* Landowners who choose to partially or fully develop their land in the Santini district into a neighborhood center may simultaneously request public streetscape improvements by entering into a development agreement with the town (see §§ 2-91—2-102 of this LDC).
 - (1) This agreement would establish a public/private partnership for the necessary improvements, identifying responsibilities, timing, approximate costs, and funding.
 - (2) This agreement would also contain a detailed plan for the redevelopment of the property consistent with the regulations in the remainder of this section.
- (c) *Allowable uses.* Allowable uses for the Santini zoning district are defined in Tables 34-1 and 34-2.
- (d) *Streets.* Secondary streets and alleys shall be laid out and dedicated to the public generally in accordance with Figure 34-17 to improve circulation for vehicles and pedestrians.
- (e) *Plazas.* An urban plaza at least one-half acre in size shall be provided along Estero Boulevard as a focal point for mixed-use buildings and as a public gathering place. This plaza may also be used for overflow parking.
- (f) *Build-to lines established.* Build-to lines (see § 34-662 of this chapter) vary according to the streets and street types designated on Figure 34-17.
 - (1) Build-to lines for all primary streets and streets surrounding the plaza are 0 feet to five feet.
 - (2) Build-to lines for all secondary streets are 0 feet to ten feet.
 - (3) Awnings, canopies, and marquees over sidewalks and pedestrian walkways are encouraged by the commercial design standards (§§ 34-991—34-1010 of this chapter), especially along Estero Boulevard.
 - (4) Compliance with build-to lines is not required for buildings that are used for the storage of boats or for marina accessory uses, or for any buildings extend closer than 40 feet to the waterfront.
 - (5) Buildings used for the storage of boats or cars must be separated from Estero Boulevard by a liner building that provides usable building space at least 20 feet deep (see example in Figure 34-8).
 - a. This requirement applies to all buildings that extend closer than 75 feet to Estero Boulevard.
 - b. Liner buildings must be two stories or more in height.
 - c. Liner buildings may be detached from or attached to building space used for the storage of boats or cars.
 - d. Liner buildings must be constructed simultaneously with those portions of buildings that are subject to this requirement.
 - e. Liner buildings and any visible portions of the principal facade of buildings that are used for the storage of boats or cars must meet the commercial design standards (see §§ 34-991—34-1010 of this chapter).
- (g) *Setback lines.* No minimum setbacks are required (see § 34-662 of this chapter).

- (h) *Building frontage.* Building frontage limits (see § 34-663 of this chapter) vary according to the street types designated on Figure 34-17:
 - (1) For primary streets and streets surrounding the plaza, building frontages shall be at least 70 percent of the lot frontage.
 - (2) For secondary streets, building frontages shall be at least 35 percent of the lot frontage.
 - (3) For multiple adjoining lots under single control, or for a single lot with multiple buildings, the percentages above apply to the combination of lot(s) and building(s).
 - (4) Phased redevelopment is permitted provided that a site plan is provided showing how the building frontage percentages will be met upon completion of the redevelopment
- (i) *Building height.* Building heights (see § 34-631 of this chapter) shall be limited to:
 - (1) For parcels immediately abutting a plaza of at least one-half acre in size and for parcels immediately abutting canals, a maximum of 40 feet above base flood elevation and no taller than three stories.
 - (2) For all other parcels, a maximum of 30 feet above base flood elevation and no taller than two stories.
- (j) *Floor area ratio (FAR).* Floor area ratios shall not exceed 1.0 (see § 34-633 of this chapter).
- (k) *Residential density.* Residential units can be constructed in the Santini district up to the maximum density allowed by the Fort Myers Beach Comprehensive Plan.
- (l) *Residential intensity. Detached single-family and two-family residence building coverage shall not exceed 40%.*
- ~~(l)~~ (m) *Guest units.* Guest units may be substituted for dwelling units in accordance with the equivalency factors found in § 34-1802 of this chapter.
- ~~(m)~~ (n) *Reductions to minimum parking requirements.* Neighborhood centers are "park-once" districts with preference given to pedestrian movement. The number of parking spaces normally required by § 34-2020 of this chapter shall be multiplied by 67 percent to determine the adjusted parking requirement for the Santini district. Adjoining on-street parking spaces may be counted toward this parking requirement.
- ~~(n)~~ (o) *Parking location.* Off-street parking may be provided under commercial or mixed-use buildings provided that:
 - (1) All under-building parking spaces must be separated from primary streets and the plaza by usable commercial space at least 20 feet deep that meets all commercial design guidelines; and
 - (2) Driveways leading to under-building parking spaces must connect to a driveway, secondary street, or alley, and may not be accessed from a primary street or pedestrian plaza.
- ~~(o)~~ (p) *Commercial design standards.* The commercial design standards (§§ 34-991—34-1010 of this chapter) shall apply to all commercial and mixed-use buildings, or portions thereof, that are being newly built, and to "substantial improvements" to such buildings as defined in § 6-405 of this LDC.

Sec. 34-693. Regulations to obtain development order for pre-approved redevelopment option.

- (a) *Purpose.* This section provides detailed regulations for the pre-approved redevelopment option if that option is chosen by landowners, as described in § 34-692(3) of this chapter.
- (b) *Allowable uses.* Allowable uses in the Village district are defined in Tables 34-1 and 34-2. If a development order is issued pursuant to § 34-692(3) of this chapter, the additional uses in the "Open" subgroup of Table 34-1 for the residential, lodging, office, and retail groups will be permitted on property that is subject to the development order.
- (c) *Streets.* Secondary streets shall be laid out and dedicated to the public generally in accordance with Figure 34-18 to improve circulation for vehicles and pedestrians.
 - (1) Figure 34-18 provides two acceptable options for the new network of secondary streets.
 - (2) Under either option, the street design must incorporate the extension of a through street from Donora Boulevard to Lovers Lane that will be permanently accessible by the public.
- (d) *View corridor.* A view corridor at least 50 feet wide shall be provided between Estero Boulevard and the Gulf as a focal point for abutting buildings and as part of a prominent visual corridor to the water. This view corridor need not be available for public use.
- (e) *Build-to lines established.* Build-to lines (see § 34-662 of this chapter) for all streets shall be 0 feet to ten feet.
- (f) *Setback lines established.* Setback lines (see § 34-662 of this chapter) are established as follows:
 - (1) For principal buildings, minimum setbacks are as follows:
 - a. Rear setbacks: 20 feet.
 - b. Waterbody setbacks: see § 34-638(d)(3) of this chapter.
 - (2) For accessory structures, minimum setbacks are set forth in §§ 34-1171—34-1176 of this chapter.
- (g) *Building frontage.* Building frontage limits (see § 34-663 of this chapter) vary according to the street types designated on Figure 34-18:
 - (1) For primary streets, building frontages shall be at least 50 percent of the lot frontage. This percentage may be reduced to 35 percent for properties between Estero Boulevard and the Gulf of Mexico provided that the open space thus created allows open views to the Gulf.

- (2) For multiple adjoining lots under single control, or for a single lot with multiple buildings, the percentages above apply to the combination of lot(s) and building(s).
- (h) *Building height.* Building heights (see § 34-631 of this chapter) shall be limited to:
 - (1) For properties that front on the bay side of Estero Boulevard and all streets other than Estero Boulevard, a maximum of 30 feet above base flood elevation and no taller than two stories. However, for mixed-use buildings and for elevated buildings without enclosed space on the first story, the maximum height is three stories (but still limited to 30 feet above base flood elevation).
 - (2) For properties that front on the beach side of Estero Boulevard, a maximum of 40 feet above base flood elevation and no taller than three stories.
- (i) *Building intensity.* Commercial and mixed-use building intensity shall be evaluated using floor area ratio (FAR). Detached single-family and two-family residence intensity shall be evaluated using building coverage (see § 34-634 of this chapter).
 - (1) *Floor area ratio (FAR).* Floor area ratios shall not exceed 1.2.
 - (2) *Building coverage.* Building coverage (See § 34-634 of this chapter) for detached single-family and two-family residences shall not exceed 40%.
- (j) *Residential density.* Policy 4-F-2-iii of the Fort Myers Beach Comprehensive Plan allows up to 15 dwelling units per acre for redevelopment in accordance with this section. Any land used for roadway or access purposes may be included in this density computation.
- (k) *Guest units.* Guest units may be substituted for dwelling units in accordance with the equivalency factors found in § 34-1802 of this chapter.
- (l) *Circulation and parking.* Off-street parking may be provided under commercial or mixed-use buildings provided that:
 - (1) All under-building parking spaces must be separated from primary streets and the plaza by usable commercial space at least 20 feet deep that meets all commercial building design guidelines; and
 - (2) Driveways leading to under-building parking spaces must connect to a secondary street or an alley and may not be accessed from a primary street or pedestrian plaza.
- (m) *Commercial design standards.* The commercial design standards (§§ 34-991—34-1010 of this chapter) shall apply to all commercial and mixed-use buildings that are visible from Estero Boulevard, or portions thereof, that are being newly built, and to "substantial improvements" to such buildings as defined in § 6-405 of this LDC.

Sec. 34-705. - Building size.

- (a) *Building frontage.* Building frontage limits (see § 34-663 of this chapter) are established as follows:
- (1) For Estero Boulevard, building frontages shall be at least 50 percent of the lot frontage. This percentage may be reduced to 35 percent for properties between Estero Boulevard and the Gulf of Mexico provided that the open space thus created allows open views to the Gulf of Mexico.
 - (2) For multiple adjoining lots under single control, or for a single lot with multiple buildings, the percentages above apply to the combination of lot(s) and building(s).
- (b) *Building height.* Building heights (see § 34-631 of this chapter) shall be limited to:
- (1) For properties that front on the bay side of Estero Boulevard and all streets other than Estero Boulevard, a maximum of 30 feet above base flood elevation and no taller than two stories, except that an elevated building without enclosed space on the first story may be three stories tall (but still limited to 30 feet above base flood elevation).
 - (2) For properties that front on the beach side of Estero Boulevard, a maximum of 40 feet above base flood elevation and no taller than three stories.
- (c) *Floor area ratio (FAR).* For commercial and mixed-use developments Floor area ratios (see § 34-633 of this chapter) shall not exceed 1.0.
- (d) *Building coverage.* For detached single-family and two-family residences, building coverage (see § 34-634 of this chapter) shall not exceed 40%.



Business Impact Estimate

This form should be included in the agenda packet for the item under which the proposed ordinance is to be considered and must be posted on the [City's/Town's/Village's] website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference:

Ordinance 24-24 AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING 1) TABLE 34-3 TITLED "DIMENSIONAL REGULATIONS IN CONVENTIONAL ZONING DISTRICTS" IN CHAPTER 34, ARTICLE III, DIVISION 4 TO CREATE NOTE (10) TO PROVIDE THAT DETACHED SINGLE-FAMILY AND TWO-FAMILY HOMES WITHOUT A COMMERCIAL USE, IN ANY CONVENTIONAL ZONING DISTRICT WHERE THAT USE IS ALLOWED, MAY BE EVALUATED BY BUILDING COVERAGE RATHER THAN FAR; 2) SECTION 34-675(C) IN CHAPTER 34, ARTICLE III, DIVISION 5 TO PROVIDE THAT BUILDING INTENSITY OF COMMERCIAL AND MIXED-USE BUILDINGS SHALL BE EVALUATED USING FLOOR AREA RATIO (FAR) AND DETACHED SINGLE-FAMILY AND TWO-FAMILY RESIDENCE INTENSITY SHALL BE EVALUATED USING BUILDING COVERAGE NOT TO EXCEED 40% IN THE DOWNTOWN ZONING DISTRICT; 3) SECTION 34-683 IN CHAPTER 34, ARTICLE III, DIVISION 5 RELATED TO THE CREATION OF NEIGHBORHOOD CENTERS IN THE SANTINI ZONING DISTRICT TO PROVIDE THAT DETACHED SINGLE-FAMILY AND TWO-FAMILY RESIDENCE BUILDING COVERAGE SHALL NOT EXCEED 40%; 4) SECTION 34-693 IN THE VILLAGE ZONING DISTRICT REGULATIONS TO PROVIDE THAT COMMERCIAL AND MIXED-USE BUILDING INTENSITY SHALL BE EVALUATED USING FLOOR AREA RATIO (FAR) AND DETACHED SINGLE-FAMILY AND TWO-FAMILY RESIDENCE INTENSITY SHALL BE EVALUATED USING BUILDING COVERAGE AND SHALL NOT EXCEED 40%; 5) SECTION 34-705 IN THE CB ZONING DISTRICT TO PROVIDE THAT FOR COMMERCIAL AND MIXED-USE DEVELOPMENTS FLOOR AREA RATIOS SHALL NOT EXCEED 1.0 AND BUILDING COVERAGE FOR DETACHED SINGLE-FAMILY AND TWO-FAMILY RESIDENCES, BUILDING COVERAGE SHALL NOT EXCEED 40%; PROVIDING FOR SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS; CONFLICTS OF LAW; AND PROVIDING AN EFFECTIVE DATE.

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

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

enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

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

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

1. Summary of the proposed ordinance (must include a statement of the public purpose, such as serving the public health, safety, morals and welfare):

The proposed ordinance amends allows for single family and two family residential structures to be measured by building coverage rather than floor area ratio.

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

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

There are unlikely to be direct compliance costs associated with Ordinance 23-24.

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

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

The Town will not likely incur additional costs.

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

This ordinance applies only to single family and two family residential structures, not businesses.

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

[You may wish to include in this section the methodology or data used to prepare the Business Impact Estimate. For example: [City/Town/Village] staff solicited comments from businesses in the [City/Town/Village] as to the potential impact of the proposed ordinance by contacting the chamber of commerce, social media posting, direct mail or direct email, posting on [City/Town/Village] website, public workshop, etc. You may also wish to include efforts made to reduce the potential fiscal impact on businesses. You may also wish to state here that the proposed ordinance is a generally applicable ordinance that applies to all persons similarly situated (individuals as well as businesses) and, therefore, the proposed ordinance does not affect only businesses].

1. **Request:**

Meeting Date: September 23, 2024

Motion to ratify the Mayor's signature and the changes made to Resolution 24-183 which was approved on September 9, 2024

Why the action is necessary:

The action was necessary to ratify the action that was taken to comply with direction given by FEMA.

What the action accomplishes:

The action ratifies the change that was made to resolution 24-183 in compliance with FEMA's direction.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Andy Hyatt, Town Manager

5. **Background:**

On September 9, 2024, the Town Council approved Resolution 24-183 AUTHORIZING THE TOWN MANAGER OF THE TOWN OF FORT MYERS BEACH, TO REQUEST A LOAN UNDER THE COMMUNITY DISASTER LOAN PROGRAM OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) FOR A MAXIMUM AMOUNT OF \$4,081,357, TO DRAW UPON IF NEEDED TO FUND ESSENTIAL GOVERNMENT SERVICES AS A RESULT OF LOST REVENUES, TO RECEIVE AND MANAGE THESE FUNDS, AND FOR OTHER PURPOSES; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE. On Wednesday, September 11th, FEMA contacted the Town and informed us that Section 9 of the resolution that referred to the Town providing collateral should be deleted, since it did not pertain to us since the state of Florida would be a co-signer on the loan. Per FEMA's direction, section 9 was struck from the resolution. However, since the signed resolution needed to be submitted to FEMA as soon as possible, the Town was advised by the Town's Attorney that the Mayor could sign the revised resolution in order for it to be submitted to FEMA sooner rather than later, and then have the revision to the resolution be ratified by the Town Council at its next meeting.

Attachments:

1. 24-183; FEMA CDL Application

Financial Impact:

The removal of the collateral requirement from the resolution reflects the benefit of the state being a cosigner on the loan.

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Joe Onzick, Finance Director

Created/Initiated - 9/11/2024

Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Approved - 9/11/2024
Approved - 9/16/2024
Approved - 9/16/2024
Final Approval - 9/16/2024

RESOLUTION NO. 24-183

A RESOLUTION TO AUTHORIZE THE TOWN MANAGER OF THE TOWN OF FORT MYERS BEACH, TO REQUEST A LOAN UNDER THE COMMUNITY DISASTER LOAN PROGRAM OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) FOR A MAXIMUM AMOUNT OF \$4,081,357, TO DRAW UPON IF NEEDED TO FUND ESSENTIAL GOVERNMENT SERVICES AS A RESULT OF LOST REVENUES, TO RECEIVE AND MANAGE THESE FUNDS, AND FOR OTHER PURPOSES, PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

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

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

WHEREAS, due to the effects of the Hurricane Ian DR-4673FL, the Town of Fort Myers Beach is projecting substantial losses of revenue necessary for the continued operations of essential government services; and

WHEREAS, the Federal Emergency Management Administration (FEMA), through its Community Disaster Loan Program (CDL Program), makes available low interest loans to help bridge substantial revenue losses until such time as recovery efforts lead to restored revenues sources; and

WHEREAS, the Town of Fort Myers Beach is interested in submitting to FEMA a consideration request for a Community Disaster Loan in the amount of \$4,081,357, that must be repaid no later than 5 years after the execution of the note, and will be used as revenue in support of annual budgets as permitted by Law; and

WHEREAS, the described law permits local governments to accept such loan proceeds and anticipate same in support of their annual budgets; and

WHEREAS, (1) The interest rate of the loan will be equal to the 5-year maturities based on the United States Treasury obligations in effect on the date the Promissory Note is executed by FEMA; (2) The loan may be forgiven under certain circumstances; and (3) Whatever portion of the loan not forgiven will be repaid at a time when economic recovery has broadened the base of revenues in support of the budget; and

WHEREAS, refraining to accept such a loan would irresponsibly forgo relief available to the residents of the Town of Fort Myers Beach at a time when relief may be critically needed.

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

Section 1. The above recitals are true and correct, and incorporated herein by this reference and adopted as the legislative and administrative findings of the Town Council; all exhibits referenced and attached are incorporated herein and made a specific part of this Resolution.

Section 2. The Town Council of the Town of Fort Myers Beach authorizes the Town Manager or his authorized representative to begin all the necessary steps to present to FEMA the formal Request for a Loan of the CDL Program for an amount not to exceed \$4,081,357;

Section 3. If FEMA approves the loan, the Town Council authorizes the Town Manager to receive and administer these funds, as provided by the Community Disaster Loan Program.

Section 4. That the Town Manager is hereby authorized and designated as representative of the Town of Fort Myers Beach and as such may and will provide any additional information, as required, including all the guarantees contained in the request.

Section 5. With respect to such request and receipt of funds, the Town of Fort Myers Beach in accordance with the requirements of the Community Disaster Loan Program of FEMA shall comply with the following:

- A. A contract with FEMA, in a manner and manner acceptable to the Director of the Agency, for payment of the amount requested and compliance with any other obligation required or acquired, as a condition of receiving the loan proceeds.
- B. Commit re-payment of funds that the Town of Fort Myers Beach may be receiving in the future.
- C. Request an amount of funds not to exceed \$4,081,357.
- D. Authorize the Finance Director to create a sinking fund account that will be used to amortize the CDL service debt.
- E. Establish a payment period that does not exceed a term of five (5) years.
- F. Provide, at the discretion of the Director of FEMA, any other type of guarantee that it deems appropriate.

Section 6. That the Town Manager is hereby authorized to sign any contract and / or agreement with the Director of FEMA in relation to said request and is also authorized to review and obligate such funds requested pursuant to said contract and / or agreement.

Section 7. To the extent that all or any or any of the actions authorized by this means have been carried out and / or executed by the Town Manager, all are ratified and confirmed.

Section 8. Any ordinance, resolution or any of its parts that may be in conflict with this, are hereby repealed.

Section 9. ~~We pledge the following listed collateral security to the Federal Emergency Management Agency (FEMA) on the Promissory Note for a Community Disaster Loan for \$4,081,357 executed on _____ pursuant to Section 417 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, and the FEMA Regulation, 44 CFR 206, Subpart K. We further understand that failure to repay any outstanding principal and related interest on those portions of the loan which do not qualify for loan cancellation as determined by FEMA or any successor agency will result in forfeiture of as much as the listed collateral security as is necessary to collect such outstanding principal and interest (Collateral security listed below).~~

~~The promissory note is payable from and secured by a pledge of the applicant's revenues for each fiscal year while any of the loan is outstanding, after a provision has been made for the payments required in connection with any outstanding indebtedness of the application.~~

Section 9. Copy of this Resolution duly approved by the Town of Fort Myers Beach will be sent to the Director of Finance of Fort Myers Beach, to the Budget Director of Fort Myers Beach, to the Town Attorney, to the authorized officials of FEMA Community Disaster Loans Program and to any other agency involved in the process.

Section 10. This resolution will take effect immediately once signed by the Mayor.

The foregoing Resolution was adopted by the Town Council upon a motion by Vice Mayor Atterholt and seconded by Council Member King, and upon being put to a roll call vote, the result was as follows:

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

ADOPTED this 9th day of September 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers
Dan Allers (Sep 12, 2024 10:48 EDT)

Dan Allers, Mayor

ATTEST:

Amy Baker

Amy Baker, Town Clerk

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

Nancy Stuparich
Nancy Stuparich (Sep 15, 2024 10:03 EDT)

Vose Law Firm, Town Attorneys

This Resolution was filed in the Office of the Town Clerk on this 10th day of September 2024.

1. **Request:**

Meeting Date: September 23, 2024

Accept CDBG-DR Funding awards in the amounts of up to \$8,336,753.00 and \$4,681,844.90 for the projects submitted to the Public Facilities and Critical Infrastructure CDBG-DR programs.

Why the action is necessary:

Acknowledges and accepts the funding obligation and subrecipient agreement associated with the Lee County CDBG-DR Public Facilities and Critical Infrastructure programs.

What the action accomplishes:

Acknowledges and accepts the funding obligation and subrecipient agreement associated with the Lee County CDBG-DR Public Facilities and Critical Infrastructure programs.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Jason Freeman, Legislative
Liaison / Deputy Town Clerk,
Joe Onzick, Finance Director

5. **Background:**

In May 2024, the Town Council authorized the application and administration of projects under the Critical Infrastructure and Public Facilities through Resolution 24-76.

The Planning and Infrastructure Evaluation Committee met on August 12, 2024, to evaluate the applicants' proposals. The committee recommended funding both of the qualifying proposals and were ranked within the top 10 of all the proposals submitted. These projects were then brought before the Lee County Board of County Commissioners for approval on September 3, 2024, in which they were approved.

The Town is being awarded up to \$13,018,597.90 to utilize for tasks related to these projects:

- CDBG-DR Public Facilities Program: \$8,336,753.00 Parks & Recreation Revitalization Projects

(This includes funding for Old San Carlos Lighting, Newton Beach Park, and the Fort Myers Beach Community Pool.

- CDBG-DR Critical Infrastructure Program: \$4,681,844.90 North (West) Tower Project

Attachments:

1. North Island Water Tower Conditional Award Letter
2. Parks and Recreation Revitalization Conditional Award Letter

Financial Impact:

CDBG-DR Public Facilities Program: \$8,336,753.00 Parks & Recreation Revitalization Projects
CDBG-DR Critical Infrastructure Program: \$4,681,844.90 North (West) Tower Project
Total Town Obligation for both Programs: \$13,018,597.90

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Jason Freeman, Legislative Liaison / Deputy Town Clerk
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 9/9/2024
Approved - 9/9/2024
Approved - 9/12/2024
Approved - 9/13/2024
Final Approval - 9/13/2024

Kevin Ruane
District One

Cecil L. Pendergrass
District Two

Ray Sandelli
District Three

Brian Hamman
District Four

Mike Greenwell
District Five

Dave Harner, II
County Manager

Richard Wm. Wesch
County Attorney

Donna Marie Collins
County Hearing
Examiner

Date: September 4, 2024

Andrew Hyatt, Town Manager
Town of Fort Myers Beach
2781 Oak Street
Fort Myers Beach, FL 33931

Re: CDBG-DR Conditional Award Notice

Good afternoon,

On September 3, 2024, the Lee County Board of County Commissioner's voted to award Community Development Block Grant – Disaster Recovery (CDBG-DR) funds to Public Facilities and Infrastructure projects. I am pleased to inform you that the BoCC has conditionally awarded funding for the Town of Fort Myers Beach North Island Water Tower Complex.

The awarded amount for your project is up to \$4,681,844.90. The anticipated start date for the project is January 1, 2025. This start date is subject to the completion of necessary requirements and final signature of the written agreement. Costs to be reimbursed by the grant cannot be incurred until the effective date of the written agreement. No choice limiting actions may be taken prior to the completion of the required environmental review requirements.

During your onboarding meeting we will review the requirements of the funding award, but as a reminder, CDBG-DR funds were provided to Lee County from the U.S. Department of Housing and Urban Development and are subject to all federal requirements outlined in 24 CFR 570, 2 CFR 200, and others. The required procurement procedures are outlined in 2 CFR 200 Subpart D, and in Lee County's Subrecipient Manual.

This award is conditional on completion and submission of the following:

- Completed Initial Risk Assessment that includes:
 - o Grant Management Plan
 - o Procurement Policy to include 2 CFR 200.318-327 OR Resolution Adopting Lee County's Procurement Policy
 - o Recipient A-133 Audit (Single Audit)
 - o List of Key Stakeholders/Org Chart
 - o Financial Policies and Procedures
 - o Section 504 Compliance (Property Conditions Report)
 - o Indirect Cost Rate Plan (if applicable)
 - o Non-Discrimination Policy
 - o Affirmatively Furthering Fair Housing Compliance
 - o Excessive Force Policy Compliance
- Completion of an Environmental Review Record and Authorization to Use Grant Funds from HUD (*Lee County SRGA will coordinate this effort*)
- Review of the Draft Subrecipient Agreement
- Final Budget

- Copy of ICE and any procurement packages that have been assembled and/or advertised.
 - o Applicants should not have an executed contract with any vendors. If you have an executed contract, please contact your grant manager to receive guidance regarding obtaining concurrence on your procurement of this vendor.

The jurisdiction must have an active and unexpired Unique Entity ID (UEI) in the System for Award Management (SAM) to avoid delays in the disbursement of funds. Grantees are required to maintain an active SAM registration for the duration of their contract by re-activating their UEI annually at the following website: <https://www.sam.gov/SAM>.

Should you have any additional questions, regarding the conditional award or attached documents, please do not hesitate to contact your grant manager.

Congratulations once again on this award, and we look forward to working with you.

Contacts:

Grant Manager
Carla Platter
cplatter@hga-llc.com
239-533-8716

CC: Lee County
Strategic Resources and Government Affairs (SRGA)
<https://cdbgdr.leegov.com>
Recovery@leegov.com
(239) 533-2315

Enclosures:
CDBG-DR Subrecipient Award Summary Page

CDBG-DR SUBRECIPIENT AWARD SUMMARY

The following information is provided pursuant to 2 CFR 200.332(a)(1)

Federal Award Identification Number (FAIN)/ HUD CDBG-DR Grant No.:	B-23-UN-12-0002
Assistance Listing Number (formerly CFDA #):	14.218 Community Development Block Grants/Entitlement Grants
Federal Register Notice & Public Law:	FR-6393-N-01: PL-117-328
Federal Award (HUD Grant Agreement) Date:	11/20/2023
Agreement No.:	To be determined.
Responsible Entity (RE):	Lee County
Lead and Responsible Department:	Office of Strategic Resources and Government Affairs
CDBG-DR Funding Source/Program:	US Department of Housing and Urban Development
Subrecipient Name:	Town of Fort Myers Beach
Subrecipient ID (Unique Entity Identifier via SAM.gov):	J87EFSEEQ884
Subrecipient Period of Performance (Start Date):	1/1/2025
Subrecipient Period of Performance (End Date):	12/31/2027
Total Amount Obligated via Agreement:	\$4,681,844.90
Project/Activity ID(s):	To be determined.
Federal Award Program/Project/Activity Description:	CDBG-DR/Critical Infrastructure/Town of Fort Myers Beach North Island Water Tower Complex
Does the Federal award include an Indirect Cost Rate for Subrecipient?	Yes ☐ No ☒
	☐ Negotiated Rate Click or tap here to enter text. %
If Yes, is the Indirect Cost Rate a:	☐ De Minimis Rate

Official County Contact for Award: Jeannie Sutton, Director, Strategic Resources and Government Affairs; 2115 Second St., Fort Myers, FL 33901; Phone: (239) 822-8438; Email: JSutton@leegov.com

Kevin Ruane
District One

Cecil L. Pendergrass
District Two

Ray Sandelli
District Three

Brian Hamman
District Four

Mike Greenwell
District Five

Dave Harner, II
County Manager

Richard Wm. Wesch
County Attorney

Donna Marie Collins
County Hearing
Examiner

Date: September 4, 2024

Andrew Hyatt, Town Manager
Town of Fort Myers Beach
2781 Oak Street
Fort Myers Beach, FL 33931

Re: CDBG-DR Conditional Award Notice

Good afternoon,

On September 3, 2024, the Lee County Board of County Commissioner's voted to award Community Development Block Grant – Disaster Recovery (CDBG-DR) funds to Public Facilities and Infrastructure projects. I am pleased to inform you that the BoCC has conditionally awarded funding for the Town of Fort Myers Beach Parks and Recreation Revitalization.

The awarded amount for your project is up to \$8,336,753. The anticipated start date for the project is January 1, 2025. This start date is subject to the completion of necessary requirements and final signature of the written agreement. Costs to be reimbursed by the grant cannot be incurred until the effective date of the written agreement. No choice limiting actions may be taken prior to the completion of the required environmental review requirements.

During your onboarding meeting we will review the requirements of the funding award, but as a reminder, CDBG-DR funds were provided to Lee County from the U.S. Department of Housing and Urban Development and are subject to all federal requirements outlined in 24 CFR 570, 2 CFR 200, and others. The required procurement procedures are outlined in 2 CFR 200 Subpart D, and in Lee County's Subrecipient Manual.

This award is conditional on completion and submission of the following:

- Completed Initial Risk Assessment that includes:
 - o Grant Management Plan
 - o Procurement Policy to include 2 CFR 200.318-327 OR Resolution Adopting Lee County's Procurement Policy
 - o Recipient A-133 Audit (Single Audit)
 - o List of Key Stakeholders/Org Chart
 - o Financial Policies and Procedures
 - o Section 504 Compliance (Property Conditions Report)
 - o Indirect Cost Rate Plan (if applicable)
 - o Non-Discrimination Policy
 - o Affirmatively Furthering Fair Housing Compliance
 - o Excessive Force Policy Compliance
- Completion of an Environmental Review Record and Authorization to Use Grant Funds from HUD (*Lee County SRGA will coordinate this effort*)
- Review of the Draft Subrecipient Agreement
- Final Budget

- Copy of ICE and any procurement packages that have been assembled and/or advertised.
 - o Applicants should not have an executed contract with any vendors. If you have an executed contract, please contact your grant manager to receive guidance regarding obtaining concurrence on your procurement of this vendor.

The jurisdiction must have an active and unexpired Unique Entity ID (UEI) in the System for Award Management (SAM) to avoid delays in the disbursement of funds. Grantees are required to maintain an active SAM registration for the duration of their contract by re-activating their UEI annually at the following website: <https://www.sam.gov/SAM>.

Should you have any additional questions, regarding the conditional award or attached documents, please do not hesitate to contact your grant manager.

Congratulations once again on this award, and we look forward to working with you.

Contacts:

Grant Manager
Carla Platter
cplatter@hga-llc.com
239-533-8716

CC: Lee County
Strategic Resources and Government Affairs (SRGA)
<https://cdbgdr.leegov.com>
Recovery@leegov.com
(239) 533-2315

Enclosures:
CDBG-DR Subrecipient Award Summary Page

CDBG-DR SUBRECIPIENT AWARD SUMMARY

The following information is provided pursuant to 2 CFR 200.332(a)(1)

Federal Award Identification Number (FAIN)/ HUD CDBG-DR Grant No.:	B-23-UN-12-0002
Assistance Listing Number (formerly CFDA #):	14.218 Community Development Block Grants/Entitlement Grants
Federal Register Notice & Public Law:	FR-6393-N-01: PL-117-328
Federal Award (HUD Grant Agreement) Date:	11/20/2023
Agreement No.:	To be determined.
Responsible Entity (RE):	Lee County
Lead and Responsible Department:	Office of Strategic Resources and Government Affairs
CDBG-DR Funding Source/Program:	US Department of Housing and Urban Development
Subrecipient Name:	Town of Fort Myers Beach
Subrecipient ID (Unique Entity Identifier via SAM.gov):	J87EFSEEQ884
Subrecipient Period of Performance (Start Date):	1/1/2025
Subrecipient Period of Performance (End Date):	12/31/2027
Total Amount Obligated via Agreement:	\$8,336,753.00
Project/Activity ID(s):	To be determined.
Federal Award Program/Project/Activity Description:	CDBG-DR/Public Facilities/Town of Fort Myers Beach Parks and Recreation Revitalization
Does the Federal award include an Indirect Cost Rate for Subrecipient?	Yes ☐ No ☒
If Yes, is the Indirect Cost Rate a:	☐ Negotiated Rate Click or tap here to enter text.% ☐ De Minimis Rate

Official County Contact for Award: Jeannie Sutton, Director, Strategic Resources and Government Affairs; 2115 Second St., Fort Myers, FL 33901; Phone: (239) 822-8438; Email: JSutton@leegov.com

1. **Request:**

Meeting Date: September 23, 2024

Authorize the Town Manager to renew and execute an agreement in the amount of \$45,000 with the Town's State Lobbyist, Ronald L. Book, P.A.

Why the action is necessary:

The current contract for a Town Lobbyist expires on September 30, 2024

What the action accomplishes:

Provides a lobbyist for the Town for an additional year.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Andy Hyatt, Town Manager

5. **Background:**

Mr. Book has been representing the Town of Fort Myers Beach on state matters since November of 2017 with many positive results. This agreement will extend his firm's services for another year.

Attachments:

1. Lobbyist Renewal Agreement FY25 w Agreement

Financial Impact:

6. **Alternative Action**

Do not renew the contract and hire an alternate Lobbyist.

7. **Management Recommendations:**

8. **Recommended Approval:**

Jason Freeman, Legislative Liaison / Deputy Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 9/10/2024
Approved - 9/12/2024
Approved - 9/13/2024
Final Approval - 9/13/2024

PROFESSIONAL SERVICES AGREEMENT RENEWAL

The undersigned parties to that certain Professional Services Agreement entered into between the Town of Fort Myers Beach and **Ronald L. Book, P.A.** originally dated November 21, 2017, and most recently extended and renewed on October 1, 2023, hereby agree, pursuant to Section 2 of the Agreement, to renew the Agreement on the same terms and conditions for a period of one year, commencing on October 1, 2024, and expiring on September 30, 2025. Those terms and conditions are reflected in the prior agreement that is attached hereto and incorporated herein by reference as Exhibit A.

IN WITNESS WHEREOF, the parties have executed this Professional Services Agreement Renewal on the dates set forth below.

TOWN OF FORT MYERS BEACH

Ronald L. Book, P.A.

By: _____
Andrew Hyatt, Town Manager

By: _____

Title: _____

DATE: _____

DATE: _____

ATTEST:

Amy Baker, Town Clerk

APPROVED AS TO LEGAL FORM:

Vose Law Firm, Town Attorney

**PROFESSIONAL SERVICES AGREEMENT BETWEEN THE
TOWN OF FORT MYERS BEACH
AND
RONALD L. BOOK, PA**

THIS AGREEMENT is made and entered into between Ronald L. Book, P.A., a Florida limited liability company, (hereinafter the "Consultant"), and the **TOWN OF FORT MYERS BEACH, FLORIDA**, a Florida municipal corporation, (hereinafter the "Town").

WHEREAS, the Consultant and Town, through mutual negotiation, have agreed upon a scope of services and fee for legislative consulting services on behalf of the Town before the Florida Legislature, the executive branch of the Florida government, and various regional and local governments; and

WHEREAS, the Town desires to engage the Consultant to perform the legislative consulting services specified below.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Consultant and the Town agree as follows.

1. **Scope of Services/Deliverables.**

- 1.1 Consultant shall provide legislative consulting services on behalf of the Town before the Florida Legislature, the executive branch of the Florida government, and various regional and local governments.
- 1.2 Specifically, Consultant shall provide the following services:
 - 1.2.1 No less than once a year, in person, meet with the Town Council and staff to assist the Town in developing a legislative program.
 - 1.2.2 Monitor and report on all state agency programs of interest to the Town, including any programs that could be helpful in funding, planning and operating the Town.
 - 1.2.3 Represent Town's interests before the Florida legislature and any executive branch body and any other entity that could be of benefit to the Town's interests.
 - 1.2.4 Monitor and track all legislation of interest to the Town.
 - 1.2.5 Provide no less than monthly reports during the legislative session and quarterly reports during the non-session months to the Town Manager and Town Attorney on all legislation being tracked. Such reports will be electronically transmitted to the Town Manager and Town Attorney.

1.2.6 Host Town officials during the legislative session in Tallahassee and arrange all appropriate meetings.

1.2.7 Attend staff meetings, workshops or Council meetings in Fort Myers Beach at the Town Manager's request.

2. **Term/Commencement Date.**

2.1 This Agreement is effective upon execution by both parties. The initial term is from October 1, 2020 through September 30, 2021 unless earlier terminated in accordance with Paragraph 8. The agreement can be extended by mutual consent of the Consultant and Town Council.

3. **Compensation and Payment.**

3.1 For all professional services provided by Consultant described in Section 1, the Town shall pay Consultant an annual fee of \$45,000.00, payable in four (4) equal quarterly installments of \$11,250.00.

3.2 Consultant shall be entitled to reimbursement of expenses incurred as a result of its representation of the Town. Such expenses may include use of on-line legislative and legal resources, copying and facsimile charges, postage and overnight delivery charges and other expenses directly related to representation of the Town. However, the total of such charges shall be capped at \$5,000 per year.

3.3 Consultant shall be reimbursed by the Town for reasonable travel expenses provided such expenses are pre-approved by the Town Manager in writing. If Consultant is traveling on behalf of several clients, the Town shall be charged only its pro-rated portion of the costs incurred.

3.4 Reimbursement of costs and travel expenses shall be paid by the Town to the Consultant upon approval of an invoice, including appropriate receipts and back-up documents.

3.5 Payments and reimbursements due under this section shall be paid by the Town pursuant to the Florida Prompt Payment Act.

3.6 If a dispute should occur regarding an invoice submitted, the Town Manager may withhold payment of the disputed amount and may pay to the Consultant the undisputed portion of the invoice. Upon written request of the Finance Director, the Consultant shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the Town Manager whose decision shall be final.

4. **No Subconsultants or Assignment.**

- 4.1 Although this Agreement is with Consultant, the parties understand that the services of Consultant are personal in nature and that the following members of Consultant's firm shall be designated by Consultant to perform services under this Agreement is Ronald L. Book.
- 4.2 In the event that any member of the firm can no longer perform services under this Agreement, Consultant shall immediately notify the Town Manager and the Town Manager shall have the right to immediately terminate this Agreement.
- 4.3 This Agreement shall not be subject to assignment by Consultant without prior written consent of the Town.

5. **Town's Responsibilities**

- 5.1 Furnish to Consultant, at the Consultant's written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by Consultant, in possession of the Town.

6. **Consultant's Responsibilities**

- 6.1 The Consultant shall exercise the same degree of care, skill and diligence in the performance of the work under this Agreement as is ordinarily provided by a professional under similar circumstances.

7. **Conflict of Interest.**

- 7.1 Consultant shall not be prohibited from representing or providing the like services to other persons and entities other than the Town, so long as Consultant shall avoid any representation or relation that would create a conflict of interest, as determined by the Town Attorney and Town Council.
- 7.2 Consultant shall not take on any client or matter, which would jeopardize Consultant's ability to devote the time, resources, and effort necessary to fulfill its obligations to the Town.

8. **Termination.**

- 8.1 Either party may terminate this Agreement without cause upon thirty (30) days written notice to the other.
- 8.2 The Town may terminate this Agreement immediately with cause.

- 8.2 Upon receipt of the Town's written notice of termination, Consultant shall stop all work on behalf of the Town unless directed otherwise in writing by the Town Manager.
- 8.3 In the event of termination, the Town shall be obligated to pay the Consultant only for approved fees and costs incurred by the Consultant prior to the date of termination. If the Consultant has already received the quarterly fee payment, the Consultant shall refund a pro-rated percentage of the fee back to the Town.

9. **Insurance.**

The Contractor shall secure and maintain throughout the duration of this Agreement insurance of such type and in such amounts as required by the Town Manager. The underwriter of such insurance shall be qualified to do business in the State of Florida and have agents upon whom service of process may be made in the State of Florida. If requested by the Town Manager, the insurance coverage shall be primary insurance with respect to the Town, its officials, employees, agents and volunteers. The insurance coverages shall include a minimum of:

- 9.1 Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law. Consultants with Worker's Compensation exemption shall not hold Town liable for employee injury or claims.
- 9.2 Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$100,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- 9.3 Professional Liability. The Consultant shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.
- 9.4 Certificates of Insurance shall be provided to the Town at the time of execution of this Agreement and certified copies provided if requested. Certificates of Insurance shall include the Town as additional insured or certificate holder. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Town before any policy or coverage is cancelled or restricted.

10. **Nondiscrimination.**

10.1 During the term of this Agreement, Consultant shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and to abide by all Federal and State laws regarding nondiscrimination

11. **Attorneys Fees and Waiver of Jury Trial.**

11.1 In the event of any litigation arising out of this Agreement each party shall be responsible for its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

11.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

12. **Indemnification.**

12.1 Consultant shall defend, indemnify, and hold harmless the Town, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Consultant's performance or non-performance of any provision of this Agreement. Consultant shall reimburse the Town for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Consultant's performance or non-performance of this Agreement.

12.2 The provisions of this section shall survive termination of this Agreement.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

13. **Notices/Authorized Representatives.**

- 13.1 Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the Town: Roger T. Hernstadt, Town Manager
Town of Fort Myers Beach, Florida
2525 Estero Boulevard
Fort Myers Beach, Florida 33931
239-765-0202

For The Consultant: Mr. Ronald L. Book, President
Ronald L. Book, P.A.
18851 NE 29 Ave., Ste. 1010
Aventura, FL 33180
305-935-1866

14. **Governing Law.**

- 14.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Lee County, Florida.

15. **Entire Agreement/Modification/Amendment.**

- 15.1 This writing contains the entire Agreement of the parties and supercedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.
- 15.2 No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

16. **Ownership and Access to Records and Audits.**

- 16.1 All records, books, documents, papers and financial information (the "Records") that result from the Consultant providing services to the Town under this Agreement shall be the property of the Town.
- 16.2 The Town Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the Consultant involving transactions related to this Agreement.
- 16.3 The Town may cancel this Agreement for refusal by the Consultant to allow access by the Town Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

17. **Severability.**

- 17.1 If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

18. **Independent Contractor.**

- 18.1 The Consultant and its employees, volunteers and agents shall be and remain independent contractor and not agents or employees of the Town with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

19. **Compliance with Laws.**

- 19.1 The Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project.

20. **Waiver**

- 20.1 The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

21. **Survival of Provisions**

- 21.1 Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

22. **Prohibition Of Contingency Fees.**

- 22.1 The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

23. **Counterparts**

- 23.1 This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties execute this Agreement on the respective dates under each signature: The Town, signing by and through its Town Manager, attested to by its Town Clerk, duly authorized to execute same and by Consultant by and through Ronald L. Book, who has been duly authorized to execute same.

JF

ATTEST:

TOWN OF FORT MYERS BEACH:


Michelle Mayher, Town Clerk

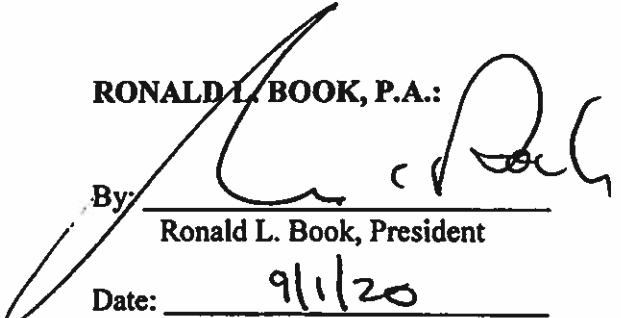
By: 
Roger T. Hernstadt, Town Manager

Date: 09/29/2020

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA ONLY:


Town Attorney

RONALD L. BOOK, P.A.:

By: 
Ronald L. Book, President

Date: 9/1/20

1. **Request:**

Meeting Date: September 23, 2024

Authorize the Mayor or Town Manager to sign all needed closing documents and for both to sign the closing statement approving the final expenditure of Town funds for the property at 6221 Estero Boulevard.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

5. **Background:**

Attachments:

1. Notice of Disclosure of Real Property Interests
2. Single Site Sales Agreement
3. Intrepid Real Estate Listing Price
4. Sales Contract - 6221 Estero Blvd Fort Myers Beach FL

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

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

Created/Initiated - 9/16/2024
Approved - 9/17/2024
Approved - 9/17/2024
Approved - 9/17/2024
Final Approval - 9/17/2024



June 26, 2024

Ms. Kimberly M. Shiver, Property Manager/RE Sales
Intrepid Commercial Real Estate
365 Citrus Tower Boulevard, Suite 102
Clermont, Florida 34711

Via: Registered/Certified Mail

NOTICE OF REQUIRED DISCLOSURE OF INTERESTS IN REAL PROPERTY

THIS NOTICE is to inform you that, pursuant to Section 286.23, Florida Statutes, any person or entity holding real property in the form of a partnership, limited partnership, corporation, trust, or any form of representative capacity for others, is required to make certain disclosures (the "Required Disclosures") to the chief officer of the Town of Ft. Myers Beach, before entering into any contract whereby real property is sold, leased, taken by eminent domain, or otherwise conveyed to the Town. The Required Disclosures must state your name and address, as well as the name and address of every person having a beneficial interest in the real property to be sold, leased, or otherwise conveyed to the Town.

Enclosed is an Affidavit of Interest in Real Property which you may use to make the Required Disclosures. The Required Disclosures must be made prior to the execution of a contract providing for the sale, lease, or conveyance of property to the Town and at least 10 days prior to closing of the sale, lease, or conveyance. **Please be advised that, pursuant to Section 286.23, Florida Statutes, the Required Disclosures must be made under oath and subject to the penalties for perjury.**

Please return the signed and notarized affidavit in a sealed envelope made deliverable to:

**Mayor Dan Allers
Town of Ft. Myers Beach
2731 Oak Street
Fort Myers Beach, FL 33931**

**With a copy to:
Andy Hyatt, Town Manager
Becky Vose, Town Attorney
Town of Ft. Myers Beach
2731 Oak Street
Fort Myers Beach, FL 33931**

Thank you for your cooperation in this matter.

Sincerely,

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

AFFIDAVIT OF INTEREST IN REAL PROPERTY

THIS AFFIDAVIT OF INTEREST IN REAL PROPERTY is made and entered into this 30th day of July, 2024, for the sole purpose of compliance with Section 286.23, Florida Statutes. The affiant hereby swears and affirms that the following is true:

1. The affiant is the Scott Hopp of 7-Eleven, Inc, a Florida, the legal title holder of the real property (the "Property") more particularly described in **Exhibit "A"** attached hereto and incorporated by reference.

2. The affiant, after diligent search and inquiry, hereby states that *(select appropriate option below.)*:

(check if applicable) - The name(s) and address(es) of every person having a beneficial interest in the Property described above, however small or minimal, is/are (attach additional pages if needed):

Name	Address	Percentage of Ownership
7-Eleven, Inc.	3200 Hackberry Road Irving, Tx 75063	100%

OR

(check if applicable) - All beneficial interests in the property are exempt from disclosure because the entity identified above as the owner of the Property is an entity registered with the Federal Securities Exchange Commission or the Florida Department of Financial Services pursuant to Chapter 517, Florida Statutes, whose interest is for sale to the general public.

3. The information furnished herein is accurate as of the date hereof, and the affiant agrees to promptly disclose any changes in the information contained herein, or any errors in such information.

4. The affiant understands that this disclosure is made under oath, and the affiant will be subject to penalties for perjury for any false information contained herein.



FMBgov.com

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

[SIGNATURE AND NOTARY ON FOLLOWING PAGE]



AFFIANT:

By: Scott Hopp
Scott Hopp (Jul 30, 2024 10:00 CDT)
Print Name: Scott Hopp
Company: 7-Eleven, Inc.
Title: Sr Mgr Asset Optimization

STATE OF Texas

COUNTY OF Dallas

The foregoing instrument was sworn to, subscribed and acknowledged before me by means of either ☐ personal presence or ☐ online notarization this 30 day of July, 2024, by Scott Hopp He She is ☒ personally known to me or ☐ has produced _____ as identification.

Robin Bryant
Notary Public, State of ~~Florida~~ Texas
Print Name: Robin Bryant

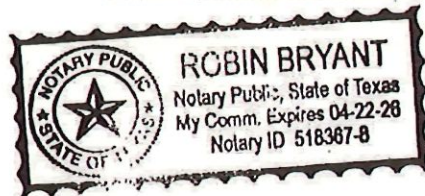




EXHIBIT "A"

**DESCRIPTION OF THE PROPERTY TO BE CONVEYED
(WITH FOLIO NUMBER)**



SINGLE-SITE SALES AGREEMENT LOI

VIA Email: andyhyatt@fmbgov.com

July 26, 2024

Andrew Hyatt
Town of Fort Myers Beach
2731 Oak Street
Fort Myers Beach, FL 33931

RE: 7-ELEVEN, INC., AS SELLER – LETTER OF INTENT
#10292 – 6221 Estero Boulevard
Fort Myers Beach, FL 33931

Dear Mr. Hyatt:

On behalf of Seller, it is a pleasure to present the following letter of intent for the sale of the Property referenced above. Following are general terms and conditions under which Seller would be willing to enter into a sales contract for the Property.

1. **BUYER:** Town of Fort Myers Beach, a Florida municipal corporation ("Buyer")
2. **SELLER:** 7-Eleven, Inc., a Texas corporation ("Seller")
3. **PROPERTY:** The real property with an address of 6221 Estero Boulevard, in the City of Fort Myers Beach ("Property"), as further outlined on the attached Exhibit "A", together with all fixtures and articles of personal property situated on the Property and owned by Seller, including but not limited to air conditioning and heating equipment, light fixtures, shrubbery, and all such fixtures and articles of personal property. Notwithstanding the foregoing, the Property shall not include any of Seller's proprietary trade or business fixtures or other equipment, including, but not limited to the Slurpee machine, the point of sale system (POS), Retail Information System (RIS), ordering software, Western Union equipment, ATM, security equipment (including, but not limited to, the DVR and any interior or exterior security cameras), and air/water equipment, ownership of which will remain in Seller.

4. **PURCHASE PRICE:** One Million Seven Hundred Thousand and 00/100 Dollars (\$1,700,000.00) (the "Purchase Price").
5. **ESCROW AGENT:** The escrow shall be handled by TBD or its designated affiliate ("Escrow Agent"). The party that chooses the escrow agent shall pay all Escrow and title search fees and the title premium. Buyer shall pay for any survey costs incurred by Buyer and recording costs on the deed. Seller shall pay recording costs on any documents necessary to be recorded to establish marketable title. Seller shall pay for documentary stamp taxes as required by Florida law, since Buyer (a municipality) is not permitted to pay such taxes under Sec. 201.01, Fla. Stat. Each party shall pay its own attorney fees.
6. **TITLE:** Seller shall deliver marketable title to the Property and Buyer shall purchase the Property and any fixtures and articles of personal property in AS IS condition.
7. **DEPOSIT:** Within five (5) days of the mutual execution of a Contract, Buyer shall deposit with Escrow Agent the sum of Eighty-Five Thousand Dollars and 00/100 (\$85,000.00) as an earnest money deposit.
8. **FEASIBILITY PERIOD:** Buyer shall have **forty-five (45)** days from the effective date of the Contract within which to investigate all matters of interest to Buyer respecting or affecting the Property ("Feasibility Period"). During such Feasibility Period, should any such item be deemed unsatisfactory by Buyer, Buyer may, at its election, terminate the Contract (hereinafter defined) in its sole and absolute discretion and receive a refund of all earnest money from Escrow Agent. Escrow Agent shall provide Buyer with a Title Commitment with copies of all relevant recorded documents no later than fifteen (15) days after the effective date of the Contract, and Buyer shall have until that date which is twenty (20) days prior to the end of the Feasibility Period to examine and object to the current condition of title to the Property. **Notwithstanding anything to the contrary, no Phase II, drilling, boring or other invasive property investigations shall be allowed at the Property.** Seller represents that no gasoline products have been sold from the Property and to the best of its knowledge and belief there are no contaminants on the Property as a result of its ownership.
9. **PRORATIONS:** All real property taxes and special assessments shall be prorated as of the date of the Close of Escrow.
10. **HAZARDOUS SUBSTANCES:** Buyer shall release and indemnify Seller for all environmental obligations and liabilities pertaining to the Property to the extent permitted by Florida law and upon disclosure and receipt of any and all documents in Sellers possession regarding hazardous substances on the Property during its ownership and any due diligence reports (Environmental Phase 1 or 2) reports previously prepared or received regarding the condition of the soil and subsurface condition of the Property.
11. **GOVERNING LAW:** The laws of the State of Florida shall govern the validity, construction, enforcement and interpretation of the Contract. Venue shall be in the 20th Judicial Circuit in and for Lee County, Florida.

12. **CLOSING:** The transaction shall be closed (the "Closing") on the date ("Closing Date") which shall be **thirty (30)** days after the expiration of the Feasibility Period.

13. **RESTRICTIONS:** Any warranty deed conveying title to the Property will contain the following restrictions which will run with the land.

"Neither Grantee nor its successors, assigns or legal representatives, lessees, or sublessees, shall conduct or permit the conduct on the Property of, and the Property shall not be used for:

i. a grocery or convenience store selling at retail any food or food products, dairy products, beer, or wine or other alcoholic beverages for consumption off the premises;

ii. the sale of motor fuels and petroleum products.

14. **SALES CONTRACT:** Seller's standard sales contract shall be used. A copy of Seller's standard sales contract ("the Contract") shall be provided to Buyer at the time this letter of intent is signed by both parties.

15. **BROKERS:** Buyer and Seller will each represent and warrant to the other that it has not contacted or entered into any agreement with any real estate broker, agent, finder, or any other party in connection with the transaction **other than Intrepid Commercial Real Estate, LLC and All City Real Estate who have represented Seller in this transaction ("Seller's Brokers")**, and that it has not taken any action which would result in any real estate broker's, finder's, or other fees or commissions being due or payable to any other party with respect to the transaction. **If, as and when Closing actually occurs and the Purchase Price is received by Seller, Seller agrees to pay the Seller's Brokers a commission of six percent (6%) of the Purchase Price, to be split equally between the Brokers, in accordance with a separate written agreement by and between Seller and the Seller's Brokers.**

16. **SUBJECT TO:** The proposed transaction shall be subject to a mutually acceptable sales contract being fully executed between Buyer and Seller.

It is expressly understood and agreed that anticipated terms and conditions of a future Contract as described in this letter of intent are nonbinding and are only intended as an outline of the principal business terms of the transaction. Except as set forth in the paragraph below labeled "Confidential Information," neither Seller nor Buyer shall have any rights or obligations regarding the provisions set forth in this letter of intent unless and until a binding agreement is executed between the parties, including execution by an officer authorized by Seller's board of directors to execute such agreement (the "Contract"). Each of Buyer and Seller shall bear their respective costs and expenses to negotiate this letter of intent and the Contract.

This letter shall expire if not agreed to and accepted on or before August 2, 2024. Seller agrees that it will not for a period of 30-days from the date hereof, enter into any agreement or understanding pertaining to the sale of the Property with any party other than with Buyer.

CONFIDENTIAL INFORMATION: To the extent permitted by Florida law, and specifically Chapter 119, Florida Statutes, Buyer agrees to maintain all Confidential Information in confidence and will not disclose such information to any other party without written consent from the Seller. "Confidential Information" includes the terms of this letter of intent, any negotiations pertaining to the sale of the Property, and any and all information whether in oral, written or other form, which is communicated by Seller to Buyer related to the Property (regardless of whether such information is labeled as confidential). Confidential Information may be released to the parties' employees, partners, consultants and lenders who have a reasonable need for such Confidential Information, provided that such individuals agreed to maintain the confidential nature of the information. This provision will be binding upon execution of this letter of intent even if the parties do not enter into a Contract and will survive for a period of three years following the effective date of this letter as may be permitted by Florida law

Please do not hesitate to call me with any questions you may have concerning the above-referenced terms and conditions.

Sincerely,

7-ELEVEN, INC., a Texas corporation

By: Scott Hopp
By: Scott Hopp (Jul 30, 2024 10:00 CDT)

Name: Scott Hopp

Title: Authorized Representative

07/30/2024

AGREED TO AND ACCEPTED

BUYER:

Town of Fort Myers Beach

By: Andrew Hyatt

Name: Andrew Hyatt

Title: Town Manager

Date: 7/30/24

Exhibit A

Legal Description

Strap: 33-46-24-W3-00012.0010

Folio ID: 10230715

A lot or parcel of land lying in Sections 33 and 34, Township 46 South, Range 24, East on Estero Island, Lee County, Florida, which lot or parcel is described as follows:

From the Southeasterly corner of Block I, Unit No. 2, McPhie Park according to a map or plat thereof recorded in Plat Book 8, Page 59, of the Public Records of Lee County, Florida, run Southeasterly, perpendicular to the Southeasterly line of said Block I for 590 feet, thence run Northeasterly, parallel with the Southeasterly line of said Block I for 47.72 feet to a concrete monument marking a point on the Northeasterly line of a county road right-of-way described in and conveyed by deed recorded in Deed Book 193, Page 583, of said Public Records, thence deflect 84 degrees 47 minutes to the left and run Northwesterly along said Northeasterly line of said county road for 150 feet to a concrete monument and the Point of Beginning. From said Point of Beginning continue Northwesterly along said Northeasterly line for 5.21 feet to a concrete monument marking a point of curvature; thence run Northwesterly along said Northeasterly line, along the arc of a curve to the left of radius 2932.29 feet for 97.18 feet to a concrete monument on the Southeasterly line of Flamingo Park according to a map or plat thereof recorded in Plat Book 9, Page 66 of said Public Records, thence run Northeasterly along said Southeasterly line of said Flamingo Park for 165.53 feet to a concrete monument, thence run Southeasterly, perpendicular to said Southeasterly line for 101.54 feet to a concrete monument, thence run Southwesterly, parallel to said Southeasterly line of said Flamingo Park for 178.56 feet to the Point of Beginning.

Being the same property conveyed to Fidelity Union Life Insurance Company from The Southland Corporation by deed dated February 18, 1970, and recorded in Official Records Book 665, Page 670, Public Records of Lee County, Florida.

Freestanding Closed Retail Store

FOR SALE - \$2,500,000

6221 Estero Boulevard Fort Myers Beach, Lee County, Florida

Property Highlights

- Great corner location – Bring your business to Fort Myers Beach!!!
- Retail Building Size 2,640 sq. ft.
- Year Built 1969/1984
- Interior walls have been removed and taken back to the studs
- Land Size – .37 acres (16,030 sq. ft.)
- Monument Sign
- Zoned – CB Commercial Boulevard
- Good Access & Visibility
- 2022 Property Taxes - \$14,137

PROPERTY BEING SOLD “AS-IS”

Will be Deed Restricted from being used as a
Convenience Store with or without Motor Fuels
(other restrictions may apply)



Contact:

Gina LeMaster Brown

352.415.4499

gina@intrepidcre.com

365 Citrus Tower Blvd., Suite 102, Clermont, FL 34711 - www.intrepidcre.com

The information contained herein has been given to us by the owner of the property or other sources we deem reliable. We have no reason to doubt its accuracy, but do not guarantee it. All information should be verified before entering into an agreement.

STORE NO. 10292
6221 Estero Boulevard
Fort Myers Beach, Florida 33931

SALES CONTRACT

1. PARTIES. This Sales Contract (“Contract”) dated as of _____ (the “Effective Date”) is between **TOWN OF FORT MYERS BEACH**, a Florida municipal corporation (herein “Buyer”), and **7-ELEVEN, INC.**, a Texas corporation, formerly known as The Southland Corporation (herein “Seller”).

2. PREMISES.

a. Seller agrees to sell and convey to Buyer and Buyer agrees to purchase and pay for the real property in the City of **Fort Myers Beach**, County of **Lee**, and State of **Florida**, described on **Exhibit A** attached and included by this reference, together with all improvements, rights, and appurtenances on or pertaining thereto, including Seller’s right, title, and interest in adjacent public streets, alleys, or rights-of-way (herein collectively the “Property”). This Contract also covers all fixtures situated on the Property at the time of Closing (hereinafter defined) and owned by Seller, including but not limited to air conditioning and heating equipment, light fixtures, shrubbery, and all such fixtures are included in the Purchase Price set forth in Section 4 below. Notwithstanding the foregoing, this Contract does not cover any of Seller’s inventory or equipment, proprietary trade or business fixtures or other equipment, including, but not limited to the Slurpee machine, WIN Coffee equipment along with its software systems, the point of sale system (POS), Retail Information System (RIS), ordering software and hardware, mobile check-in equipment and software, Western Union equipment, ATM, security equipment (including, but not limited to, the DVR and any interior or exterior security cameras), and air/water equipment, ownership of which will remain in Seller.

b. Waiver of Right of First Refusal. If a right of first refusal or similar option exists relating to the Real Property (“ROFR”), Seller’s obligation to close hereunder is conditioned upon Seller obtaining a waiver of the ROFR. In the event Seller is unable to obtain a waiver of the ROFR on or before the Closing Date (as it may be extended), Seller shall terminate this Contract and instruct Escrow Agent to refund the Earnest Money to Buyer and this Contract shall be void and of no further force and effect. Seller makes no representation as to whether it will be able to obtain the waiver of the ROFR and its failure to do so will not be a breach hereunder.

3. ESCROW AGENT. The parties agree that Sutton Land of Texas, LLC or its designated affiliate (herein “Escrow Agent” or the “Title Company”) shall act as escrow agent for this transaction. Escrow Agent shall receive and deliver all documents or instruments and receive and disburse all sums of money according to the terms of this Contract and the written instructions of the parties.

4. CONSIDERATION. The purchase price is One Million Seven Hundred Thousand and 00/100 Dollars (\$1,700,000.00) (herein, the “Purchase Price”), a portion of which in the amount of Eighty-Five Thousand and 00/100 Dollars (\$85,000.00) is an earnest money deposit (the “Earnest Money”). Within five (5) days after the Effective Date, Buyer shall deliver the Earnest Money (in certified funds or by wire transfer) to Escrow Agent, to be deposited into escrow. The balance of the Purchase Price shall be paid to Seller by wire transfer at the Closing (as hereinafter defined).

5. TITLE.

a. Title Policy/Binder. At Seller's sole cost and expense, Buyer shall obtain through Escrow Agent preliminary title documentation and a standard owner's title insurance policy (herein the "Title Policy"), provided, however, any endorsements thereto shall be at Buyer's sole cost and expense. Within five (5) days of the Effective Date of this Contract, a preliminary title report or binder (herein the "Binder") giving the current condition of title to the Property shall be ordered from Escrow Agent. Escrow Agent will deliver copies of the Binder to Seller and Buyer as soon as it is available. Buyer may review the Binder and the current condition of title to the Property during the Feasibility Period but shall have no right to object to any matters with respect thereto. Seller shall have no obligation to remove, cure, or cause the Escrow Agent to insure over any matters set forth in the Binder or otherwise affecting the title to the Property.

b. Mortgages/Liens. Notwithstanding the foregoing, Seller will be obligated prior to Closing to remove (or insure over, if applicable) any deeds of trust or mortgages, judgments, mechanics' and materialmen's liens and any tax liens affecting title to the Property, in each case created by or on behalf of Seller, such that they will not be shown as exceptions to title on the Title Policy.

6. FEASIBILITY PERIOD.

a. Feasibility Period; Due Diligence Documents.

i. Subject to the provisions of Section 19.m. below, within five (5) days after the Effective Date, Seller will provide copies (which may be electronic copies) of the documents listed on **Exhibit C** attached hereto ("Due Diligence Documents"). Buyer agrees to return all such Due Diligence Documents (along with any and all copies thereof) to Seller if Closing hereunder does not occur. Seller makes no representations or warranties as to the truth, accuracy or completeness of any materials, data or other information supplied to Buyer in connection with Buyer's inspection of the Property (e.g., that such materials are complete, accurate or the final version thereof). It is the parties' express understanding and agreement that such materials are provided only for Buyer's convenience in making its own examination and determination during the Feasibility Period as to whether it wishes to purchase the Property, and, in doing so, Buyer shall rely exclusively on its own independent investigation and evaluation of every aspect of the Property and not on any materials supplied by Seller. Buyer expressly disclaims any intent to rely on any such materials provided to it by Seller in connection with its inspection and agrees that, with respect to any such materials, it shall rely solely on its own independently developed or verified information

ii. Notwithstanding any provision in the Contract to the contrary, Buyer shall have forty-five (45) days from the Effective Date within which (i) to confirm the condition of the Property; (ii) for the purpose of locating easements and utilities, making inspections, surveying, performing non-invasive site analyses and engineering reports or such other testing as Buyer may reasonably require; and (iii) to investigate all other matters of interest to Buyer respecting or affecting the Property ("Feasibility Period"). All costs of any such inspection and testing shall be paid by Buyer. **Notwithstanding anything to the contrary, in no event shall Buyer be permitted to perform any Phase II environmental site assessments, drilling, boring or other invasive or destructive testing on the Property.** During such Feasibility Period, should any such item be deemed unsatisfactory by Buyer, Buyer may, at its election, terminate this Contract in its sole and absolute discretion, by written notice to Seller

delivered on or prior to the expiration of the Feasibility Period and receive a refund of the Earnest Money, less the Title Exam Costs (as such term is defined below); if Buyer fails to give such notice of termination on or prior to the expiration of the Feasibility Period (TIME BEING OF THE ESSENCE), Buyer will be deemed to have elected to waive Buyer's right to terminate pursuant to this Section 6.a.

b. Entry onto Property. Prior to Buyer and/or its agents entering the Property, and/or performing any inspections or tests, Buyer shall provide Seller with five (5) days' written notice and shall deliver to Seller evidence of commercial general liability, public liability and other appropriate insurance is maintained by the party entering the Property, naming Seller as an additional insured, with limits of not less than Two Million Dollars (\$2,000,000) for property damage, bodily injury or death. All inspections shall be performed in accordance with law and only by appropriately qualified and, where applicable, licensed personnel. Buyer shall keep the Property free and clear of any liens resulting from Buyer's inspections. Subject to the provisions of Sec. 768.28, Fla. Stat., Buyer shall protect, defend, indemnify, save and hold harmless Seller against any and all claims, demands, losses, fines, suits, actions, proceedings, orders, decrees, judgments, damage or liability (including attorneys' fees and costs incurred by Seller with respect thereto) of any kind or nature, by or in favor of anyone whomsoever, resulting from, arising from, or occasioned in whole or in part by any act or omission by Buyer, its agents, contractors, employees, representatives or invitees in, upon, or at the Property, or from Buyer's inspection, examination and inquiry of or on the Property. The provisions of this Section shall survive the Closing or termination of this Contract. Buyer shall immediately repair any damage resulting from its entry upon the Property. Seller shall have the right, at its option, to cause a representative of Seller to be present at all inspections, reviews and examinations conducted hereunder.

7. CLOSING.

a. Closing. Notwithstanding anything to the contrary in the Contract, provided that Buyer has not terminated this Contract during the Feasibility Period pursuant to Section 6, this transaction shall be closed (herein the "Closing") on the date which shall be on or before the thirtieth (30th) day following the expiration of the Feasibility Period (the "Closing Date"); provided, however, Seller, upon written notice to Buyer, may extend the Closing Date by up to ninety (90) days.

b. Seller's Closing Documents. At or before Closing, Seller shall prepare, and deposit or cause to be deposited into escrow with the Escrow Agent the following items:

- i. an executed special warranty deed (the "Deed") conveying title to the Property, subject to the Conditions (as defined in the Deed), in substantially the form of Exhibit B attached hereto;
- ii. an executed Seller Closing Statement reflecting all financial aspects of the transaction attributed to Seller; and
- iii. any additional documents that the Escrow Agent (whether in its capacity as Escrow Agent or Title Company) may reasonably require for the proper consummation of the transaction contemplated by this Contract.

c. Buyer's Closing Documents. At or before Closing Buyer shall deposit or cause to be deposited into escrow the following:

- i. the balance of the Purchase Price, subject to the prorations and adjustments set forth in this Contract;
- ii. an executed Buyer Closing Statement reflecting all financial aspects of the transaction attributed to Buyer; and
- iii. any additional documents that the Escrow Agent (whether in its capacity as Escrow Agent or Title Company) may reasonably require for the proper consummation of the transaction contemplated by this Contract.

d. Closing Costs. Buyer shall pay all costs of recording the Deed and any costs related to the disbursement of funds in connection with Closing, and the costs of any survey or survey update obtained by Buyer. Seller shall pay recording costs on any documents necessary to be recorded to establish marketable title, the fee or charge of Escrow Agent, all transfer taxes and all title search, premium and other charges. Attorneys' fees, consulting fees, and other due diligence expenses shall be borne by the party incurring such expense. The provisions of this Section shall survive the Closing.

8. **RISK OF LOSS.** Seller shall bear the risk of condemnation and the risk of loss, damage or destruction of the Property by fire or otherwise until the Closing. Buyer shall have the option to terminate this Contract upon any material damage to the Property prior to Closing from any cause whatsoever and the Earnest Money will be returned to Buyer, less the Title Exam Costs (as such term is defined below). The parties hereby agree that "material damage" shall mean damage which will cost more than five percent (5%) of the Purchase Price to repair.

9. **CONDITION OF PROPERTY.** Possession of the Property shall be delivered to Buyer at the Closing, in materially the same condition and state of repair as on the Effective Date, subject only to normal wear, tear, and use and casualty or condemnation since that date. Buyer hereby acknowledges that, pursuant to this Contract, it has the right to inspect the Property and all fixtures, if any, to be conveyed hereunder and that should Buyer agree to proceed with Closing, that it accepts the Property and any fixtures in their AS IS, WHERE IS condition as of the Closing Date, and the Property and any fixtures shall be deemed suitable in all respects upon Buyer's waiver or deemed waiver of its right to terminate this Contract on or prior to the expiration of the Feasibility Period. Seller hereby disclaims all warranties of any kind or nature whatsoever (including warranties of habitability and fitness for particular purposes), whether expressed or implied, including, but not limited to warranties with respect to the Property or its construction, the existence of any Hazardous Substances (hereinafter defined) at the Property, any operative or proposed governmental laws and regulations (including, without limitation, zoning, environmental and land use laws and regulations) to which the Property may be subject, or the development potential or the fitness of the Property for Buyer's intended use. Buyer acknowledges that it is entering into this Contract without reliance on any materials provided by Seller or Seller's Broker (hereinafter defined) and on the basis of its own review and investigations of the applicability and effect of such laws and regulations, and Buyer assumes the risk that adverse matters may not have been revealed by its investigations.

10. ENVIRONMENTAL

a. Hazardous Substances. Buyer hereby assumes liability for, and agrees to take all actions required by law relating to, all environmental obligations or liabilities, including investigation, monitoring and remediation obligations and third party claims, arising from environmental conditions or Hazardous Substances existing on or beneath or migrating from the Property as of the Closing Date, including, but not limited to: (i) any violation or alleged violation of, or liability or alleged liability under, any local, state or federal law, rule or regulation or common law duty pertaining to human health, natural resources or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), the Clean Air Act (42 U.S.C. §7401 et seq.), the Emergency Planning and Community-Right-to-Know Act (42 U.S.C. §11001 et seq.), the Endangered Species Act (16 U.S.C. §1531 et seq.), the Toxic Substances Control Act (15 U.S.C. §2601 et seq.), the Occupational Safety and Health Act (29 U.S.C. §651 et seq.) and the Hazardous Substances Transportation Act (49 U.S.C. §1801 et seq.), and those relating to Lead Based Paint (as hereinafter defined) and each of their state counterparts and the regulations promulgated pursuant to said laws, all as amended from time to time (collectively, “Environmental Laws”), relating to or affecting the Property, whether or not caused by or within the control of Seller; (ii) the presence, release or threat of release of or exposure to any hazardous, toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos or asbestos-containing materials, polychlorinated biphenyls, petroleum or petroleum products or byproducts, flammable explosives, radioactive materials, paint containing more than .05% lead by dry weight (“Lead Based Paint”), infectious substances or raw materials which include hazardous constituents) or any other substances or materials which are included under or regulated by Environmental Laws (collectively, “Hazardous Substances”) or any toxic mold or fungus of a type that may pose a risk to human health or the environment or would negatively impact the value of the Property (“Toxic Mold”), on, in, under, migrating from or affecting all or any portion of the Property or any surrounding areas, regardless of whether or not caused by or within the control of Seller; (iii) any transport, treatment, recycling, storage, disposal or arrangement therefor of Hazardous Substances whether on the Property, originating from the Property, or otherwise associated with the Buyer or any operations conducted on the Property at any time; or (iv) any environmental investigation, assessment, audit or review conducted in connection with the Property or the operations conducted at any time thereon, including, without limitation, the cost of assessment, investigation, containment, removal and/or remediation of any and all Hazardous Substances or Toxic Mold from all or any portion of the Property or any surrounding areas, the cost of any actions taken in response to the presence, release or threat of release of any Hazardous Substances or Toxic Mold on, in, under, migrating from or affecting any portion of the Property or any surrounding areas to prevent or minimize such release or threat of release so that it does not migrate or further migrate or otherwise cause or threaten danger to present or future public health, safety, welfare or the environment, and costs incurred to comply with Environmental Laws in connection with all or any portion of the Property or any surrounding areas. It is acknowledged and agreed that the Purchase Price of the Property reflects the condition of the Property.

b. Indemnity. Subject to the provisions of Sec. 768.28, Fla. Stat., Buyer will protect, defend, hold harmless and indemnify Seller, Seller’s respective subsidiaries, parent companies, affiliated companies, and successors-in-interest, Seller’s directors, officers, agents and employees from and against any and all expenses, claims, actions, liabilities, attorney’s fees, damages, losses, penalties, fines and interest of any kind whatsoever (including without limiting the foregoing, death of or injury to persons and damage to Property), actually or allegedly resulting from or connected with the environmental condition of the Property or from the omission or commission of any act, lawful or unlawful, by Buyer or its agents or employees, whether or not such act is within the scope of the employment of such agents or

employees, or from leaks, seepage, spills or other loss of motor fuels or other toxic pollutants at the Property.

c. Waiver and Release. Buyer hereby (i) waives, relinquishes and releases Seller from all costs by reason of or arising out of any environmental conditions at the Property and from any contribution action; and (ii) should any investigation, assessment, clean-up, remediation or removal of Hazardous Substances or other environmental conditions on the Property be required after the Closing Date, it is hereby understood and agreed that such clean-up, removal or remediation shall be the responsibility of and shall be performed at the sole cost and expense of Buyer. It is understood and agreed that the Purchase Price reflects the allocation of risk set forth in this subsection. Further, notwithstanding anything to the contrary herein, Buyer covenants and agrees that in no event shall it commence any action or make any claim against Seller, its parent corporation, subsidiaries, affiliates and assigns, or any former owner or operator of the Property which in any way relates to the environmental or other condition of the Property, including any claim for property damage or diminution of property value by reason of the presence of Hazardous Substances at, on under or emanating from the Property, and Buyer hereby releases Seller from all such claims. It is acknowledged and agreed that the Purchase Price of the Property reflects the condition of the Property.

d. Survival. The covenants of this Section 10 shall survive Closing and shall be binding upon and shall inure to the successors and assigns of each of the parties and all subsequent purchasers of the Property. Upon the request of Seller, Buyer agrees to execute and deliver such instruments in recordable form as necessary to effect record notice of the foregoing rights and covenants.

11. TAXES, ASSESSMENTS, AND OTHER PRORATIONS.

a. Taxes. All real estate taxes pertaining to the Property shall be prorated between Buyer and Seller as of the Closing with Seller responsible for taxes prior to the day of Closing and Buyer responsible for taxes as of the day of Closing and thereafter. If at the Closing Seller has paid the then current year's taxes, copies of the receipt(s) shall be furnished to Buyer upon Buyer's request, and said receipt(s) shall be the basis for proration. If Seller has received but has not paid statement(s) for the then current year's taxes, then said statement(s) shall be the basis for proration. If at the Closing the taxes for the current year have not been paid and no statement(s) has (have) been received by Seller but notice(s) of valuation has (have) been received by Seller, then said notice(s) of valuation times the previous year's tax rate shall be the basis for proration, and it shall be the obligation of Buyer to make payment of said current year's taxes. If none of the above situations exist at the time of the Closing, the basis of proration shall be one hundred percent (100%) of the previous year's taxes, and Seller agrees to furnish Buyer (at Buyer's request) copies of the receipt(s) for the said previous year's taxes, and it shall be the obligation of Buyer to make payment of the then current year's taxes.

b. Proration of Rents and Expenses. All rents and expenses, if any, attributable to the Property, shall be prorated as of the Closing Date.

c. Assessments. If at the Closing, the Property or any part thereof shall be or shall have been affected by an assessment or assessments which are or may become payable in annual installments, only the current due installment, if any, shall be prorated as of the Closing and all of the unpaid installments of any such assessments, including those which are to become due and payable after the Closing, shall be the sole responsibility of Buyer.

12. DEFAULT.

a. Buyer Default. If Buyer defaults in its performance under this Contract, Seller (i) may retain the Earnest Money as liquidated damages for Buyer's failure to close or other default, it being acknowledged by Buyer and Seller that in such event Seller will suffer substantial damages but such damages are incapable of exact ascertainment and that payment of the Earnest Money shall not be deemed a penalty, or (ii) pursue any available legal remedy at law, in equity or otherwise, [including, without limitation, specific performance. In the event of a Buyer default under this Contract, Buyer acknowledges and agrees Buyer shall be solely responsible for all search and exam fees, escrow cancellation fees and any other accrued fees or charges payable to the Title Company ("Title Exam Costs"). If Seller elects to exercise its remedy described in (i) above, Seller shall deliver written notice of said election to Buyer and the Title Company, with instructions to the Title Company to disburse the Earnest Money in full to Seller within twenty-four (24) hours of receipt of the proof of delivery Seller's written notice to Buyer. Buyer's execution of this Contract shall serve as Buyer's agreement and permission for the Title Company to disburse the full amount of the Earnest Money to Seller, in the timeframe stated above, in the event of a Buyer default as described herein. Notwithstanding the foregoing, Buyer agrees to promptly execute any release forms as may be required by the Title Company so as to facilitate the disbursement of the full amount of the Earnest Money to Seller; provided, however, the Title Company agrees that the requirement of such release forms shall not hinder or delay the Title Company in its obligation to release the funds within the timeframe stated herein.

b. Seller Default. If Seller defaults in its performance under this Contract, Buyer may (i) terminate this Contract by written notice to Seller, in which event the Earnest Money shall be refunded to Buyer, or (ii) enforce specific performance of this Contract by written notice filed within thirty (30) days of the Closing Date. Such specific performance remedy shall be available to Buyer only upon Buyer's full satisfaction of each of Buyer's obligations under this Contract, including without limitation Buyer's obligation to deliver the Earnest Money to the Escrow Agent and delivering sufficient proof to the Escrow Agent and Seller that Buyer is ready, willing and able to close this transaction. The option selected by Buyer shall be Buyer's sole and exclusive remedy, and in no event shall Buyer be entitled to damages.

13. BROKERAGE CHARGES. Buyer and Seller each represent and warrant to the other that it has not contacted or entered into any agreement with any real estate broker, agent, finder, or any other party in connection with this transaction other than Gina LeMaster Brown of Intrepid Commercial Real Estate and Steve Kendall of All City Real Estate LTD Co. who have represented Seller in this transaction (collectively, "Seller's Broker" or "Brokers"), and that it has not taken any action which would result in any real estate broker's, finder's, or other fees or commissions being due or payable to any other party with respect to this transaction. Buyer is not represented by a broker with respect to this transaction. Subject to the provisions of Sec. 768.28, Fla. Stat., Each party hereby indemnifies, protects, defends and agrees to hold the other party harmless from any loss, liability, damage, cost, or expense (including, but not limited to, reasonable attorneys' fees) resulting from a breach by the other party of the representations and warranties made by such party herein. If, as and when Closing actually occurs and the Purchase Price is received by Seller, Seller agrees to pay the Brokers a commission of six percent (6%) of the Purchase Price, at closing, to be split equally between the two (2) Brokers named above. Such commissions shall be paid to the Brokers by the Escrow Agent out of the proceeds from Closing. The provisions of this Section shall survive the Closing and termination of this Contract.

14. NOTICES. All notices hereunder shall be in writing and shall be deemed to have been properly given when sent by United States Certified Mail, Return Receipt Requested, postage fully prepaid, or by nationally-recognized overnight courier, to the addresses set forth hereunder, or to such other address as the parties may mutually agree by amendment of this Contract. Any notices delivered via e-mail or facsimile will not constitute formal notice.

SELLER:

7-Eleven, Inc., Store No. 10292
Attn: Real Estate Services
3200 Hackberry Road
Irving, Texas 75063

BUYER:

Town of Fort Myers Beach
Attn: Andrew Hyatt
2731 Oak Street
Fort Myers Beach, FL 33931
Ph: (239) 765-0202
Email: andyhyatt@fmbgov.com

ESCROW AGENT:

Sutton Land of Texas, LLC
2615 Calder Avenue, Suite 704
Beaumont, Texas 77702
Attn: Anthony Papa
Ph.: (409) 710-4502
Email: apapa@suttonlandtexas.com

15. ASSIGNMENT. Buyer's reputation, experience, and financial status constitutes a material inducement and a substantial part of the consideration for sale of the Property by Seller to Buyer. Therefore, Buyer may not assign this Contract, nor may any of Buyer's rights hereunder be transferred in any manner to any person or entity, without Seller's specific prior written consent, which consent may be withheld by Seller for any reason whatsoever; except, however, that Buyer shall have the right to assign this Contract, without Seller's consent, to an entity owned and controlled by Buyer or those that directly hold the ownership interests in Buyer; provided, however, any such assignment shall be binding on Seller only to the extent Buyer provides Seller with written intent to so assign, specifically naming the assignee and providing the signature block for the assignee, no later than three (3) Business Days (as defined below) prior to Closing. If Buyer assigns this Contract pursuant to the terms hereof: (a) the assignee shall be liable (jointly and severally with assignor) for all of Buyer's obligations hereunder; (b) the assignor (i.e., the original Buyer hereunder) shall remain obligated (but jointly and severally with assignee) with respect to all of Buyer's obligations hereunder; and (c) the assignor and any assignee shall execute such instruments of assignment and assumption in such form as Seller may require in confirmation of the provisions hereof.

16. RESTRICTIONS. The Deed shall contain the following restrictions which shall run with the land:

"Neither Grantee nor its successors, assigns or legal representatives, lessees, or sublessees, shall conduct or permit the conduct on the Property of, and the Property shall not be used for:

- i. a grocery or convenience store selling at retail any food or food products, dairy products, beer, or wine or other alcoholic beverages for consumption off the premises; or
- ii. the sale of motor fuels and petroleum products.”

17. REPRESENTATIONS AND WARRANTIES

a. Buyer’s Warranties and Representations. Buyer warrants and represents that: (a) Buyer has the full right, power, and authority to purchase the Property from Seller as provided in this Contract and to carry out Buyer’s obligations hereunder; (b) Buyer is the type of entity set forth in the preamble to this Contract, duly organized and in good standing under the laws of the state of its organization and is qualified to do business in the State of Florida; (c) all requisite action necessary to authorize Buyer to enter into this Contract and to carry out Buyer’s obligations has been obtained; (d) this Contract has been duly authorized, executed and delivered by Buyer; and (e) the execution of this Contract and the Closing to occur hereunder do not and will not violate any contract, covenant or other Contract to which Buyer may be a party or by which Buyer may be bound. The provisions of this Section shall survive the Closing.

b. Seller’s Warranties and Representations. As of the Closing Date, Seller warrants and represents that: (a) Seller has the full right, power, and authority to sell the Property to Buyer as provided in this Contract and to carry out Seller’s obligations hereunder; (b) Seller is duly organized and in good standing under the laws of its state of formation; (c) all requisite action necessary to authorize Seller to enter into this Contract and to carry out Seller’s obligations has been obtained; and (d) this Contract has been duly authorized, executed and delivered by Seller. The provisions of this Section shall survive the Closing.

c. Prohibited Persons. Neither Buyer nor any of its respective officers, directors, shareholders, partners, members or affiliates (including without limitation indirect holders of equity interests in Buyer) is or will be an entity or person (i) that is listed in the Annex to, or is otherwise subject to the provisions of Executive Order 13224 issued on September 24, 2001 (“EO13224”), (ii) whose name appears on the United States Treasury Department’s Office of Foreign Assets Control (“OFAC”) most current list of “Specifically Designated National and Blocked Persons” (which list may be published from time to time in various mediums including, but not limited to, the OFAC website, <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>), (iii) who commits, threatens to commit or supports “**terrorism**,” as that term is defined in EO13224, (iv) is subject to sanctions of the United States government or is in violation of any federal, state, municipal or local laws, statutes, codes, ordinances, orders, decrees, rules or regulations relating to terrorism or money laundering, including, without limitation, EO13224 and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, or (v) who is otherwise affiliated with any entity or person listed above (any and all parties described in clauses (i) – (v) above are herein referred to as a “**Prohibited Person**”). Buyer covenants and agrees that neither it nor any of its respective officers, directors, shareholders, partners, members or affiliates (including without limitation indirect holders of equity interests in it) shall (aa) conduct any business, nor engage in any transaction or dealing, with any Prohibited Person, including, but not limited to, the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Prohibited Person, or (bb) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of

evading or avoiding, or attempts to violate, any of the prohibitions set forth in EO13224. The provisions of this Section shall survive the Closing or termination of this Contract.

d. Proprietary Information. Buyer will not, without Seller's prior written consent, disclose any of Seller's procedures, records, information contained on records, technical data, proprietary information, business and technical information or trade secrets (including, if any, any materials or documents delivered to Buyer as listed on Exhibit C attached hereto) ("Proprietary Information"). All Proprietary Information, whether written or oral, disclosed in connection with this Contract will be received and retained by Buyer, its agents and representatives as strictly confidential and such information will only be disseminated internally and on a "need-to-know" basis. All Proprietary Information will be and remain the exclusive property of Seller at all times and will be returned to Seller upon its request or upon termination or cancellation of this Contract. Buyer will not use or duplicate any Proprietary Information without Seller's prior written consent. Buyer's obligations under this subparagraph will not apply to information that: (i) is or later becomes a part of the public domain through no fault of Buyer; (ii) is received from a third party having no obligation of confidentiality to Seller; or (iii) is required to be disclosed under applicable law, provided that Buyer will give written notice of such disclosure obligation to Seller prior to such disclosure to permit Seller to contest the disclosure at its expense.

18. LITIGATION

a. Attorneys' Fees and Costs; Jurisdiction; Venue. In the event of any litigation arising out of or under this Contract and/or out of Buyer's ownership, development or construction upon the Property, the prevailing party shall be entitled to collect from the non-prevailing party reasonable attorneys' fees and costs, including at all appellate levels and in any bankruptcy proceeding. Buyer and Seller hereby submit to the jurisdiction of the Civil Courts of the State of Florida and the United States District Courts located in the State of Florida in respect of any suit or other proceeding brought in connection with or arising out of this Contract and venue shall be in the 20th Judicial Circuit in and for Lee County, Florida. The provisions of this Section shall survive the Closing.

b. WAIVER OF JURY TRIAL. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS CONTRACT AND ANY DOCUMENT EXECUTED IN CONNECTION HERewith OR RELATED HERETO, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS TRANSACTION.

19. MISCELLANEOUS

a. Entire Agreement. This Contract merges all prior negotiations and understandings between the parties and constitutes their entire agreement which is binding upon Buyer when executed by Buyer, and is binding upon Seller only if executed by a Vice President or an Attorney-in-Fact of Seller, regardless of any written or verbal representations of any agent, manager, or other employees of Seller to the contrary.

b. Timing. Time is of the essence in this Contract. If the final day of any period or any date of performance under this Contract falls on a date which is not a Business Day, then the

final day of the period or the date of performance, as applicable, shall be extended to the next day which is a Business Day. As used herein, a “Business Day” shall mean any weekday on which business is conducted by national banking institutions in Dallas, Texas.

c. Successors/Assigns. The provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, legal representatives, successors, and assigns.

d. Counterparts/Electronic Signatures. This Contract may be executed in one or more counterparts, each of which shall be deemed an original and all of which combined shall constitute one and the same instrument. A facsimile copy or electronic copy of this Contract signed by the parties shall be binding on the parties. To facilitate the execution of this Contract, the parties may execute and exchange counterparts of signature pages affixing their signature by means of an electronic signature tool, application, or software (e.g., DocuSign). Each such electronic signature of a party shall be treated as an original as if personally signed by that party.

e. Construction. The terms “Seller” and “Buyer” whenever used in this Contract shall include the heirs, personal representatives, successors and assigns of the respective parties hereto; provided, however, that Buyer’s right of assignment is restricted by the provisions hereof. Whenever used, the singular number shall include the plural and the plural the singular, and the use of any gender shall include all genders. The term “including” as used herein shall in all instances mean “including, but not limited to”. The headings in this Contract are intended solely for convenience of reference and shall be given no effect in the interpretation of this Contract. This Contract and any related instruments shall not be construed more strictly against one party than against the other by virtue of the fact that initial drafts may have been prepared by counsel for one of the parties, it being recognized that this Contract and any related instruments are the product of extensive negotiations between the parties hereto.

f. Severability and Waiver. Invalidation of any one Section or provision of this Contract by judgment or court order shall in no way affect any other Section or provision. Failure of any party to this Contract to insist on the full performance of any of its provisions by the other party (or parties) shall not constitute a waiver of such performance unless the party failing to insist on full performance of the provision declares in writing signed by it that it is waiving such performance. A waiver of any breach under this Contract by any party, unless otherwise expressly declared in writing, shall not be a continuing waiver or waiver of any subsequent breach of the same or other provision of this Contract. The provisions of this Section shall survive the Closing.

g. Governing Law. The laws of the state in which the Property is located (without regard to conflicts of law) shall govern the validity, construction, enforcement and interpretation of this Contract.

h. No Recording. This Contract shall not be filed of record and Buyer agrees that recording the Contract in the public real property records shall constitute a default by Buyer.

i. Exhibits and Schedules. Any Exhibits and Schedules that are referenced in and/or attached to this Contract are incorporated in, and made a part of, this Contract for all purposes.

j. No Third-Party Beneficiary. This Contract is solely between Seller and Buyer and no other party shall be entitled to rely upon any provision hereof for any purpose whatsoever.

k. Limitation of Liability. Buyer expressly agrees that the obligations and liabilities of Seller under this Contract and any document referenced herein shall not constitute personal obligations of the officers, directors, employees, agents, trustees, partners, members, representatives, stockholders or other principals and representatives of Seller. Notwithstanding anything to the contrary, Seller's liability, if any, arising in connection with this Contract or with the Property shall be limited to Seller's interest in the Property for the recovery of any judgment against Seller, and Seller shall not be personally liable for any such judgment or deficiency after execution thereon. The limitations of liability contained in this subsection shall apply equally and inure to the benefit of Seller's present and future officers, directors, trustees, shareholders, agents and employees, and their respective heirs, successors and assigns.

l. Disclosures. Subject to the provisions of Ch. 119 and Ch. 286, Florida Statutes, Prior to Closing, Buyer shall not make any public announcement or disclosure of any information related to this Contract to any brokers (other than the Brokers) or third parties without the prior written specific consent of Seller; provided, however, that Buyer may make disclosure of this Contract to Buyer's representatives as necessary to perform its obligations hereunder. After Closing, Buyer may announce or disclose the fact that the transaction contemplated by this Contract was closed, but may not disclose any specific information relating to the terms of this Contract, including without limitation the identity of the other party, to any brokers (other than the Brokers) or third parties without the prior written specific consent of Seller, which such consent may be granted or withheld in Seller's sole and absolute discretion.

m. Confidential Information. Subject to the provisions of Ch. 119 and Ch. 286, Florida Statutes, All of the Due Diligence Documents provided by Seller pursuant to this Contract (including any materials provided during the negotiations of the terms contained in this Contract) are collectively hereinafter referred to as "Confidential Information". By executing this Contract, Buyer (including, without limitation, its respective officers, partners, managers, members, directors, employees, counsel, consultants, brokers, agents, advisors, accountants, lenders and potential lenders) acknowledges and agrees that Buyer shall maintain the Confidential Information in confidence from the date the Confidential Information is delivered to Buyer and for a period of three (3) years from the Effective Date of this Contract. Further, Buyer agrees that Buyer shall not disclose any of the Confidential Information without Seller's prior written consent, except Buyer may release the Confidential Information to Buyer's employees, partners, attorneys, advisors, accountants, brokers, and lenders who have a reasonable need for such Confidential Information in connection with the transaction contemplated in this Contract, so long as such parties also agree to maintain the confidential nature of the Confidential Information. The provisions of this Section shall survive the Closing or termination of this Contract.

n. Title Exam Costs. Notwithstanding anything in this Contract to the contrary, if Buyer terminates this Contract pursuant to any termination right contained in Sections 5, 6 or 8 of this Contract, Buyer shall be solely responsible for the Title Exam Costs, and Buyer agrees that such Title Exam Costs will be automatically deducted from the Earnest Money upon receipt of Buyer's notice of termination.

[Remainder of Page Intentionally Left Blank]

EXECUTED by Buyer as of the Effective Date set forth above.

BUYER

WITNESSES:

TOWN OF FORT MYERS BEACH, a
Florida municipal corporation

Printed Name: _____

By: _____

Name: _____

Title: _____

Printed Name: _____

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

[Signatures Continue On Following Page]

EXECUTED by Seller as of the Effective Date set forth above.

SELLER

WITNESSES:

7-ELEVEN, INC., a Texas corporation

Printed Name: _____

By: _____
Name: Richard Ingram
Title: Agent and Attorney-in-Fact

Printed Name: _____

ATTEST:

By: _____
Name: Robin D. Bryant
Title: Assistant Secretary

[End Signatures]

EXHIBIT A

Property Description

A lot or parcel of land lying in Sections 33 and 34, Township 46 South, Range 24, East on Estero Island, Lee County, Florida, which lot or parcel is described as follows:

From the Southeasterly corner of Block I, Unit No. 2, McPhie Park according to a map or plat thereof recorded in Plat Book 8, Page 59, of the Public Records of Lee County, Florida, run Southeasterly, perpendicular to the Southeasterly line of said Block I for 590 feet, thence run Northeasterly, parallel with the Southeasterly line of said Block I for 47.72 feet to a concrete monument marking a point on the Northeasterly line of a county road right-of-way described in and conveyed by deed recorded in Deed Book 193, Page 583, of said Public Records, thence deflect 84 degrees 47 minutes to the left and run Northwesterly along said Northeasterly line of said county road for 150 feet to a concrete monument and the Point of Beginning. From said Point of Beginning continue Northwesterly along said Northeasterly line for 5.21 feet to a concrete monument marking a point of curvature; thence run Northwesterly along said Northeasterly line, along the arc of a curve to the left of radius 2932.29 feet for 97.18 feet to a concrete monument on the Southeasterly line of Flamingo Park according to a map or plat thereof recorded in Plat Book 9, Page 66 of said Public Records, thence run Northeasterly along said Southeasterly line of said Flamingo Park for 165.53 feet to a concrete monument, thence run Southeasterly, perpendicular to said Southeasterly line for 101.54 feet to a concrete monument, thence run Southwesterly, parallel to said Southeasterly line of said Flamingo Park for 178.56 feet to the Point of Beginning.

Being the same property conveyed to Fidelity Union Life Insurance Company from The Southland Corporation by deed dated February 18, 1970, and recorded in Official Records Book 665, Page 670, Public Records of Lee County, Florida.

Strap: 33-46-24-W3-00012.0010

Folio ID: 10230715

LESS AND EXCEPT any tract or parcel of land conveyed out of or removed from the above-described property as shown in the Binder.

EXHIBIT B

(Deed)

[Drafter will conform to applicable state requirements]

THIS DOCUMENT PREPARED BY:

[_____]

7-Eleven, Inc.

Legal Department

3200 Hackberry Road

Irving, Texas 75063

WHEN RECORDED MAIL TO

AND SEND FUTURE TAX STATEMENTS

TO:

[_____]

[_____]

[_____]

[_____]

SPECIAL WARRANTY DEED

7-ELEVEN, INC., a Texas corporation, formerly known as The Southland Corporation, with a principal address of 3200 Hackberry Road, Irving, Texas 75063 ("Grantor"), **GRANTS, BARGAINS, CONVEYS AND SELLS** to **[BUYER NAME]**, a _____, with a principal address of _____ ("Grantee"), for the sum of TEN AND NO/100 DOLLARS (\$10.00) AND OTHER GOOD AND VALUABLE CONSIDERATION, the real property located in the City of _____, County of _____, State of _____ and more fully described on **Exhibit A** attached hereto and made a part hereof (the "Property"). For purposes of this Deed, the "Closing" shall mean the recordation of this Deed, fully-executed and acknowledged, in the official records of the County, and the "Closing Date" shall mean the date this Deed is so recorded.

TO HAVE AND TO HOLD the Property, with all and singular the rights, members and appurtenances thereof, belonging or in anywise appertaining, to Grantee, its successors and assigns, forever. GRANTOR, for itself and its successors, does covenant, promise and agree, to and with the Grantee, its successors and assigns, that Grantor is lawfully seized of said land in fee simple; that Grantor has good, right and lawful authority to sell and convey said land; Grantor has not done, or suffered to be done, anything whereby the Property is, or may be, in any manner encumbered or charged, except as set forth above, and Grantor hereby **SPECIALLY WARRANTS AND AGREES TO FOREVER DEFEND** the Property against all persons lawfully claiming the same by, through or under it, but not otherwise,

SUBJECT TO (i) current taxes and assessments not yet delinquent and taxes and assessments for subsequent years; (ii) all covenants, conditions, restrictions, servitudes, liens, reservations, easements, rights-of-way, declarations, encumbrances and other matters of record or to which reference is made in the public records; (iii) zoning and other regulatory laws and ordinances affecting the Property; (iv) matters that would be disclosed by an accurate survey; (v) rights of tenants in possession (if any); and (vi) any plat affecting the Property ("Conditions").

The payment of current ad valorem taxes on the Property having been prorated to the date hereof, the payment thereof is assumed by Grantee.

Invalidation of any one provision herein by judgment or court order shall in no way affect any other provision.

The Property is sold and conveyed AS IS, WHERE IS, WITH ALL FAULTS, SUBJECT, HOWEVER, TO THE WARRANTIES OF TITLE SET FORTH IN THIS DEED. GRANTOR DOES NOT EXPRESSLY OR IMPLIEDLY WARRANT OR GUARANTEE THE CONDITION OF THE PROPERTY NOR ITS MERCHANTABILITY OR FITNESS FOR ANY PURPOSE.

[INSERT DEED RESTRICTION FROM PSA]

BY ITS ACCEPTANCE OF THIS CONVEYANCE, GRANTEE AGREES AS FOLLOWS: PURSUANT TO SECTION 10 OF THE SALES CONTRACT, DATED _____, 20____, BY AND BETWEEN GRANTOR AND GRANTEE, SUBSECTIONS (A) THROUGH [(____)] BELOW SHALL BE COVENANTS RUNNING WITH THE LAND AND SHALL BE BINDING UPON GRANTEE AND ITS SUBSIDIARIES, LEGAL REPRESENTATIVES, HEIRS, SUCCESSORS AND ASSIGNS, AS APPLICABLE, INCLUDING, BUT NOT LIMITED TO, FUTURE OWNERS OF ALL (OR ANY PORTION) OF THE PROPERTY, AND INURE TO THE BENEFIT OF GRANTOR AND ITS SUBSIDIARIES, LEGAL REPRESENTATIVES, HEIRS, SUCCESSORS AND ASSIGNS, AS APPLICABLE. THE INTENTION OF GRANTOR AND GRANTEE IS THAT SAID COVENANTS SHALL LAST IN PERPETUITY. IF REQUESTED BY GRANTOR, GRANTEE OR THE THEN OWNER(S) OF THE PROPERTY, BY ITS ACCEPTANCE OF A DEED FOR ALL OR A PORTION OF THE PROPERTY, AGREE TO EXECUTE SUCH DOCUMENTATION OR TAKE SUCH ACTION AS GRANTOR MAY REASONABLY REQUEST TO CONFIRM OR OTHERWISE GIVE EFFECT TO SUCH COVENANTS.

[PRIOR TO CLOSING DRAFTER WILL INSERT SECTION 10 OF THE SALES CONTRACT AND GLOBALLY REPLACE "SELLER" WITH "GRANTOR" AND "BUYER" WITH "GRANTEE." EACH INSERTED PARAGRAPH WILL HAVE A SUBSECTION DESIGNATION (a) THROUGH (____) AS STATED IN THE PARAGRAPH ABOVE REGARDING COVENANTS RUNNING WITH THE LAND.]

[ADD FOR SITES WITH EXXONMOBIL COVENANTS IN CHAIN OF TITLE:

This conveyance is made expressly subject to all covenants, restrictions, rights and reservations contained in the Special Warranty Deed between [ExxonMobil entity], as the grantor, and the [buyer entity], as grantee, dated effective as of _____, recorded [recording info] that by their terms run with the land, including the Engineering and Institutional Controls, the Reservation of Access and the Maintenance of Records, each as set forth and defined in the Exxon Deed, which are incorporated herein by reference. Grantee expressly agrees to obtain from any purchaser, transferee, assignee, lessee or occupier the obligation to comply with the aforesaid covenants, restrictions, rights and reservations, which shall be for the benefit of [ExxonMobil entity], its subsidiaries, affiliates, legal representatives, successors and assigns.]

*[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.
SIGNATURE PAGE TO FOLLOW]*

IN WITNESS WHEREOF, Grantor has duly executed this deed this ____ day of _____, 20____ (the “Closing Date”).

ATTEST:

GRANTOR:

7-ELEVEN, INC., a Texas corporation

By: _____

By: _____

Name: _____

Name: _____

Title: Assistant Secretary

Title: _____

WITNESSES:

Printed Name: _____

Printed Name: _____

STATE OF TEXAS §

§

COUNTY OF DALLAS §

§

§

On this _____ day of _____, 2024, before me, the undersigned, a Notary Public in and for the aforesaid County and State, on this day by means of ☒ physical presence or ☐ online notarization _____ and _____, a(n) _____ and an Assistant Secretary, respectively, of **7-ELEVEN, INC.**, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they each executed the same as the act of such corporation for the purposes therein expressed and in the capacities therein stated.

Witness my hand and official seal.

Signature: _____

(seal)

Typed or printed name: _____

My commission expires:_____

EXHIBIT A

Property Description

EXHIBIT C

PROPRIETARY INFORMATION/DUE DILIGENCE DOCUMENTS

NONE

1. **Request:**

Meeting Date: September 23, 2024

Proposed settlement agreement between the Town of Fort Myers Beach, Florida, and Kaminskiy at 131 Estero, LLC, the Owner of 131/133 Estero Blvd.

Why the action is necessary:

The approval of the proposed settlement agreement between the Town of Fort Myers Beach and the Owner of 131/133 Estero Blvd. is necessary to facilitate the resolution of unsafe conditions on the property, located at 131/133 Estero Blvd., without resorting to a lengthy and costly demolition process.

What the action accomplishes:

The proposed settlement agreement allows the property owner of 131/133 Estero Blvd. to make the property safe without demolishing it, which is beneficial to the Town and promotes health and safety of the Town's residents.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Nancy Stuparich, Town
Attorney

5. **Background:**

On or around July 19, 2024, the property located at 131/133 Estero Blvd. was deemed unsafe and noticed for demolition by the Town Building Official. Following the noticing, the property owner's attorney reached out to the Town Building Official in an effort to resolve the matter without the necessity for a demolition. The Building Official and the attorney for the property owner were able to resolve the matter by agreeing that the property owner would resolve the unsafe conditions on the property and the Town would remove the property off of the list of unsafe properties within the Town. The proposed settlement agreement memorializes the terms discussed between the Town Building Official, the Town Attorney, and the Attorney for the property owner.

Attachments:

1. 131_133 Estero - Settlement Agreement final for TC with exhibits

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

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

Created/Initiated - 9/3/2024
Approved - 9/4/2024
Approved - 9/4/2024
Final Approval - 9/4/2024

SETTLEMENT AGREEMENT
(Unsafe Structure)

THIS SETTLEMENT AGREEMENT (the “Agreement”) is entered into this ____ day of _____, 2024, by and between, KAMINSKIY AT 131 ESTERO, LLC, a Florida limited liability company (the “Owner”), and the TOWN OF FORT MYERS BEACH, a municipal corporation of the State of Florida (the “Town”), collectively referred to herein as the “Parties.”

RECITALS

WHEREAS, KAMINSKIY AT 131 ESTERO LLC, is the current owner of certain parcel of real property located at 131/133 Estero Blvd., Fort Myers Beach, Florida 33931 (STRAP: 24-46-23-W1-0080D.0370) (the “Property”); and

WHEREAS, the structure on the Property became the subject of a notice of unsafe building on the 19th day of July of 2024, issued by the Town of Fort Myers Beach Building Official, attached hereto as Exhibit “A”; and

WHEREAS, subsequent to the receipt of the notice of an unsafe structure and within the allowable 30-day appeal period, the Owner filed a notice of appeal of the Building Official’s determination; and

WHEREAS, prior to review of the appeal, the Town and the Owner reached a resolution of the matter.

NOW, THEREFORE, in exchange for the mutual promises contained herein and other good and valuable consideration, the Parties hereby agree as follows:

1. **RECITALS.** The above recitals are true and correct and are incorporated herein by reference.

2. **SETTLEMENT.** Parties agree that there are unsafe conditions on the Property as identified by the Town Building Official, reflected in Exhibit “B.” The Owner has agreed to remediate the unsafe conditions identified in Exhibit “B” within 15 days of full execution of this Agreement and dismiss the appeal in exchange for the Building Official delaying any further action regarding the unsafe structure on the Property as provided under section 6-37 of Town of Fort Myers Beach Land Development Code.

3. **COMPLIANCE.** The Parties acknowledge that the Owner is proceeding through the process of obtaining a re-zoning, which will result in a demolition of the structure on the Property. In the event a re-zoning is not approved, the Owner agrees to demolish the structure on the Property. Furthermore, the Owner agrees to fence the Property off to prevent any harm to private and public parties until the structure is demolished.

4. **ENTIRE AGREEMENT.** The Parties acknowledge that this Agreement constitutes the entire agreement between them regarding the settlement of their dispute and any prior statements, whether oral or written, are merged herein. This Agreement may not be modified

or amended without a written instrument signed by the party against whom enforcement is sought.

5. **AUTHORITY.** The signatories to this Agreement are expressly authorized to resolve their dispute as set forth herein and by their signatures here represent and affirm their authority to execute this Agreement.

6. **GOVERNING LAW.** The law of the State of Florida shall apply to this Agreement. Any dispute regarding this Agreement shall be litigated exclusively in the state courts of Lee County. The parties expressly agree that no action between the parties may be filed in, or removed to, Federal Court, and consent to exclusive jurisdiction and venue in the Circuit Court in Lee County and waive any objections thereto. Each party shall bear its own litigation fees and costs, including but not limited to attorney's fees and costs, regardless of which party is the prevailing party.

WHEREFORE, this Agreement is entered into as of the date of last execution below.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor of Fort Myers Beach

Date: _____

ATTEST

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

KAMINSKIY AT 131 ESTERO, LLC, a
Florida limited liability company

Signature: _____

Print Name: _____

Print Title: _____

Signature of Witness #1

Print Name of Witness #1

Signature of Witness #2

Print Name of Witness #2

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2024, by _____, [TITLE OF PERSON SIGNING], of KAMINSKIY AT 131 ESTERO, LLC, who is ☐ personally known to me or who ☐ has produced _____ as identification.

[Notary Seal]

Notary Public

Name typed, printed or stamped
My Commission Expires: _____

EXHIBIT "A"



FMBgov.com

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

06/28/2024

KAMINSKIY AT 131 ESTERO LLC

12463 RANCHO BERNARDO RD., #237, SAN DIEGO, CA 92128

RE: 131/133 Estero Blvd., Fort Myers Beach, FL 33931

NOTICE TO VACATE

YOU ARE HEREBY NOTIFIED that an inspection of the above-referenced property was completed on the 28th day of June, 2024 by the FMB Building Official. In accordance with Section 6-36 of the Land Development Code of the Town of Fort Myers Beach, Florida, the structure on the above-referenced property is determined to be in violation of the Town of Fort Myers Beach Code and UNSAFE pursuant to the Demolition Notice, a copy of which is attached.

**THE PREMISES MUST BE VACATED WITHIN
60 DAYS OF THIS NOTICE.**

**THIS BUILDING IS UNSAFE AND ITS USE OR OCCUPANCY
HAS BEEN PROHIBITED BY THE BUILDING OFFICIAL.**

You have a right appeal this Notice to the Lee County Board of Adjustment and Appeals by submitting a written appeal and filing it with the Building Official within 30 days of this notice in accordance with Division 2 of Article II of Chapter 6 of the Fort Myers Beach Code of Ordinances. Failure to submit a timely appeal will constitute a waiver of all rights to an administrative hearing.

If an appeal is not filed or if no application for a demolition permit is received and 60 days have lapsed since the date of this Notice, the Town intends to proceed with demolition of this structure, as further outlined in the Demolition Notice.

If you have any questions, please contact the Building Official by email at jspecht@fmbgov.com

Town of Fort Myers Beach, Florida

Joseph W Specht

Building Official

FORT MYERS BEACH, ESTERO ISLAND

P. 239-765-0202 | F. 239-765-0909 | 2731 Oak Street, Fort Myers Beach, FL 33931



06/28/2024

KAMINSKIY AT 131 ESTERO LLC

12463 RANCHO BERNARDO RD., #237, SAN DIEGO, CA 92128

RE: 131/133 Estero Blvd., Fort Myers Beach, FL 33931

DEMOLITION NOTICE

YOU ARE HEREBY NOTIFIED that an inspection of the above-referenced property was completed on the 28th day of June, 2024 by the FMB Building Official. In accordance with Section 6-36 of the Land Development Code of the Town of Fort Myers Beach, Florida, the structure on the above-referenced property is determined to be in violation of the Town of Fort Myers Beach Code and UNSAFE for the following reasons:

- [] 1. Any means of egress or portion thereof is not of adequate size or is not arranged to provide a safe path of travel in case of fire or panic.
- [] 2. Any means of egress or portion thereof, such as but not limited to fire doors, closing devices and fire resistive ratings, is in disrepair or in a dilapidated or nonworking condition such that the means of egress could be rendered unsafe in case of fire or panic.
- [] 3. The stress in any material, member or portion thereof, due to all imposed loads including dead loads exceeds the stresses allowed in the Florida Building Code for new buildings.
- [] 4. The building, structure or portion thereof has been damaged by fire, flood, earthquake, wind or other cause to the extent that the structural integrity of the building or structure is less than it was prior to the damage and is less than the minimum requirement established by the Florida Building Code for new buildings.
- [] 5. Any exterior appendage or portion of the building or structure is not securely fastened, attached or anchored such that it is capable of resisting wind, seismic or similar loads as required by the Florida Building Code for new buildings.
- [] 6. The building, structure or portion thereof is manifestly unsafe or unsanitary for the purpose for which it is being used.
- [] 7. The building, structure or portion thereof as a result of decay, deterioration or dilapidation appears likely to fully or partially collapse.
- [] 8. The building, structure or portion thereof has been constructed or maintained in violation of a specific requirement of the Standard Codes or of a city, county or state law.



- ☐ 9. The building, structure, or portion thereof is in such a condition as to constitute a public nuisance.
- ☐ 10. The building, structure or portion thereof is unsafe, unsanitary or not provided with adequate egress, or which constitutes a fire hazard, or is otherwise dangerous to human life, or, which in relation to existing use, constitutes a hazard to safety or health by reason of inadequate maintenance, dilapidation, obsolescence or abandonment.
- ☐ 11. OTHER: _____

The Town of Fort Myers Beach has determined that it is unreasonable to repair this structure. The premises MUST BE vacated within 60 days of service of this notice. As the property owner you may:

- 1) Immediately apply for a demolition permit and arrange for the structure to be demolished. Please provide documentation of these arrangements, including your case number (if applicable), to the Director of Operations and Compliance, at fkropacek@fmbgov.com within 10 days. OR
- 2) Appeal this Demolition Notice to the Lee County Board of Adjustment and Appeals by submitting a written appeal and filing it with the Building Official within 30 days of this notice in accordance with Division 2 of Article II of Chapter 6 of the Fort Myers Beach Code of Ordinances. Failure to submit a timely appeal will constitute a waiver of all rights to an administrative hearing of this matter. OR
- 3) Voluntarily waive your rights to an appeal of the Demolition Notice and any rights you may have under the Notice to Vacate before expiration the appeal and vacation period, by informing the Director of Operations and Compliance, at fkropacek@fmbgov.com. If you choose this option, the Town will schedule and demolish the structure at your expense and bill you for the costs.

If an appeal is not filed, no application for a demolition permit is received and 60 has lapsed since the date of service of this notice, demolition of the structure on the above referenced property will be scheduled. You will then be charged at your expense for all costs incurred by the Town for the demolition, which will be recorded as a lien against the property in the event of nonpayment. The Town will use any and all legal means to collect monies owed due to the demolition.

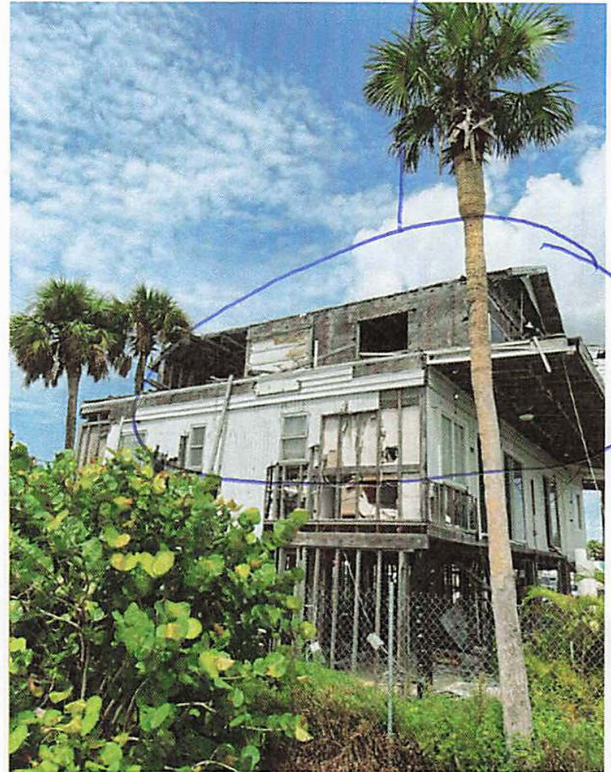
If you have any questions, please contact the Building Official by email at jspecht@fmbgov.com.

Joseph W Specht
Building Official

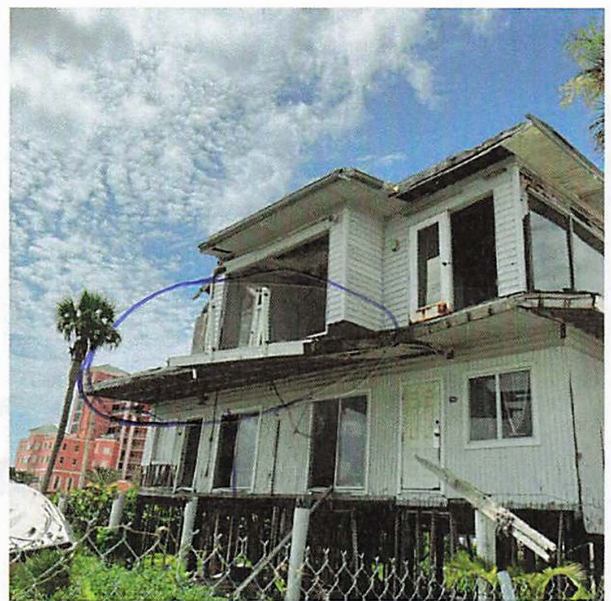
stabalize
ledge

EXHIBIT "B"

loose
debris
and materials



hanging
objects



hanging
objects

1. **Request:**

Meeting Date: September 23, 2024

Authorize the Mayor to execute Amendment #3 to the previous Non-Exclusive Right of Way Agreement with Bandes Construction Company, Inc. to extend the agreement for one additional month under the same terms and conditions.

Why the action is necessary:

Allows the Licensee to continue to utilize Town right of way for proposed purposes within the agreement.

What the action accomplishes:

Authorizes the Mayor to execute an amendment to extend the previous Non-Exclusive Right of Way License Agreement with Bandes Construction Company.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Thomas Yozzo, Operations &
Compliance Manager

5. **Background:**

The Bandes Construction Company agreement is for the use of 11 Town parking spaces for construction equipment and dumpsters.

Attachments:

1. Bandes Construction Co-Non-Exclusive Right of Way License Agreement
2. First Amendment to Bandes Agreement Executed
3. Second Amendment to Bandes - NS edits FINAL
4. Third Amendment Bandes Construction Signed

Financial Impact:

6. **Alternative Action**

Do not approve the third amendment

7. **Management Recommendations:**

Authorize the Mayor to execute

8. **Recommended Approval:**

Raleigh Baker, Neighborhood Services Coordinator
Thomas Yozzo, Operations & Compliance Manager
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 9/6/2024
Approved - 9/9/2024
Approved - 9/9/2024
Approved - 9/16/2024
Approved - 9/17/2024
Final Approval - 9/17/2024

For Recording Purposes Only

**THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:**

Nancy Stuparich, Esq.
Vose Law Firm LLP
324 W. Morse Blvd.
Winter Park, FL 32789

NON-EXCLUSIVE RIGHT OF WAY LICENSE AGREEMENT

THIS NON-EXCLUSIVE RIGHT OF WAY LICENSE AGREEMENT, (hereinafter “Agreement”), is entered into as of Wednesday, February 14, 2024, by and between **Bandes Construction Company Inc.**, their successors, and assigns, (collectively hereinafter the “Licensee”), and the **TOWN OF FORT MYERS BEACH** (hereinafter, the “Licensor”), a political subdivision of the State of Florida.

RECITALS

WHEREAS, the Licensor owns property located at the corner of Old San Carlos Blvd & Estero Blvd, Fort Myers Beach, currently used for (11) metered parking spaces, in the Licensor right of way, which is shown on Exhibit “A” (“the Property”) to this agreement; and

WHEREAS, the Licensee desires to obtain a non-exclusive right of way license agreement to allow the use of the Property for the location of construction equipment & dumpsters, which will remain on the Property, subject to the terms of this Agreement; and

WHEREAS, the construction equipment & dumpsters provide a public benefit by facilitating the rebuilding of property located within the Town, which is in the in the best interest of the Town in rebuilding the Town following Hurricane Ian to enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the terms and conditions set forth herein, the parties agree as follows:

1. **RECITALS**. The foregoing recitals are true and form a material part of this Agreement.

2. **NON-EXCLUSIVE RIGHT-OF-WAY USE PERMIT**. This Agreement shall serve as a Non-Exclusive Right of Way Use Permit for the benefit of Licensee. Licensee will not cause, or allow to be caused, any damage to the Property and shall maintain the area free of trash and debris.

Licensee shall not install or make any permanent changes to the Property without the prior approval of the Licensors. If the Licensee allows the Property to fall into disrepair, or does not adequately maintain same, the Licensors shall have the right, after three (3) days written notice to the Licensee, to take appropriate actions to repair or maintain the Property, and the Licensee shall be responsible for the reimbursement of the Licensors for the costs of such repair, maintenance or removal. Nothing contained herein or by virtue of the issuance of a Permit shall give or grant the Licensee any property rights to the Property, other than as may be provided herein.

3. **REMOVAL/RELOCATION/EMERGENCIES.** If, in the opinion of the Licensors, the use of the Property interferes with any construction, reconstruction, repairs, alteration or improvement which the Licensors desires to perform on, around or under the Property, Licensee, upon receipt of a written notice from the Licensors, shall remove or relocate construction equipment & dumpsters as requested by the Licensors within fifteen (15) days of receipt of said notice. In the event the Licensee does not remove or relocate the construction equipment & dumpsters as provided herein, the Licensors shall have the right, but not the obligation, to remove the construction equipment & dumpsters at the sole expense of the Licensee, and the Licensors shall have no obligation to safeguard or otherwise preserve the construction equipment & dumpsters that is removed by the Licensors. In the event of the need for emergency repairs, as determined by the Licensors at its sole discretion, the Licensors shall have the right to remove the construction equipment & dumpsters without advance notice to Licensee. The Licensors shall in no event be liable to the Licensee for the preservation or condition of the construction equipment & dumpsters that is removed due to actions of the Licensors or its agents.

4. **INDEMNIFICATION.** Licensee agrees and shall indemnify the Licensors and hold it harmless from and against all claims, damages, losses and expenses, including reasonable attorney's fees and costs arising out of, or resulting from, the performance of their respective responsibilities under this Agreement, or to the extent the existence of the construction equipment & dumpsters on the Property, or any hazard caused by the construction equipment & dumpsters, or any damages which are the result in any mishap or accident on the site of the construction equipment & dumpsters. Licensee shall indemnify and hold harmless the Licensors from and against all expenses, costs or claims for any damages to the construction equipment & dumpsters, which may result from the use of the Property by the Licensors or other governmental body or authority for maintenance, construction, installation, or other proper use within the Property.

5. **INSURANCE.** Throughout the period of time the Licensee continues to have the construction equipment & dumpsters on Licensors' Property under this Agreement, Licensee shall obtain and possess Commercial General Liability coverage for all operations under this Agreement not less than \$1,000,000 Combined Single Limit (CSL) or its equivalent. Prior to the location of the construction equipment & dumpsters on the Property, Licensee shall provide Certificates of Insurance to the Licensors to verify coverage. A reference to this specific Agreement, and the type and amount of coverage provided, shall be clearly stated on the face of the Certificates of Insurance. The insurance coverage shall name the Town of Fort Myers Beach as an additional insured, and shall contain a provision which forbids any cancellation, changes, material alterations, or non-renewal of coverage without providing thirty (30) days' prior written notice to the Licensors.

6. **NOTICES.** Notices required or permitted under this Agreement shall be made by written document delivered as follows:

To the Licensor:

By hand delivery to the Town of Fort Myers Beach, City Hall, Attention: Town Manager.

To the Licensee:

By hand delivery (or posting on the door) at 151 Old San Carlos Blvd.

7. **DURATION.** This Agreement shall remain in effect until terminated on or before Friday March 15, 2024.

8. **FEE.** Licensee agrees to pay \$4000.00 for the rights contained in this agreement, which shall be due at the time this agreement is signed by the last party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be made and executed as of the day and date first above written.

WITNESSES:

Print Name: Lisa Miller

Print Name: Jeremy Brown

LICENSEE: Bandes Construction Company Inc.

Print Name: _____

Title: President

LICENSOR: TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/27/2024

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

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

PRODUCER Bowen, Miclette & Britt of Florida, LLC 850 Concourse Parkway S Suite #105 Maitland FL 32751	CONTACT NAME: Michelle Rushing PHONE (A/C, No, Ext): 407-647-1616 FAX (A/C, No): 407-628-1635 E-MAIL ADDRESS: mrrushing@bmbinc.com												
INSURED Bandes Construction Co., Inc. 1368 Spalding Rd Ste C Dunedin FL 34698	INSURER(S) AFFORDING COVERAGE <table><tr><td>INSURER A : North River Insurance Co.</td><td>NAIC # 21105</td></tr><tr><td>INSURER B : Insurance Co of the West</td><td>27847</td></tr><tr><td>INSURER C : National Fire Ins Co of Hartford</td><td>20478</td></tr><tr><td>INSURER D : Continental Casualty Co.</td><td>20443</td></tr><tr><td>INSURER E :</td><td></td></tr><tr><td>INSURER F :</td><td></td></tr></table>	INSURER A : North River Insurance Co.	NAIC # 21105	INSURER B : Insurance Co of the West	27847	INSURER C : National Fire Ins Co of Hartford	20478	INSURER D : Continental Casualty Co.	20443	INSURER E :		INSURER F :	
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INSURER C : National Fire Ins Co of Hartford	20478												
INSURER D : Continental Casualty Co.	20443												
INSURER E :													
INSURER F :													

COVERAGES**CERTIFICATE NUMBER:** 2005481145**REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS														
C	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC OTHER:	Y	Y	7015418560	8/29/2023	8/29/2024	<table><tr><td>EACH OCCURRENCE</td><td>\$ 1,000,000</td></tr><tr><td>DAMAGE TO RENTED PREMISES (Ea occurrence)</td><td>\$ 100,000</td></tr><tr><td>MED EXP (Any one person)</td><td>\$ 15,000</td></tr><tr><td>PERSONAL & ADV INJURY</td><td>\$ 1,000,000</td></tr><tr><td>GENERAL AGGREGATE</td><td>\$ 2,000,000</td></tr><tr><td>PRODUCTS - COM/OP AGG</td><td>\$ 2,000,000</td></tr><tr><td>Deductible</td><td>\$ 10,000</td></tr></table>	EACH OCCURRENCE	\$ 1,000,000	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000	MED EXP (Any one person)	\$ 15,000	PERSONAL & ADV INJURY	\$ 1,000,000	GENERAL AGGREGATE	\$ 2,000,000	PRODUCTS - COM/OP AGG	\$ 2,000,000	Deductible	\$ 10,000
EACH OCCURRENCE	\$ 1,000,000																				
DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000																				
MED EXP (Any one person)	\$ 15,000																				
PERSONAL & ADV INJURY	\$ 1,000,000																				
GENERAL AGGREGATE	\$ 2,000,000																				
PRODUCTS - COM/OP AGG	\$ 2,000,000																				
Deductible	\$ 10,000																				
D	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☒ ALL OWNED AUTOS ☒ HIRED AUTOS ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS	Y	Y	7015418557	8/29/2023	8/29/2024	<table><tr><td>COMBINED SINGLE LIMIT (Ea accident)</td><td>\$ 1,000,000</td></tr><tr><td>BODILY INJURY (Per person)</td><td>\$</td></tr><tr><td>BODILY INJURY (Per accident)</td><td>\$</td></tr><tr><td>PROPERTY DAMAGE (Per accident)</td><td>\$</td></tr><tr><td></td><td>\$</td></tr></table>	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000	BODILY INJURY (Per person)	\$	BODILY INJURY (Per accident)	\$	PROPERTY DAMAGE (Per accident)	\$		\$				
COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000																				
BODILY INJURY (Per person)	\$																				
BODILY INJURY (Per accident)	\$																				
PROPERTY DAMAGE (Per accident)	\$																				
	\$																				
A	☐ UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 0	Y	Y	5821219107	8/29/2023	8/29/2024	<table><tr><td>EACH OCCURRENCE</td><td>\$ 5,000,000</td></tr><tr><td>AGGREGATE</td><td>\$ 10,000,000</td></tr><tr><td></td><td>\$</td></tr></table>	EACH OCCURRENCE	\$ 5,000,000	AGGREGATE	\$ 10,000,000		\$								
EACH OCCURRENCE	\$ 5,000,000																				
AGGREGATE	\$ 10,000,000																				
	\$																				
B	☒ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y	N/A	WFL506193402	8/29/2023	8/29/2024	<table><tr><td>☒ PER STATUTE</td><td>☐ OTH-ER</td></tr><tr><td>E.L. EACH ACCIDENT</td><td>\$ 1,000,000</td></tr><tr><td>E.L. DISEASE - EA EMPLOYEE</td><td>\$ 1,000,000</td></tr><tr><td>E.L. DISEASE - POLICY LIMIT</td><td>\$ 1,000,000</td></tr></table>	☒ PER STATUTE	☐ OTH-ER	E.L. EACH ACCIDENT	\$ 1,000,000	E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000	E.L. DISEASE - POLICY LIMIT	\$ 1,000,000						
☒ PER STATUTE	☐ OTH-ER																				
E.L. EACH ACCIDENT	\$ 1,000,000																				
E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000																				
E.L. DISEASE - POLICY LIMIT	\$ 1,000,000																				

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

The following policy provisions and/or endorsements form part of the policies of insurance represented by this certificate of insurance. The terms contained in the policies and/or endorsements supersede the representations made herein. Electronic copies of the policy provisions and/or endorsements listed below are available by emailing contact person shown above.

When required by written contract, those parties listed in said contract, including the certificate holder, are added as an additional insured with respect to the general liability, including on-going and completed operations, auto liability and umbrella liability as afforded by the policy and/or endorsements.

When required by written contract, waiver of subrogation, with respect to the general liability, auto liability, worker's compensation and umbrella is granted to See Attached...

CERTIFICATE HOLDER**CANCELLATION**

Town of Fort Myers Beach
2525 Estero Blvd.
Fort Myers Beach FL 33931

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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AGENCY CUSTOMER ID: BANDESCONS

LOC #: _____



ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY Bowen, Midgette & Britt of Florida, LLC		NAMED INSURED Bandes Construction Co., Inc. 1368 Spalding Rd Ste C Dunedin FL 34698
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

those parties listed in said contract, including the certificate holder.

The general liability, auto liability, & umbrella liability certified herein are primary and non-contributory to other insurance available, but only to the extent required by written contract.

30-day notice of cancellation applies.

**CNA PARAMOUNT****Contractors' General Liability Extension Endorsement**

It is understood and agreed that this endorsement amends the **COMMERCIAL GENERAL LIABILITY COVERAGE PART** as follows. If any other endorsement attached to this policy amends any provision also amended by this endorsement, then that other endorsement controls with respect to such provision, and the changes made by this endorsement with respect to such provision do not apply.

TABLE OF CONTENTS

- | |
|---|
| 1. Additional Insureds |
| 2. Additional Insured - Primary And Non-Contributory To Additional Insured's Insurance |
| 3. Bodily Injury – Expanded Definition |
| 4. Broad Knowledge of Occurrence/ Notice of Occurrence |
| 5. Broad Named Insured |
| 6. Broadened Liability Coverage For Damage To Your Product And Your Work |
| 7. Contractual Liability - Railroads |
| 8. Electronic Data Liability |
| 9. Estates, Legal Representatives and Spouses |
| 10. Expected Or Intended Injury – Exception for Reasonable Force |
| 11. General Aggregate Limits of Insurance – Per Project |
| 12. In Rem Actions |
| 13. Incidental Health Care Malpractice Coverage |
| 14. Joint Ventures/Partnership/Limited Liability Companies |
| 15. Legal Liability – Damage To Premises / Alienated Premises / Property In The Named Insured's Care, Custody or Control |
| 16. Liquor Liability |
| 17. Medical Payments |
| 18. Non-owned Aircraft Coverage |
| 19. Non-owned Watercraft |
| 20. Personal And Advertising Injury – Discrimination or Humiliation |
| 21. Personal And Advertising Injury - Contractual Liability |
| 22. Property Damage - Elevators |
| 23. Supplementary Payments |
| 24. Unintentional Failure To Disclose Hazards |
| 25. Waiver of Subrogation – Blanket |
| 26. Wrap-Up Extension: OCIP CCIP, or Consolidated (Wrap-Up) Insurance Programs |

CNA74705XX (1-15)

Page 1 of 17

VALLEY FORGE INSURANCE COMPANY

Insured Name: BANDES CONSTRUCTION COMPANY, INC.

Policy No: 7015418560

Endorsement No:

Effective Date: 08/29/2023

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**Contractors' General Liability Extension Endorsement****1. ADDITIONAL INSURED**

- a. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization described in paragraphs A. through H. below whom a **Named Insured** is required to add as an additional insured on this **Coverage Part** under a written contract or written agreement, provided such contract or agreement:

(1) is currently in effect or becomes effective during the term of this **Coverage Part**; and

(2) was executed prior to:

(a) the **bodily injury** or **property damage**; or

(b) the offense that caused the **personal and advertising injury**,

for which such additional insured seeks coverage.

- b. However, subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

(1) a higher limit of insurance than required by such contract or agreement; or

(2) coverage broader than required by such contract or agreement, and in no event broader than that described by the applicable paragraph A. through H. below.

Any coverage granted by this endorsement shall apply only to the extent permissible by law.

A. Controlling Interest

Any person or organization with a controlling interest in a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of:

1. such person or organization's financial control of a **Named Insured**; or

2. premises such person or organization owns, maintains or controls while a **Named Insured** leases or occupies such premises;

provided that the coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

B. Co-owner of Insured Premises

A co-owner of a premises co-owned by a **Named Insured** and covered under this insurance but only with respect to such co-owner's liability for **bodily injury**, **property damage** or **personal and advertising injury** as co-owner of such premises.

C. Lessor of Equipment

Any person or organization from whom a **Named Insured** leases equipment, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** caused, in whole or in part, by the **Named Insured's** maintenance, operation or use of such equipment, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease.

D. Lessor of Land

Any person or organization from whom a **Named Insured** leases land but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the ownership, maintenance or use of such land, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease. The

**Contractors' General Liability Extension Endorsement**

coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

E. Lessor of Premises

An owner or lessor of premises leased to the **Named Insured**, or such owner or lessor's real estate manager, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of the ownership, maintenance or use of such part of the premises leased to the **Named Insured**, and provided that the **occurrence** giving rise to such **bodily injury or property damage**, or the offense giving rise to such **personal and advertising injury**, takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

F. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver of premises but only with respect to such mortgagee, assignee or receiver's liability for **bodily injury, property damage or personal and advertising injury** arising out of the **Named Insured's** ownership, maintenance, or use of a premises by a **Named Insured**.

The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

G. State or Governmental Agency or Subdivision or Political Subdivisions – Permits

A state or governmental agency or subdivision or political subdivision that has issued a permit or authorization but only with respect to such state or governmental agency or subdivision or political subdivision's liability for **bodily injury, property damage or personal and advertising injury** arising out of:

1. the following hazards in connection with premises a **Named Insured** owns, rents, or controls and to which this insurance applies:
 - a. the existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - b. the construction, erection, or removal of elevators; or
 - c. the ownership, maintenance or use of any elevators covered by this insurance; or
2. the permitted or authorized operations performed by a **Named Insured** or on a **Named Insured's** behalf.

The coverage granted by this paragraph does not apply to:

- a. **Bodily injury, property damage or personal and advertising injury** arising out of operations performed for the state or governmental agency or subdivision or political subdivision; or
- b. **Bodily injury or property damage** included within the **products-completed operations hazard**.

With respect to this provision's requirement that additional insured status must be requested under a written contract or agreement, the Insurer will treat as a written contract any governmental permit that requires the **Named Insured** to add the governmental entity as an additional insured.

H. Trade Show Event Lessor

1. With respect to a **Named Insured's** participation in a trade show event as an exhibitor, presenter or displayer, any person or organization whom the **Named Insured** is required to include as an additional insured, but only with respect to such person or organization's liability for **bodily injury, property damage or personal and advertising injury** caused by:

CNA74705XX (1-15)

Page 3 of 17

VALLEY FORGE INSURANCE COMPANY

Insured Name: BANDES CONSTRUCTION COMPANY, INC.

Policy No: 7015418560

Endorsement No: 8

Effective Date: 8/29/2023

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**Contractors' General Liability Extension Endorsement**

- a. the **Named Insured's** acts or omissions; or
 - b. the acts or omissions of those acting on the **Named Insured's** behalf,
in the performance of the **Named Insured's** ongoing operations at the trade show event premises during the trade show event.
2. The coverage granted by this paragraph does not apply to **bodily injury** or **property damage** included within the **products-completed operations hazard**.

2. ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY TO ADDITIONAL INSURED'S INSURANCE

The **Other Insurance** Condition in the **COMMERCIAL GENERAL LIABILITY CONDITIONS** Section is amended to add the following paragraph:

If the **Named Insured** has agreed in writing in a contract or agreement that this insurance is primary and non-contributory relative to an additional insured's own insurance, then this insurance is primary, and the Insurer will not seek contribution from that other insurance. For the purpose of this Provision 2., the additional insured's own insurance means insurance on which the additional insured is a named insured. Otherwise, and notwithstanding anything to the contrary elsewhere in this Condition, the insurance provided to such person or organization is excess of any other insurance available to such person or organization.

3. BODILY INJURY – EXPANDED DEFINITION

Under **DEFINITIONS**, the definition of **bodily injury** is deleted and replaced by the following:

Bodily injury means physical injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the physical injury, sickness or disease.

4. BROAD KNOWLEDGE OF OCCURRENCE/ NOTICE OF OCCURRENCE

Under **CONDITIONS**, the condition entitled **Duties in The Event of Occurrence, Offense, Claim or Suit** is amended to add the following provisions:

A. BROAD KNOWLEDGE OF OCCURRENCE

The **Named Insured** must give the Insurer or the Insurer's authorized representative notice of an **occurrence**, offense or **claim** only when the **occurrence**, offense or **claim** is known to a natural person **Named Insured**, to a partner, executive officer, manager or member of a **Named Insured**, or an **employee** designated by any of the above to give such notice.

B. NOTICE OF OCCURRENCE

The **Named Insured's** rights under this **Coverage Part** will not be prejudiced if the **Named Insured** fails to give the Insurer notice of an **occurrence**, offense or **claim** and that failure is solely due to the **Named Insured's** reasonable belief that the **bodily injury** or **property damage** is not covered under this **Coverage Part**. However, the **Named Insured** shall give written notice of such **occurrence**, offense or **claim** to the Insurer as soon as the **Named Insured** is aware that this insurance may apply to such **occurrence**, offense or **claim**.

5. BROAD NAMED INSURED

WHO IS AN INSURED is amended to delete its Paragraph 3. in its entirety and replace it with the following:

3. Pursuant to the limitations described in Paragraph 4. below, any organization in which a **Named Insured** has management control:
- a. on the effective date of this **Coverage Part**; or

**Contractors' General Liability Extension Endorsement**

- B. Solely for the purpose of the coverage provided by this **PROPERTY DAMAGE – ELEVATORS** Provision, the **Other Insurance** conditions is amended to add the following paragraph:

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is Property insurance covering property of others damaged from the use of elevators.

23. SUPPLEMENTARY PAYMENTS

The section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** is amended as follows:

- A. Paragraph 1.b. is amended to delete the \$250 limit shown for the cost of bail bonds and replace it with a \$5,000. limit; and
- B. Paragraph 1.d. is amended to delete the limit of \$250 shown for daily loss of earnings and replace it with a \$1,000. limit.

24. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If the **Named Insured** unintentionally fails to disclose all existing hazards at the inception date of the **Named Insured's Coverage Part**, the Insurer will not deny coverage under this **Coverage Part** because of such failure.

25. WAIVER OF SUBROGATION - BLANKET

Under **CONDITIONS**, the condition entitled **Transfer Of Rights Of Recovery Against Others To Us** is amended to add the following:

The Insurer waives any right of recovery the Insurer may have against any person or organization because of payments the Insurer makes for injury or damage arising out of:

1. the **Named Insured's** ongoing operations; or
2. **your work** included in the **products-completed operations hazard**.

However, this waiver applies only when the **Named Insured** has agreed in writing to waive such rights of recovery in a written contract or written agreement, and only if such contract or agreement:

1. is in effect or becomes effective during the term of this **Coverage Part**; and
2. was executed prior to the **bodily injury, property damage or personal and advertising injury** giving rise to the claim.

26. WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS

Note: The following provision does not apply to any public construction project in the state of Oklahoma, nor to any construction project in the state of Alaska, that is not permitted to be insured under a **consolidated (wrap-up) Insurance program** by applicable state statute or regulation.

If the endorsement **EXCLUSION – CONSTRUCTION WRAP-UP** is attached to this policy, or another exclusionary endorsement pertaining to Owner Controlled Insurance Programs (O.C.I.P.) or Contractor Controlled Insurance Programs (C.C.I.P.) is attached, then the following changes apply:

- A. The following wording is added to the above-referenced endorsement:

With respect to a **consolidated (wrap-up) Insurance program** project in which the **Named Insured** is or was involved, this exclusion does not apply to those sums the **Named Insured** become legally obligated to pay as **damages** because of:

1. **Bodily injury, property damage, or personal or advertising injury** that occurs during the **Named Insured's** ongoing operations at the project, or during such operations of anyone acting on the **Named Insured's** behalf; nor



CONTRACTORS EXTENDED COVERAGE ENDORSEMENT - BUSINESS AUTO PLUS

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

I. LIABILITY COVERAGE

A. Who Is An Insured

The following is added to **Section II, Paragraph A.1., Who Is An Insured:**

1. a. Any incorporated entity of which the Named Insured owns a majority of the voting stock on the date of inception of this Coverage Form; provided that,
 - b. The insurance afforded by this provision **A.1.** does not apply to any such entity that is an **insured** under any other liability "policy" providing **auto** coverage.
2. Any organization you newly acquire or form, other than a limited liability company, partnership or joint venture, and over which you maintain majority ownership interest.

The insurance afforded by this provision **A.2.:**

- a. Is effective on the acquisition or formation date, and is afforded only until the end of the policy period of this Coverage Form, or the next anniversary of its inception date, whichever is earlier.
- b. Does not apply to:
 - (1) **Bodily injury or property damage** caused by an **accident** that occurred before you acquired or formed the organization; or
 - (2) Any such organization that is an **insured** under any other liability "policy" providing **auto** coverage.
3. Any person or organization that you are required by a written contract to name as an additional insured is an **insured** but only with respect to their legal liability for acts or omissions of a person, who qualifies as an **insured** under **SECTION II – WHO IS AN INSURED** and for whom Liability Coverage is afforded under this policy. If required by written contract, this insurance will be primary and non-contributory to insurance on which the additional insured is a Named Insured.
4. An **employee** of yours is an **insured** while operating an **auto** hired or rented under a contract or agreement in that **employee's** name, with your permission, while performing duties related to the conduct of your business.

"Policy", as used in this provision **A. Who Is An Insured**, includes those policies that were in force on the inception date of this Coverage Form but:

1. Which are no longer in force; or
2. Whose limits have been exhausted.

B. Bail Bonds and Loss of Earnings

Section II, Paragraphs A.2. (2) and A.2. (4) are revised as follows:

1. In **a.(2)**, the limit for the cost of bail bonds is changed from \$2,000 to \$5,000; and
2. In **a.(4)**, the limit for the loss of earnings is changed from \$250 to \$500 a day.

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 12; Page: 1 of 4

Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 7015418557

Policy Effective Date: **8/29/23**

Policy Page: 71 of 94



C. Fellow Employee

Section II, Paragraph B.5 does not apply.

Such coverage as is afforded by this provision C. is excess over any other collectible insurance.

II. PHYSICAL DAMAGE COVERAGE

A. Glass Breakage – Hitting A Bird Or Animal – Falling Objects Or Missiles

The following is added to **Section III, Paragraph A.3.:**

With respect to any covered **auto**, any deductible shown in the Declarations will not apply to glass breakage if such glass is repaired, in a manner acceptable to us, rather than replaced.

B. Transportation Expenses

Section III, Paragraph A.4.a. is revised, with respect to transportation expense incurred by you, to provide:

- a. \$60 per day, in lieu of \$20; subject to
- b. \$1,800 maximum, in lieu of \$600.

C. Loss of Use Expenses

Section III, Paragraph A.4.b. is revised, with respect to loss of use expenses incurred by you, to provide:

- a. \$1,000 maximum, in lieu of \$600.

D. Hired "Autos"

The following is added to **Section III, Paragraph A.:**

5. Hired "Autos"

If Physical Damage coverage is provided under this policy, and such coverage does not extend to Hired Autos, then Physical Damage coverage is extended to:

- a. Any covered **auto** you lease, hire, rent or borrow without a driver; and
- b. Any covered **auto** hired or rented by your **employee** without a driver, under a contract in that individual **employee's** name, with your permission, while performing duties related to the conduct of your business.
- c. The most we will pay for any one **accident** or **loss** is the actual cash value, cost of repair, cost of replacement or \$75,000, whichever is less, minus a \$500 deductible for each covered **auto**. No deductible applies to **loss** caused by fire or lightning.
- d. The physical damage coverage as is provided by this provision is equal to the physical damage coverage(s) provided on your owned **autos**.
- e. Such physical damage coverage for hired **autos** will:
 - (1) Include loss of use, provided it is the consequence of an **accident** for which the Named Insured is legally liable, and as a result of which a monetary loss is sustained by the leasing or rental concern.
 - (2) Such coverage as is provided by this provision will be subject to a limit of \$750 per **accident**.

E. Airbag Coverage

The following is added to **Section III, Paragraph B.3.:**

The accidental discharge of an airbag shall not be considered mechanical breakdown.

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 12; Page: 2 of 4

Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 7015418557

Policy Effective Date: 8/29/23

Policy Page: 72 of 94



F. Electronic Equipment

Section III, Paragraphs B.4.c and B.4.d. are deleted and replaced by the following:

- c. Physical Damage Coverage on a covered **auto** also applies to **loss** to any permanently installed electronic equipment including its antennas and other accessories
- d. A \$100 per occurrence deductible applies to the coverage provided by this provision.

G. Diminution In Value

The following is added to **Section III, Paragraph B.6.:**

Subject to the following, the **diminution in value** exclusion does not apply to:

- a. Any covered **auto** of the private passenger type you lease, hire, rent or borrow, without a driver for a period of 30 days or less, while performing duties related to the conduct of your business; and
- b. Any covered **auto** of the private passenger type hired or rented by your **employee** without a driver for a period of 30 days or less, under a contract in that individual **employee's** name, with your permission, while performing duties related to the conduct of your business.
- c. Such coverage as is provided by this provision is limited to a **diminution in value** loss arising directly out of accidental damage and not as a result of the failure to make repairs; faulty or incomplete maintenance or repairs; or the installation of substandard parts.
- d. The most we will pay for **loss** to a covered **auto** in any one accident is the lesser of:
 - (1) \$5,000; or
 - (2) 20% of the **auto's** actual cash value (ACV).

III. Drive Other Car Coverage – Executive Officers

The following is added to **Sections II and III:**

- 1. Any **auto** you don't own, hire or borrow is a covered **auto** for Liability Coverage while being used by, and for Physical Damage Coverage while in the care, custody or control of, any of your "executive officers", except:
 - a. An **auto** owned by that "executive officer" or a member of that person's household; or
 - b. An **auto** used by that "executive officer" while working in a business of selling, servicing, repairing or parking **autos**.

Such Liability and/or Physical Damage Coverage as is afforded by this provision.

- (1) Equal to the greatest of those coverages afforded any covered **auto**; and
- (2) Excess over any other collectible insurance.

- 2. For purposes of this provision, "executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document, and, while a resident of the same household, includes that person's spouse.

Such "executive officers" are **insureds** while using a covered **auto** described in this provision.

IV. BUSINESS AUTO CONDITIONS

A. Duties In The Event Of Accident, Claim, Suit Or Loss

The following is added to **Section IV, Paragraph A.2.a.:**

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 12; Page: 3 of 4

Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 7015418557

Policy Effective Date: 8/29/23

Policy Page: 73 of 94



- (4) Your **employees** may know of an **accident** or **loss**. This will not mean that you have such knowledge, unless such **accident** or **loss** is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

The following is added to **Section IV, Paragraph A.2.b.**:

- (6) Your **employees** may know of documents received concerning a claim or **suit**. This will not mean that you have such knowledge, unless receipt of such documents is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

B. Transfer Of Rights Of Recovery Against Others To Us

The following is added to **Section IV, Paragraph A.5. Transfer Of Rights Of Recovery Against Others To Us**:

We waive any right of recovery we may have, because of payments we make for injury or damage, against any person or organization for whom or which you are required by written contract or agreement to obtain this waiver from us.

This injury or damage must arise out of your activities under a contract with that person or organization.

You must agree to that requirement prior to an **accident** or **loss**.

C. Concealment, Misrepresentation or Fraud

The following is added to **Section IV, Paragraph B.2.**:

Your failure to disclose all hazards existing on the date of inception of this Coverage Form shall not prejudice you with respect to the coverage afforded provided such failure or omission is not intentional.

D. Other Insurance

The following is added to **Section IV, Paragraph B.5.**:

Regardless of the provisions of Paragraphs 5.a. and 5.d. above, the coverage provided by this policy shall be on a primary non-contributory basis. This provision is applicable only when required by a written contract.

That written contract must have been entered into prior to **Accident** or **Loss**.

E. Policy Period, Coverage Territory

Section IV, Paragraph B. 7.(5).(a). is revised to provide:

- a. 45 days of coverage in lieu of 30 days.

V. DEFINITIONS

Section V. paragraph C. is deleted and replaced by the following:

Bodily injury means bodily injury, sickness or disease sustained by a person, including mental anguish, mental injury or death resulting from any of these.

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 12; Page: 4 of 4

Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 7015418557

Policy Effective Date: 8/29/23

Policy Page: 74 of 94

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

**ANY PERSON OR ORGANIZATION FOR WHOM THE NAMED INSURED IS
REQUIRED UNDER WRITTEN CONTRACT TO FURNISH THIS WAIVER,
FOR FLORIDA OPERATIONS ONLY.**

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective **08/29/2023** Policy No. **WFL 5061934 02**
Insured **BANDES CONSTRUCTION CO INC**
Insurance Company **INSURANCE COMPANY OF THE WEST**

Endorsement No.
Premium \$ **INCL.**

Countersigned By _____



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/27/2024

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

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

PRODUCER Bowen, Miclette & Britt of Florida, LLC 850 Concourse Parkway S Suite #105 Maitland FL 32751	CONTACT NAME: Michelle Rushing PHONE (A/C, No. Ext): 407-647-1616 E-MAIL ADDRESS: mrushing@bmbinc.com FAX (A/C, No): 407-628-1635
INSURED Bandes Construction Co., Inc. 1368 Spalding Rd Ste C Dunedin FL 34698	INSURER(S) AFFORDING COVERAGE INSURER A : North River Insurance Co. NAIC # 21105 INSURER B : Insurance Co of the West 27847 INSURER C : National Fire Ins Co of Hartford 20478 INSURER D : Continental Casualty Co. 20443 INSURER E : INSURER F :

COVERAGES**CERTIFICATE NUMBER: 2005481145****REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
C	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC OTHER:	Y	Y	7015418560	8/29/2023	8/29/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Deductible \$ 10,000
D	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☒ ALL OWNED AUTOS ☒ HIRED AUTOS ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS	Y	Y	7015418557	8/29/2023	8/29/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☐ UMBRELLA LIAB ☒ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 0	Y	Y	5821219107	8/29/2023	8/29/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 10,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y	N/A	WFL508193402	8/29/2023	8/29/2024	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

The following policy provisions and/or endorsements form part of the policies of insurance represented by this certificate of insurance. The terms contained in the policies and/or endorsements supersede the representations made herein. Electronic copies of the policy provisions and/or endorsements listed below are available by emailing contact person shown above.

When required by written contract, those parties listed in said contract, including the certificate holder, are added as an additional insured with respect to the general liability, including on-going and completed operations, auto liability and umbrella liability as afforded by the policy and/or endorsements.

When required by written contract, waiver of subrogation, with respect to the general liability, auto liability, worker's compensation and umbrella is granted to See Attached...

CERTIFICATE HOLDER**CANCELLATION**

Town of Fort Myers Beach
2525 Estero Blvd.
Fort Myers Beach FL 33931

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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ADDITIONAL REMARKS SCHEDULE

AGENCY Bowen, Miclette & Britt of Florida, LLC		NAMED INSURED Bandes Construction Co., Inc. 1368 Spalding Rd Ste C Dunedin FL 34698
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

those parties listed in said contract, including the certificate holder.

The general liability, auto liability, & umbrella liability certified herein are primary and non-contributory to other insurance available, but only to the extent required by written contract.

30-day notice of cancellation applies.

**CNA PARAMOUNT****Contractors' General Liability Extension Endorsement**

It is understood and agreed that this endorsement amends the **COMMERCIAL GENERAL LIABILITY COVERAGE PART** as follows. If any other endorsement attached to this policy amends any provision also amended by this endorsement, then that other endorsement controls with respect to such provision, and the changes made by this endorsement with respect to such provision do not apply.

TABLE OF CONTENTS

- | |
|---|
| 1. Additional Insureds |
| 2. Additional Insured - Primary And Non-Contributory To Additional Insured's Insurance |
| 3. Bodily Injury – Expanded Definition |
| 4. Broad Knowledge of Occurrence/ Notice of Occurrence |
| 5. Broad Named Insured |
| 6. Broadened Liability Coverage For Damage To Your Product And Your Work |
| 7. Contractual Liability - Railroads |
| 8. Electronic Data Liability |
| 9. Estates, Legal Representatives and Spouses |
| 10. Expected Or Intended Injury – Exception for Reasonable Force |
| 11. General Aggregate Limits of Insurance – Per Project |
| 12. In Rem Actions |
| 13. Incidental Health Care Malpractice Coverage |
| 14. Joint Ventures/Partnership/Limited Liability Companies |
| 15. Legal Liability – Damage To Premises / Alienated Premises / Property In The Named Insured's Care, Custody or Control |
| 16. Liquor Liability |
| 17. Medical Payments |
| 18. Non-owned Aircraft Coverage |
| 19. Non-owned Watercraft |
| 20. Personal And Advertising Injury – Discrimination or Humiliation |
| 21. Personal And Advertising Injury - Contractual Liability |
| 22. Property Damage - Elevators |
| 23. Supplementary Payments |
| 24. Unintentional Failure To Disclose Hazards |
| 25. Waiver of Subrogation – Blanket |
| 26. Wrap-Up Extension: OCIP CCIP, or Consolidated (Wrap-Up) Insurance Programs |

CNA74705XX (1-15)

Page 1 of 17

VALLEY FORGE INSURANCE COMPANY

Insured Name: BANDES CONSTRUCTION COMPANY, INC.

Policy No: 7015418560

Endorsement No:

Effective Date: 08/29/2023

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**Contractors' General Liability Extension Endorsement****1. ADDITIONAL INSUREDS**

- a. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization described in paragraphs A. through H. below whom a **Named Insured** is required to add as an additional insured on this **Coverage Part** under a written contract or written agreement, provided such contract or agreement:

(1) is currently in effect or becomes effective during the term of this **Coverage Part**; and

(2) was executed prior to:

(a) the **bodily injury** or **property damage**; or

(b) the offense that caused the **personal and advertising injury**,

for which such additional insured seeks coverage.

- b. However, subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

(1) a higher limit of insurance than required by such contract or agreement; or

(2) coverage broader than required by such contract or agreement, and in no event broader than that described by the applicable paragraph A. through H. below.

Any coverage granted by this endorsement shall apply only to the extent permissible by law.

A. Controlling Interest

Any person or organization with a controlling interest in a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of:

1. such person or organization's financial control of a **Named Insured**; or

2. premises such person or organization owns, maintains or controls while a **Named Insured** leases or occupies such premises;

provided that the coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

B. Co-owner of Insured Premises

A co-owner of a premises co-owned by a **Named Insured** and covered under this insurance but only with respect to such co-owner's liability for **bodily injury**, **property damage** or **personal and advertising injury** as co-owner of such premises.

C. Lessor of Equipment

Any person or organization from whom a **Named Insured** leases equipment, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** caused, in whole or in part, by the **Named Insured's** maintenance, operation or use of such equipment, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease.

D. Lessor of Land

Any person or organization from whom a **Named Insured** leases land but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the ownership, maintenance or use of such land, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease. The

**Contractors' General Liability Extension Endorsement**

coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

E. Lessor of Premises

An owner or lessor of premises leased to the **Named Insured**, or such owner or lessor's real estate manager, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of the ownership, maintenance or use of such part of the premises leased to the **Named Insured**, and provided that the occurrence giving rise to such **bodily injury or property damage**, or the offense giving rise to such **personal and advertising injury**, takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

F. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver of premises but only with respect to such mortgagee, assignee or receiver's liability for **bodily injury, property damage or personal and advertising injury** arising out of the **Named Insured's** ownership, maintenance, or use of a premises by a **Named Insured**.

The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

G. State or Governmental Agency or Subdivision or Political Subdivisions – Permits

A state or governmental agency or subdivision or political subdivision that has issued a permit or authorization but only with respect to such state or governmental agency or subdivision or political subdivision's liability for **bodily injury, property damage or personal and advertising injury** arising out of:

1. the following hazards in connection with premises a **Named Insured** owns, rents, or controls and to which this insurance applies:
 - a. the existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - b. the construction, erection, or removal of elevators; or
 - c. the ownership, maintenance or use of any elevators covered by this insurance; or
2. the permitted or authorized operations performed by a **Named Insured** or on a **Named Insured's** behalf.

The coverage granted by this paragraph does not apply to:

- a. **Bodily injury, property damage or personal and advertising injury** arising out of operations performed for the state or governmental agency or subdivision or political subdivision; or
- b. **Bodily injury or property damage** included within the **products-completed operations hazard**.

With respect to this provision's requirement that additional insured status must be requested under a written contract or agreement, the Insurer will treat as a written contract any governmental permit that requires the **Named Insured** to add the governmental entity as an additional insured.

H. Trade Show Event Lessor

1. With respect to a **Named Insured's** participation in a trade show event as an exhibitor, presenter or displayer, any person or organization whom the **Named Insured** is required to include as an additional insured, but only with respect to such person or organization's liability for **bodily injury, property damage or personal and advertising injury** caused by:

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**Contractors' General Liability Extension Endorsement**

- a. the **Named Insured's** acts or omissions; or
 - b. the acts or omissions of those acting on the **Named Insured's** behalf,
- in the performance of the **Named Insured's** ongoing operations at the trade show event premises during the trade show event.
2. The coverage granted by this paragraph does not apply to **bodily injury** or **property damage** included within the **products-completed operations hazard**.

2. ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY TO ADDITIONAL INSURED'S INSURANCE

The **Other Insurance** Condition in the **COMMERCIAL GENERAL LIABILITY CONDITIONS** Section is amended to add the following paragraph:

If the **Named Insured** has agreed in writing in a contract or agreement that this insurance is primary and non-contributory relative to an additional insured's own insurance, then this insurance is primary, and the Insurer will not seek contribution from that other insurance. For the purpose of this Provision 2., the additional insured's own insurance means insurance on which the additional insured is a named insured. Otherwise, and notwithstanding anything to the contrary elsewhere in this Condition, the insurance provided to such person or organization is excess of any other insurance available to such person or organization.

3. BODILY INJURY – EXPANDED DEFINITION

Under **DEFINITIONS**, the definition of **bodily injury** is deleted and replaced by the following:

Bodily injury means physical injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the physical injury, sickness or disease.

4. BROAD KNOWLEDGE OF OCCURRENCE/ NOTICE OF OCCURRENCE

Under **CONDITIONS**, the condition entitled **Duties In The Event of Occurrence, Offense, Claim or Suit** is amended to add the following provisions:

A. BROAD KNOWLEDGE OF OCCURRENCE

The **Named Insured** must give the Insurer or the Insurer's authorized representative notice of an **occurrence**, offense or **claim** only when the **occurrence**, offense or **claim** is known to a natural person **Named Insured**, to a partner, executive officer, manager or member of a **Named Insured**, or an **employee** designated by any of the above to give such notice.

B. NOTICE OF OCCURRENCE

The **Named Insured's** rights under this **Coverage Part** will not be prejudiced if the **Named Insured** fails to give the Insurer notice of an **occurrence**, offense or **claim** and that failure is solely due to the **Named Insured's** reasonable belief that the **bodily injury** or **property damage** is not covered under this **Coverage Part**. However, the **Named Insured** shall give written notice of such **occurrence**, offense or **claim** to the Insurer as soon as the **Named Insured** is aware that this insurance may apply to such **occurrence**, offense or **claim**.

5. BROAD NAMED INSURED

WHO IS AN INSURED is amended to delete its Paragraph 3. in its entirety and replace it with the following:

3. Pursuant to the limitations described in Paragraph 4. below, any organization in which a **Named Insured** has management control:
- a. on the effective date of this **Coverage Part**; or

**Contractors' General Liability Extension Endorsement**

- B. Solely for the purpose of the coverage provided by this **PROPERTY DAMAGE – ELEVATORS** Provision, the **Other Insurance** conditions is amended to add the following paragraph:

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is Property insurance covering property of others damaged from the use of elevators.

23. SUPPLEMENTARY PAYMENTS

The section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** is amended as follows:

- A. Paragraph 1.b. is amended to delete the \$250 limit shown for the cost of bail bonds and replace it with a \$5,000. limit; and
- B. Paragraph 1.d. is amended to delete the limit of \$250 shown for daily loss of earnings and replace it with a \$1,000. limit.

24. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If the **Named Insured** unintentionally fails to disclose all existing hazards at the inception date of the **Named Insured's Coverage Part**, the Insurer will not deny coverage under this **Coverage Part** because of such failure.

25. WAIVER OF SUBROGATION - BLANKET

Under **CONDITIONS**, the condition entitled **Transfer Of Rights Of Recovery Against Others To Us** is amended to add the following:

The Insurer waives any right of recovery the Insurer may have against any person or organization because of payments the Insurer makes for injury or damage arising out of:

1. the **Named Insured's** ongoing operations; or
2. **your work** included in the **products-completed operations hazard**.

However, this waiver applies only when the **Named Insured** has agreed in writing to waive such rights of recovery in a written contract or written agreement, and only if such contract or agreement:

1. is in effect or becomes effective during the term of this **Coverage Part**; and
2. was executed prior to the **bodily injury, property damage or personal and advertising injury** giving rise to the claim.

26. WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS

Note: The following provision does not apply to any public construction project in the state of Oklahoma, nor to any construction project in the state of Alaska, that is not permitted to be insured under a **consolidated (wrap-up) insurance program** by applicable state statute or regulation.

If the endorsement **EXCLUSION – CONSTRUCTION WRAP-UP** is attached to this policy, or another exclusionary endorsement pertaining to Owner Controlled Insurance Programs (O.C.I.P.) or Contractor Controlled Insurance Programs (C.C.I.P.) is attached, then the following changes apply:

- A. The following wording is added to the above-referenced endorsement:

With respect to a **consolidated (wrap-up) insurance program** project in which the **Named Insured** is or was involved, this exclusion does not apply to those sums the **Named Insured** become legally obligated to pay as **damages** because of:

1. **Bodily injury, property damage, or personal or advertising injury** that occurs during the **Named Insured's** ongoing operations at the project, or during such operations of anyone acting on the **Named Insured's** behalf; nor



CONTRACTORS EXTENDED COVERAGE ENDORSEMENT - BUSINESS AUTO PLUS

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

I. LIABILITY COVERAGE

A. Who Is An Insured

The following is added to **Section II, Paragraph A.1., Who Is An Insured:**

1. a. Any incorporated entity of which the Named Insured owns a majority of the voting stock on the date of inception of this Coverage Form; provided that,
 - b. The insurance afforded by this provision **A.1.** does not apply to any such entity that is an **insured** under any other liability "policy" providing **auto** coverage.
2. Any organization you newly acquire or form, other than a limited liability company, partnership or joint venture, and over which you maintain majority ownership interest.

The insurance afforded by this provision **A.2.:**

- a. Is effective on the acquisition or formation date, and is afforded only until the end of the policy period of this Coverage Form, or the next anniversary of its inception date, whichever is earlier.
- b. Does not apply to:
 - (1) **Bodily injury or property damage** caused by an **accident** that occurred before you acquired or formed the organization; or
 - (2) Any such organization that is an **insured** under any other liability "policy" providing **auto** coverage.
3. Any person or organization that you are required by a written contract to name as an additional insured is an **insured** but only with respect to their legal liability for acts or omissions of a person, who qualifies as an **insured** under **SECTION II – WHO IS AN INSURED** and for whom Liability Coverage is afforded under this policy. If required by written contract, this insurance will be primary and non-contributory to insurance on which the additional insured is a Named Insured.
4. An **employee** of yours is an **insured** while operating an **auto** hired or rented under a contract or agreement in that **employee's** name, with your permission, while performing duties related to the conduct of your business.

"Policy", as used in this provision **A. Who Is An Insured**, includes those policies that were in force on the inception date of this Coverage Form but:

1. Which are no longer in force; or
2. Whose limits have been exhausted.

B. Bail Bonds and Loss of Earnings

Section II, Paragraphs A.2. (2) and A.2. (4) are revised as follows:

1. In **a.(2)**, the limit for the cost of bail bonds is changed from \$2,000 to \$5,000; and
2. In **a.(4)**, the limit for the loss of earnings is changed from \$250 to \$500 a day.

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 12; Page: 1 of 4

Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 7015418557

Policy Effective Date: 8/29/23

Policy Page: 71 of 94



C. Fellow Employee

Section II, Paragraph B.5 does not apply.

Such coverage as is afforded by this provision C. is excess over any other collectible insurance.

II. PHYSICAL DAMAGE COVERAGE

A. Glass Breakage – Hitting A Bird Or Animal – Falling Objects Or Missiles

The following is added to **Section III, Paragraph A.3.:**

With respect to any covered **auto**, any deductible shown in the Declarations will not apply to glass breakage if such glass is repaired, in a manner acceptable to us, rather than replaced.

B. Transportation Expenses

Section III, Paragraph A.4.a. is revised, with respect to transportation expense incurred by you, to provide:

- a. \$60 per day, in lieu of \$20; subject to
- b. \$1,800 maximum, in lieu of \$600.

C. Loss of Use Expenses

Section III, Paragraph A.4.b. is revised, with respect to loss of use expenses incurred by you, to provide:

- a. \$1,000 maximum, in lieu of \$600.

D. Hired "Autos"

The following is added to **Section III, Paragraph A.:**

5. Hired "Autos"

If Physical Damage coverage is provided under this policy, and such coverage does not extend to Hired Autos, then Physical Damage coverage is extended to:

- a. Any covered **auto** you lease, hire, rent or borrow without a driver; and
- b. Any covered **auto** hired or rented by your **employee** without a driver, under a contract in that individual **employee's** name, with your permission, while performing duties related to the conduct of your business.
- c. The most we will pay for any one **accident** or **loss** is the actual cash value, cost of repair, cost of replacement or \$75,000, whichever is less, minus a \$500 deductible for each covered **auto**. No deductible applies to **loss** caused by fire or lightning.
- d. The physical damage coverage as is provided by this provision is equal to the physical damage coverage(s) provided on your owned **autos**.
- e. Such physical damage coverage for hired **autos** will:
 - (1) Include loss of use, provided it is the consequence of an **accident** for which the Named Insured is legally liable, and as a result of which a monetary loss is sustained by the leasing or rental concern.
 - (2) Such coverage as is provided by this provision will be subject to a limit of \$750 per **accident**.

E. Airbag Coverage

The following is added to **Section III, Paragraph B.3.:**

The accidental discharge of an airbag shall not be considered mechanical breakdown.

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 12; Page: 2 of 4

Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 7015418557

Policy Effective Date: 8/29/23 ?

Policy Page: 72 of 94



F. Electronic Equipment

Section III, Paragraphs B.4.c and B.4.d. are deleted and replaced by the following:

- c. Physical Damage Coverage on a covered **auto** also applies to **loss** to any permanently installed electronic equipment including its antennas and other accessories
- d. A \$100 per occurrence deductible applies to the coverage provided by this provision.

G. Diminution In Value

The following is added to **Section III, Paragraph B.6.:**

Subject to the following, the **diminution in value** exclusion does not apply to:

- a. Any covered **auto** of the private passenger type you lease, hire, rent or borrow, without a driver for a period of 30 days or less, while performing duties related to the conduct of your business; and
- b. Any covered **auto** of the private passenger type hired or rented by your **employee** without a driver for a period of 30 days or less, under a contract in that individual **employee's** name, with your permission, while performing duties related to the conduct of your business.
- c. Such coverage as is provided by this provision is limited to a **diminution in value** loss arising directly out of accidental damage and not as a result of the failure to make repairs; faulty or incomplete maintenance or repairs; or the installation of substandard parts.
- d. The most we will pay for **loss** to a covered **auto** in any one accident is the lesser of:
 - (1) \$5,000; or
 - (2) 20% of the **auto's** actual cash value (ACV).

III. Drive Other Car Coverage – Executive Officers

The following is added to **Sections II and III:**

- 1. Any **auto** you don't own, hire or borrow is a covered **auto** for Liability Coverage while being used by, and for Physical Damage Coverage while in the care, custody or control of, any of your "executive officers", except:
 - a. An **auto** owned by that "executive officer" or a member of that person's household; or
 - b. An **auto** used by that "executive officer" while working in a business of selling, servicing, repairing or parking **autos**.

Such Liability and/or Physical Damage Coverage as is afforded by this provision.

- (1) Equal to the greatest of those coverages afforded any covered **auto**; and
- (2) Excess over any other collectible insurance.

- 2. For purposes of this provision, "executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document, and, while a resident of the same household, includes that person's spouse.

Such "executive officers" are **insureds** while using a covered **auto** described in this provision.

IV. BUSINESS AUTO CONDITIONS

A. Duties In The Event Of Accident, Claim, Suit Or Loss

The following is added to **Section IV, Paragraph A.2.a.:**

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 12; Page: 3 of 4

Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 7015418557

Policy Effective Date: 8/29/23

Policy Page: 73 of 94



- (4) Your **employees** may know of an **accident** or **loss**. This will not mean that you have such knowledge, unless such **accident** or **loss** is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

The following is added to **Section IV, Paragraph A.2.b.:**

- (6) Your **employees** may know of documents received concerning a claim or **suit**. This will not mean that you have such knowledge, unless receipt of such documents is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

B. Transfer Of Rights Of Recovery Against Others To Us

The following is added to **Section IV, Paragraph A.5. Transfer Of Rights Of Recovery Against Others To Us:**

We waive any right of recovery we may have, because of payments we make for injury or damage, against any person or organization for whom or which you are required by written contract or agreement to obtain this waiver from us.

This injury or damage must arise out of your activities under a contract with that person or organization.

You must agree to that requirement prior to an **accident** or **loss**.

C. Concealment, Misrepresentation or Fraud

The following is added to **Section IV, Paragraph B.2.:**

Your failure to disclose all hazards existing on the date of inception of this Coverage Form shall not prejudice you with respect to the coverage afforded provided such failure or omission is not intentional.

D. Other Insurance

The following is added to **Section IV, Paragraph B.5.:**

Regardless of the provisions of Paragraphs 5.a. and 5.d. above, the coverage provided by this policy shall be on a primary non-contributory basis. This provision is applicable only when required by a written contract.

That written contract must have been entered into prior to **Accident** or **Loss**.

E. Policy Period, Coverage Territory

Section IV, Paragraph B. 7.(5).(a). is revised to provide:

- a. 45 days of coverage in lieu of 30 days.

V. DEFINITIONS

Section V. paragraph C. is deleted and replaced by the following:

Bodily injury means bodily injury, sickness or disease sustained by a person, including mental anguish, mental injury or death resulting from any of these.

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 12; Page: 4 of 4

Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 7015418557

Policy Effective Date: 8/29/23

Policy Page: 74 of 94

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

**ANY PERSON OR ORGANIZATION FOR WHOM THE NAMED INSURED IS
REQUIRED UNDER WRITTEN CONTRACT TO FURNISH THIS WAIVER,
FOR FLORIDA OPERATIONS ONLY.**

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective **08/29/2023** Policy No. **WFL 5061934 02**
Insured **BANDES CONSTRUCTION CO INC**
Insurance Company **INSURANCE COMPANY OF THE WEST**

Endorsement No.
Premium \$ **INCL.**

Countersigned By _____



CRUM & FORSTER®
A FAIRFAX COMPANY

Policy #5821219107
Effective Dates: 08/29/2023-08/29/2024

EXCESS LIABILITY COVERAGE FORM

Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine rights, duties and what is and is not covered.

Throughout this Policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this Policy. The words "we", "us" and "our" refer to the company providing this insurance. The word "insured" means any person or organization qualifying as such under the "controlling underlying insurance".

Other words and phrases that appear in quotation marks in this Policy have special meaning. Refer to **SECTION IV – DEFINITIONS**. Other words and phrases that are not defined under this Policy but defined in the "controlling underlying insurance" will have the meaning described in the policy of "controlling underlying insurance".

SECTION I – COVERAGES

1. Insuring Agreement

- a. We will pay on behalf of the insured the "ultimate net loss" in excess of the "retained limit" because of "injury or damage" to which this insurance applies.

We will have the right and duty to defend the insured against any "suit" seeking damages for such "injury or damage" when the "retained limit" has been paid in full. When we have no duty to defend, we will have the right to defend, or to associate in the defense of, the insured against any "suit" seeking damages for "injury or damage".

However, we will have no duty to defend the insured against any "suit" seeking damages for which insurance under this Policy does not apply.

At our discretion, we may investigate any "event" that may involve this insurance and settle any resultant claim or "suit".

But:

- (1) The amount we will pay for "ultimate net loss" is limited as described in **SECTION II – LIMITS OF INSURANCE**; and
- (2) Our right and duty to defend ends when we have paid the applicable limit of insurance in the payment of judgments or settlements under this Policy. However, if the policy of "controlling underlying insurance" specifies that limits are reduced by defense expenses, our right and duty to defend ends when we have paid the applicable limit of insurance in the payment of defense expenses, judgments, or settlements under this Policy.
- b. The insurance under this Policy will follow the same provisions, exclusions, conditions and limitations that are contained in the applicable "controlling underlying insurance", unless otherwise directed by this Policy. To the extent such provisions differ or conflict, the provisions of this Policy will apply. However, the coverage under this Policy will not be broader than that provided by any "underlying insurance".
- If any applicable "underlying insurance" does not pay for "ultimate net loss" for any reason other than the exhaustion of its applicable limit of insurance by payment of claims or "suits", then this Policy will not cover such "ultimate net loss".
- c. There may be more than one "controlling underlying insurance" listed in the Schedule of Underlying Insurance, and there may be terms and provisions in those respective policies that are in conflict and which are not superseded by the provisions of this Policy. In such a case, the provisions, exclusions and

limitations of the "controlling underlying insurance" applicable to the particular "event" for which a claim is made or "suit" is brought will apply.

- d. If any other limit, such as a sublimit, is specified in the "underlying insurance", this insurance does not apply to "injury or damage" arising out of that exposure unless that limit is specified in the Schedule of Underlying Insurance.
- e. Any person or entity qualifying as an additional insured under the "controlling underlying insurance" will be an additional insured under this Policy. If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the minimum amount of insurance required by the contract or agreement less any amounts payable by "underlying insurance" and all other insurance available to the additional insured. Under no circumstances will we pay on behalf of the additional insured an amount exceeding the available Limit of Insurance applicable under this Policy.

Additional insured coverage, as provided by this Policy, will not be broader than coverage provided by any "underlying insurance".

2. Exclusions

Insurance provided under this Policy does not apply to:

a. Asbestos

"Injury or damage", loss, cost or expense directly or indirectly caused by, resulting from, in consequence of, or in any way involving asbestos or any materials containing asbestos in whatever form or quantity.

This exclusion applies regardless of any other contributing or aggravating cause or "event" that contributes concurrently or in any sequence to the "injury or damage", loss, cost or expense.

b. Auto

"Injury or damage", loss, cost or expense payable under or resulting from any of the following auto coverages:

- (1) First-party physical damage coverage;
- (2) No-fault coverage;
- (3) Personal injury protection or auto medical payments coverage; or
- (4) Uninsured or underinsured motorists' coverage.

c. Pollution

(1) "Injury or damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release, or escape of "pollutants" at any time.

(2) Any loss, cost or expense arising out of any:

- (a) Request, demand, order, or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, or in any way responding to, or assessing the effects of "pollutants".

This exclusion applies whether or not such "pollutants" have any function in your business, operations, premises, site, or location.

d. Workers' Compensation and Similar Laws

Any obligation of any insured under a workers' compensation, disability benefits, unemployment compensation law, or any similar law.

SECTION II – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought or number of vehicles involved;
 - c. Persons or organizations making claims or bringing "suits"; or
 - d. Limits available under any "underlying insurance".
2. The Limits of Insurance as shown in the Declarations will apply as follows:
 - a. This insurance only applies in excess of the "retained limit".
 - b. The Total Policy Aggregate Limit, if stated in the Declarations, is the most we will pay for the sum of all "ultimate net loss" for all "injury or damage" covered under this Policy other than any claims for damages arising out of the ownership, maintenance, or use of a covered auto. The Total Policy Aggregate Limit applies regardless of the sums indicated in the Declarations for any General Aggregate Limit or Products-Completed Operations Aggregate Limit, and applies collectively, rather than separately, to all locations or projects.
 - c. Subject to 2.b. above, the General Aggregate Limit, if stated in the Declarations, is the most we will pay for the sum of all "ultimate net loss" for all "injury or damage" covered under this Policy other than any claims for damages falling within the products-completed operations hazard or arising out of the ownership, maintenance or use of a covered auto.

Subject to 2.b. above, the Products-Completed Operations Aggregate Limit, if stated in the Declarations, is the most we will pay for the sum of all "ultimate net loss" for all "injury or damage" included within the products-completed operations hazard.

However, if any "underlying insurance" does not provide separate aggregate limits for "ultimate net loss" within the products-completed operations hazard, the General Aggregate set forth above is the most we will pay for all "ultimate net loss", including "ultimate net loss" within the products-completed operations hazard. Under such circumstances, any limit appearing in the Declarations for a Products-Completed Operations Aggregate Limit does not apply.
 - d. Subject to Paragraph 2.b. and 2.c. above, the Each Occurrence Limit is the most we will pay for the sum of all "ultimate net loss" under this Policy because of all "injury or damage" arising out of any one "event".
 - e. If the Limits of Insurance of the "controlling underlying insurance" are reduced by defense expenses by the terms of that policy, any payments for defense expenses we make will reduce our applicable Limits of Insurance in the same manner.
3. The Aggregate Limits of "underlying insurance", where applicable, shall be unimpaired at the attachment date of this Policy, and for the purpose of this insurance, only "events" to which this insurance applies, taking place during the Policy Period of this Policy, shall be considered in determining the extent of any exhaustion of the Aggregate Limits of "underlying insurance", where applicable.
4. If this Policy and any other policy issued by us, or by any other affiliated insurance company within the Crum & Forster group of companies, applies to the same incident, "event," act, offense, claim, "suit," or occurrence for which any insured under this Policy is legally liable, then the maximum limit of insurance payable for all "injury or damage" covered under the policies will not exceed the highest applicable Each Occurrence limit of insurance available under any one policy for the incident, "event," act, offense, claim, "suit," or occurrence. However, this does not apply to any other insurance issued to you by us, or by any affiliated insurance company within the Crum & Forster group of companies, which is specifically written to be either primary or in excess of this Policy.

The General Aggregate Limit, the Products-Completed Operations Aggregate Limit, and the Total Policy Aggregate Limit of this Policy apply separately to each consecutive annual period of this Policy and to any remaining period of this Policy of less than 12 months, starting with the beginning of the Policy Period shown in

the Declarations, unless the Policy Period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION III – CONDITIONS

The following conditions apply:

1. Appeals

If any "underlying insurer" or insured elects not to appeal a judgment in excess of the amount of the "retained limit", we may do so at our own expense. We also will pay for taxable court costs, pre and post judgment interest and disbursements associated with such appeal. In no event will this provision increase our liability beyond the applicable Limits of Insurance described in **SECTION II – LIMITS OF INSURANCE**.

2. Bankruptcy

a. Bankruptcy or Insolvency of Insured

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Policy.

b. Bankruptcy of Underlying Insurer

Bankruptcy or insolvency of any "underlying insurer" will not relieve us of our obligations under this Policy. However, insurance provided under this Policy will not replace any "underlying insurance" in the event of bankruptcy or insolvency of the "underlying insurer". The insurance provided under this Policy will apply as if the "underlying insurance" were in full effect and recoverable.

3. Cancellation

a. The first Named Insured shown in the Declarations may cancel this Policy by mailing or delivering to us advance written notice of cancellation.

b. We may cancel this Policy by mailing or delivering to the first Named Insured written notice of cancellation at least:

(1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or

(2) 30 days before the effective date of cancellation if we cancel for any other reason.

c. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.

d. Notice of cancellation will state the effective date of cancellation. The Policy Period will end on that date.

e. If this Policy is cancelled, subject to any audit, we will send the first Named Insured any premium refund due. If we cancel, any refund will be pro rata. If the first Named Insured cancels, any refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.

f. If notice is mailed, proof of mailing will be sufficient proof of notice.

4. Changes

This Policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured is authorized by all other insureds to make changes in the terms and conditions of this Policy, with our consent, provided, however, that this Policy's terms and conditions can be amended or waived only by written endorsement issued by us and made a part of this Policy.

5. Duties in the Event of a Claim, Event, or Suit

a. You must see to it that we are notified as soon as practicable of an "event", regardless of the amount, which may result in a claim under this Policy. To the extent possible, notice should include:

(1) How, when and where the "event" took place;

- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any "injury or damage" arising out of the "event".
- b. If a claim is made or "suit" is brought against any insured, you must:
 - (1) Immediately record the specifics of the claim or "suit" and the date received; and
 - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. You and any other insured involved must:
 - (1) Immediately send us copies of any demands, notices, summonses, or legal papers received in connection with the claim or "suit";
 - (2) Authorize us to obtain records and other information;
 - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
 - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of "injury or damage" to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

6. Examination of Your Books and Records

We may examine and audit your books and records as they relate to this Policy at any time during the Policy Period and up to three years afterward.

7. First Named Insured Duties

The first Named Insured is the person or organization first named in the Declarations and is responsible for the payment of all premiums. The first Named Insured will act on behalf of all other insureds for giving and receiving of notice of cancellation or the receipt of any return premium that may become payable.

The first Named Insured will furnish us, as soon as practicable, with a complete copy of any "underlying insurance" and any subsequently issued endorsements or policies which may in any way affect the insurance provided under this Policy.

8. Legal Action Against Us

No person or organization has a right under this Policy to join us as a party or otherwise bring us into a "suit" asking for damages from an insured or to sue us on this Policy unless all of its terms have been fully complied with. A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured, but we will not be liable for damages that are not payable under the terms of this Policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured, "underlying insurer" and the claimant or the claimant's legal representative.

9. Loss Payable

Liability under this Policy does not apply to a given claim unless and until the insured or insured's "underlying insurer" has become obligated to pay the "retained limit", and the obligation of the insured to pay the "ultimate net loss" in excess of the "retained limit" has been determined by a final settlement or judgment or written agreement among the insured, claimant, "underlying insurer" (or a representative of one or more of these) and us.

10. Maintenance of/Changes to Underlying Insurance

Any "underlying insurance" must be maintained in full effect during the Policy Period of this Policy, without change of coverage or reduction of limits except for the reduction of aggregate limits in accordance with the provisions of such "underlying insurance" that results from "injury or damage" to which this insurance applies. Such exhaustion or reduction of limits is not a failure to maintain "underlying insurance".

Failure to maintain "underlying insurance" will not invalidate insurance provided under this Policy, but insurance provided under this Policy will apply as if the "underlying insurance" were in full effect.

The first Named Insured must notify us in writing, as soon as practicable, if any "underlying insurance" is cancelled, not renewed, replaced, otherwise terminated, or if the limits or scope of coverage of any "underlying insurance" is changed.

11. Other Insurance

- a. If other insurance that is not "underlying insurance" applies to any claim or "suit" that is also covered under this Policy, then this Policy shall apply in excess of and shall not contribute with such other insurance.
- b. When a person or organization that is an additional insured under all "underlying insurance" requires in a written contract with you that this insurance be non-contributory, then we shall not seek contribution from other insurers that provide coverage to the additional insured as a Named Insured for "ultimate net loss" sustained by such additional insured after all underlying limits have been exhausted. If an additional insured has coverage under any other policy[ies] as an additional insured, this Policy applies excess of all such insurance, and this Policy will not contribute to any "ultimate net loss". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where this Policy is required by written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

The provisions of this Other Insurance condition will not apply if such other insurance is specifically written to be excess of this Policy. If no other insurer defends, we may undertake to do so in accordance with the defense provisions set forth elsewhere in this Policy, but we will be entitled to the insured's rights against all those other insurers.

12. Premium

The premium, as stated in the Declarations of this Policy, is a flat premium, unless there is a rate per an exposure base shown on this Policy, and an endorsement stating such is attached to this Policy. In that case, the premium is subject to adjustment in accordance with the terms of that endorsement.

The premium, as stated in the Declarations of this Policy, may be adjusted if an additional premium charge is made to the "underlying insurance" or if there is an increase in the risk assumed by us during the Policy Period of this Policy.

13. Transfer of Defense

a. Defense Transferred to Us

When the "retained limit" has been paid in full, we will cooperate in the transfer of control to us of any outstanding claims or "suits" seeking damages to which this insurance applies and which would have been covered by the "underlying insurance" had the applicable "retained limit" not been exhausted.

Where the settlement of any "suit" defended by any "underlying insurer" results, or will result, in the exhaustion of the "retained limit" and also will require the payment of a portion of the Limits of Insurance under this Policy in order to effectuate the settlement, we will have the right, but not the duty, to assume the transfer of the defense of the insured with respect to that "suit", but we will be under no obligation to have the defense transferred to us unless and until the "retained limit" has been paid in full.

Where the satisfaction of any judgment entered against the insured in a "suit" defended by any "underlying insurer" results, or will result, in the exhaustion of the "retained limit" and also will require the payment of a portion of the Limits of Insurance under this Policy in order to effectuate the satisfaction of that judgment, we will have the right, but not the duty, to defend the insured with respect to that "suit", but we will be under no obligation to have the defense transferred to us.

b. Defense Transferred by Us

When our limits of insurance have been exhausted, our duty to provide a defense will cease. We will cooperate in the transfer of control of defense to any insurer specifically written as excess over this Policy of any outstanding claims or "suits" seeking damages to which this insurance applies and which would have been covered had the applicable limit not been exhausted.

In the event that there is no insurance written as excess over this Policy, we will cooperate in the transfer of control to the insured and its designated representative.

14. Transfer of Rights of Recovery Against Others to Us

If you have rights to recover all or part of any payment we have made under this Policy, those rights are transferred to us. You must do nothing after loss to impair them. At our request, you will bring "suit" or transfer those rights to us and help us enforce them.

If you and any insurer providing "underlying insurance", prior to the time of an "event", waive in writing any right of recovery against a specific person or organization for any liability, we also will waive any rights we may have against such person or organization to the same extent waived by you and any insurer providing "underlying insurance".

The amount recovered shall be apportioned in the inverse order of payment of the "ultimate net loss" to the extent of the actual payment. The expenses of all such recovery proceedings shall be apportioned in the ratio of respective recoveries.

SECTION IV – DEFINITIONS

As used in this Policy:

1. **"Controlling underlying insurance"** means a policy of insurance listed in the Schedule of Underlying Insurance and identified as "controlling underlying insurance".
2. **"Event"** means an occurrence, offense, accident, act, or other event to which the applicable "controlling underlying insurance" applies.
3. **"Injury or damage"** means any injury or damage covered in the applicable "controlling underlying insurance" arising from an "event".
4. **"Pollutants"** mean any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned, or reclaimed.
5. **"Retained limit"** means the sum of all applicable "underlying insurance" shown in the Schedule of Underlying Insurance and any other insurance or self-insurance applicable to the claim or "suit", except insurance specifically written to apply in excess of this Policy.
6. **"Suit"** means a civil proceeding in which damages because of "injury or damage" to which this insurance applies are alleged. "Suit" includes:
 - a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent or the "underlying insurer's" consent.
7. **"Ultimate net loss"** means the total sum, after reduction for recoveries or salvages collectible, that the insured becomes legally obligated to pay as damages by reason of:
 - a. Settlements, judgments, binding arbitration; or
 - b. Other binding alternate dispute resolution proceeding entered into with our consent.

"Ultimate net loss" includes defense expenses if the "controlling underlying insurance" specifies that limits are reduced by defense expenses.
8. **"Underlying insurance"** means the policy or policies (including any renewal or replacement of such policies) of insurance listed in the Schedule of Underlying Insurance including the "controlling underlying insurance" and any self-insured retentions.
9. **"Underlying insurer"** means any insurer that provides a policy of insurance listed in the Schedule of Underlying Insurance.

**FIRST AMENDMENT TO NON-EXCLUSIVE RIGHT OF WAY
LICENSE AGREEMENT**

THIS FIRST AMENDMENT TO NON-EXCLUSIVE RIGHT OF WAY LICENSE AGREEMENT, is made and entered into this 26th day of April, 2024, ("Amendment"), and is by and between the **TOWN OF FORT MYERS BEACH**, a political subdivision of the State of Florida, (hereinafter, the "Town" or "Licensor"), and **BANDES CONSTRUCTION COMPANY, INC.**, a Florida Corporation, their successors and assigns, (collectively hereinafter, "Bandes" or "Licensee"), and amends that certain **NON-EXCLUSIVE RIGHT OF WAY LICENSE AGREEMENT** entered into on the 26th day of April, 2024 ("Agreement"); and

WHEREAS, the Town and Bandes entered into the Agreement to allow Bandes to use the Town's property located at the corner of Old San Carlos Blvd. & Estero Blvd., Fort Myers Beach, situating eleven (11) metered parking spaces, which is more explicitly identified and reflected in Exhibit "A" of the Agreement, (the "Property"), for the location of construction equipment and dumpsters, which will remain on the Property, subject to the terms of the Agreement; and

WHEREAS, the Agreement expired on March 15, 2024; and

WHEREAS, the Town and Bandes mutually desire to extend the duration of the Agreement retroactively from March 15, 2024, through July 1, 2024; and

WHEREAS, the extension is in the best interests of the Town and is consistent with promotion of the health, safety, and welfare of its residents.

NOW, THEREFORE, in consideration of the covenants to be kept and performed by each of the parties hereto, and other good and valuable consideration paid by Bandes to the Town, receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

1. **DURATION.** Paragraph 7 of the Agreement is hereby amended to grant unto Bandes the continued non-exclusive right of way license to use the Property, retroactively from March 15, 2024, through July 1, 2024.

2. **REMAINING TERMS.** Other than the duration of the Agreement, which duration shall be extended retroactively from March 15, 2024, through July 1, 2024, all other terms and conditions of the Agreement shall remain in force and effect.

IN WITNESS WHEREOF, the Town and Bandes have executed this Amendment to the Agreement as of the date and year first above written.

[Signatures and Attestation on the Following Page]

Town of Fort Myers Beach

MAY 3 2024

Received by: _____

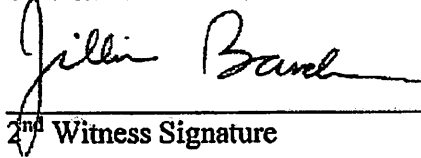
WITNESSES:



1st Witness Signature

Lisa Miller

1st Witness Print Name



2nd Witness Signature

Jillian Bandes

2nd Witness Print Name

LICENSEE: Bandes Construction Company, Inc.



Print Name: Robert Bandes

President

Print Title

LICENSOR: Town of Fort Myers Beach



Dan Allers (May 14, 2024 15:23 EDT)

Dan Allers, Mayor of Fort Myers Beach

ATTEST:



Amy Baker, Town Clerk

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



Becky Vose (May 14, 2024 22:23 EDT)

Vose Law Firm, Town Attorney

For Recording Purposes Only

**THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:**

Nancy Stuparich, Esq.
Vose Law Firm LLP
324 W. Morse Blvd.
Winter Park, FL 32789

NON-EXCLUSIVE RIGHT OF WAY LICENSE AGREEMENT

THIS NON-EXCLUSIVE RIGHT OF WAY LICENSE AGREEMENT, (hereinafter “Agreement”), is entered into as of Wednesday, February 14, 2024, by and between **Bandes Construction Company Inc.**, their successors, and assigns, (collectively hereinafter the “Licensee”), and the **TOWN OF FORT MYERS BEACH** (hereinafter, the “Licensor”), a political subdivision of the State of Florida.

RECITALS

WHEREAS, the Licensor owns property located at the corner of Old San Carlos Blvd & Estero Blvd, Fort Myers Beach, currently used for (11) metered parking spaces, in the Licensor right of way, which is shown on Exhibit “A” (“the Property”) to this agreement; and

WHEREAS, the Licensee desires to obtain a non-exclusive right of way license agreement to allow the use of the Property for the location of construction equipment & dumpsters, which will remain on the Property, subject to the terms of this Agreement; and

WHEREAS, the construction equipment & dumpsters provide a public benefit by facilitating the rebuilding of property located within the Town, which is in the in the best interest of the Town in rebuilding the Town following Hurricane Ian to enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the terms and conditions set forth herein, the parties agree as follows:

1. **RECITALS**. The foregoing recitals are true and form a material part of this Agreement.

2. **NON-EXCLUSIVE RIGHT-OF-WAY USE PERMIT**. This Agreement shall serve as a Non-Exclusive Right of Way Use Permit for the benefit of Licensee. Licensee will not cause, or allow to be caused, any damage to the Property and shall maintain the area free of trash and debris.

Licensee shall not install or make any permanent changes to the Property without the prior approval of the Licensors. If the Licensee allows the Property to fall into disrepair, or does not adequately maintain same, the Licensors shall have the right, after three (3) days written notice to the Licensee, to take appropriate actions to repair or maintain the Property, and the Licensee shall be responsible for the reimbursement of the Licensors for the costs of such repair, maintenance or removal. Nothing contained herein or by virtue of the issuance of a Permit shall give or grant the Licensee any property rights to the Property, other than as may be provided herein.

3. **REMOVAL/RELOCATION/EMERGENCIES.** If, in the opinion of the Licensors, the use of the Property interferes with any construction, reconstruction, repairs, alteration or improvement which the Licensors desires to perform on, around or under the Property, Licensee, upon receipt of a written notice from the Licensors, shall remove or relocate construction equipment & dumpsters as requested by the Licensors within fifteen (15) days of receipt of said notice. In the event the Licensee does not remove or relocate the construction equipment & dumpsters as provided herein, the Licensors shall have the right, but not the obligation, to remove the construction equipment & dumpsters at the sole expense of the Licensee, and the Licensors shall have no obligation to safeguard or otherwise preserve the construction equipment & dumpsters that is removed by the Licensors. In the event of the need for emergency repairs, as determined by the Licensors at its sole discretion, the Licensors shall have the right to remove the construction equipment & dumpsters without advance notice to Licensee. The Licensors shall in no event be liable to the Licensee for the preservation or condition of the construction equipment & dumpsters that is removed due to actions of the Licensors or its agents.

4. **INDEMNIFICATION.** Licensee agrees and shall indemnify the Licensors and hold it harmless from and against all claims, damages, losses and expenses, including reasonable attorney's fees and costs arising out of, or resulting from, the performance of their respective responsibilities under this Agreement, or to the extent the existence of the construction equipment & dumpsters on the Property, or any hazard caused by the construction equipment & dumpsters, or any damages which are the result in any mishap or accident on the site of the construction equipment & dumpsters. Licensee shall indemnify and hold harmless the Licensors from and against all expenses, costs or claims for any damages to the construction equipment & dumpsters, which may result from the use of the Property by the Licensors or other governmental body or authority for maintenance, construction, installation, or other proper use within the Property.

5. **INSURANCE.** Throughout the period of time the Licensee continues to have the construction equipment & dumpsters on Licensors' Property under this Agreement, Licensee shall obtain and possess Commercial General Liability coverage for all operations under this Agreement not less than \$1,000,000 Combined Single Limit (CSL) or its equivalent. Prior to the location of the construction equipment & dumpsters on the Property, Licensee shall provide Certificates of Insurance to the Licensors to verify coverage. A reference to this specific Agreement, and the type and amount of coverage provided, shall be clearly stated on the face of the Certificates of Insurance. The insurance coverage shall name the Town of Fort Myers Beach as an additional insured, and shall contain a provision which forbids any cancellation, changes, material alterations, or non-renewal of coverage without providing thirty (30) days' prior written notice to the Licensors.

6. **NOTICES.** Notices required or permitted under this Agreement shall be made by written document delivered as follows:

To the Licensor:

By hand delivery to the Town of Fort Myers Beach, City Hall, Attention: Town Manager.

To the Licensee:

By hand delivery (or posting on the door) at 151 Old San Carlos Blvd.

7. **DURATION.** This Agreement shall remain in effect until terminated on or before Friday March 15, 2024.

8. **FEE.** Licensee agrees to pay \$4000.00 for the rights contained in this agreement, which shall be due at the time this agreement is signed by the last party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be made and executed as of the day and date first above written.

WITNESSES:

Print Name: Lisa Miller

Print Name: Jeremy Brown

LICENSEE: Bandes Construction Company Inc.

Print Name: _____

Title: President

LICENSOR: TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/27/2024

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

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

PRODUCER Bowen, Miclette & Britt of Florida, LLC 850 Concourse Parkway S Suite #105 Maitland FL 32751	CONTACT NAME: Michelle Rushing	
	PHONE (A/C, No, Ext): 407-647-1616 FAX (A/C, No): 407-628-1635	
	E-MAIL ADDRESS: mrushing@bmbinc.com	
INSURED Bandes Construction Co., Inc. 1368 Spalding Rd Ste C Dunedin FL 34698	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : North River Insurance Co.	21105
	INSURER B : Insurance Co of the West	27847
	INSURER C : National Fire Ins Co of Hartford	20478
	INSURER D : Continental Casualty Co.	20443
	INSURER E :	
	INSURER F :	

COVERAGES**CERTIFICATE NUMBER:** 2005481145**REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
C	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC OTHER:	Y	Y	7015418560	8/29/2023	8/29/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Deductible \$ 10,000
D	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☒ ALL OWNED AUTOS ☒ HIRED AUTOS ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS	Y	Y	7015418557	8/29/2023	8/29/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☐ UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 0	Y	Y	5821219107	8/29/2023	8/29/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 10,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	WFL506193402	8/29/2023	8/29/2024	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

The following policy provisions and/or endorsements form part of the policies of insurance represented by this certificate of insurance. The terms contained in the policies and/or endorsements supersede the representations made herein. Electronic copies of the policy provisions and/or endorsements listed below are available by emailing contact person shown above.

When required by written contract, those parties listed in said contract, including the certificate holder, are added as an additional insured with respect to the general liability, including on-going and completed operations, auto liability and umbrella liability as afforded by the policy and/or endorsements.

When required by written contract, waiver of subrogation, with respect to the general liability, auto liability, worker's compensation and umbrella is granted to See Attached...

CERTIFICATE HOLDER**CANCELLATION**

Town of Fort Myers Beach
2525 Estero Blvd.
Fort Myers Beach FL 33931

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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AGENCY CUSTOMER ID: BANDESCONS

LOC #: _____

**ADDITIONAL REMARKS SCHEDULE**Page 1 of 1

AGENCY Bowen, Midgette & Britt of Florida, LLC		NAMED INSURED Bandes Construction Co., Inc. 1368 Spalding Rd Ste C Dunedin FL 34698
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

those parties listed in said contract, including the certificate holder.

The general liability, auto liability, & umbrella liability certified herein are primary and non-contributory to other insurance available, but only to the extent required by written contract.

30-day notice of cancellation applies.

**CNA PARAMOUNT****Contractors' General Liability Extension Endorsement**

It is understood and agreed that this endorsement amends the **COMMERCIAL GENERAL LIABILITY COVERAGE PART** as follows. If any other endorsement attached to this policy amends any provision also amended by this endorsement, then that other endorsement controls with respect to such provision, and the changes made by this endorsement with respect to such provision do not apply.

TABLE OF CONTENTS

- | |
|---|
| 1. Additional Insureds |
| 2. Additional Insured - Primary And Non-Contributory To Additional Insured's Insurance |
| 3. Bodily Injury – Expanded Definition |
| 4. Broad Knowledge of Occurrence/ Notice of Occurrence |
| 5. Broad Named Insured |
| 6. Broadened Liability Coverage For Damage To Your Product And Your Work |
| 7. Contractual Liability - Railroads |
| 8. Electronic Data Liability |
| 9. Estates, Legal Representatives and Spouses |
| 10. Expected Or Intended Injury – Exception for Reasonable Force |
| 11. General Aggregate Limits of Insurance – Per Project |
| 12. In Rem Actions |
| 13. Incidental Health Care Malpractice Coverage |
| 14. Joint Ventures/Partnership/Limited Liability Companies |
| 15. Legal Liability – Damage To Premises / Alienated Premises / Property In The Named Insured's Care, Custody or Control |
| 16. Liquor Liability |
| 17. Medical Payments |
| 18. Non-owned Aircraft Coverage |
| 19. Non-owned Watercraft |
| 20. Personal And Advertising Injury – Discrimination or Humiliation |
| 21. Personal And Advertising Injury - Contractual Liability |
| 22. Property Damage - Elevators |
| 23. Supplementary Payments |
| 24. Unintentional Failure To Disclose Hazards |
| 25. Waiver of Subrogation – Blanket |
| 26. Wrap-Up Extension: OCIP CCIP, or Consolidated (Wrap-Up) Insurance Programs |

CNA74705XX (1-15)

Page 1 of 17

VALLEY FORGE INSURANCE COMPANY

Insured Name: BANDES CONSTRUCTION COMPANY, INC.

Policy No: 7015418560

Endorsement No:

Effective Date: 08/29/2023

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**Contractors' General Liability Extension Endorsement****1. ADDITIONAL INSURED**

- a. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization described in paragraphs A. through H. below whom a **Named Insured** is required to add as an additional insured on this **Coverage Part** under a written contract or written agreement, provided such contract or agreement:

(1) is currently in effect or becomes effective during the term of this **Coverage Part**; and

(2) was executed prior to:

(a) the **bodily injury** or **property damage**; or

(b) the offense that caused the **personal and advertising injury**,

for which such additional insured seeks coverage.

- b. However, subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

(1) a higher limit of insurance than required by such contract or agreement; or

(2) coverage broader than required by such contract or agreement, and in no event broader than that described by the applicable paragraph A. through H. below.

Any coverage granted by this endorsement shall apply only to the extent permissible by law.

A. Controlling Interest

Any person or organization with a controlling interest in a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of:

1. such person or organization's financial control of a **Named Insured**; or

2. premises such person or organization owns, maintains or controls while a **Named Insured** leases or occupies such premises;

provided that the coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

B. Co-owner of Insured Premises

A co-owner of a premises co-owned by a **Named Insured** and covered under this insurance but only with respect to such co-owner's liability for **bodily injury**, **property damage** or **personal and advertising injury** as co-owner of such premises.

C. Lessor of Equipment

Any person or organization from whom a **Named Insured** leases equipment, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** caused, in whole or in part, by the **Named Insured's** maintenance, operation or use of such equipment, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease.

D. Lessor of Land

Any person or organization from whom a **Named Insured** leases land but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the ownership, maintenance or use of such land, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease. The

**Contractors' General Liability Extension Endorsement**

coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

E. Lessor of Premises

An owner or lessor of premises leased to the **Named Insured**, or such owner or lessor's real estate manager, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of the ownership, maintenance or use of such part of the premises leased to the **Named Insured**, and provided that the **occurrence** giving rise to such **bodily injury or property damage**, or the offense giving rise to such **personal and advertising injury**, takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

F. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver of premises but only with respect to such mortgagee, assignee or receiver's liability for **bodily injury, property damage or personal and advertising injury** arising out of the **Named Insured's** ownership, maintenance, or use of a premises by a **Named Insured**.

The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

G. State or Governmental Agency or Subdivision or Political Subdivisions – Permits

A state or governmental agency or subdivision or political subdivision that has issued a permit or authorization but only with respect to such state or governmental agency or subdivision or political subdivision's liability for **bodily injury, property damage or personal and advertising injury** arising out of:

1. the following hazards in connection with premises a **Named Insured** owns, rents, or controls and to which this insurance applies:
 - a. the existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - b. the construction, erection, or removal of elevators; or
 - c. the ownership, maintenance or use of any elevators covered by this insurance; or
2. the permitted or authorized operations performed by a **Named Insured** or on a **Named Insured's** behalf.

The coverage granted by this paragraph does not apply to:

- a. **Bodily injury, property damage or personal and advertising injury** arising out of operations performed for the state or governmental agency or subdivision or political subdivision; or
- b. **Bodily injury or property damage** included within the **products-completed operations hazard**.

With respect to this provision's requirement that additional insured status must be requested under a written contract or agreement, the Insurer will treat as a written contract any governmental permit that requires the **Named Insured** to add the governmental entity as an additional insured.

H. Trade Show Event Lessor

1. With respect to a **Named Insured's** participation in a trade show event as an exhibitor, presenter or displayer, any person or organization whom the **Named Insured** is required to include as an additional insured, but only with respect to such person or organization's liability for **bodily injury, property damage or personal and advertising injury** caused by:

CNA74705XX (1-15)

Page 3 of 17

VALLEY FORGE INSURANCE COMPANY

Insured Name: BANDES CONSTRUCTION COMPANY, INC.

Policy No: 7015418560

Endorsement No: 8

Effective Date: 8/29/2023

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**Contractors' General Liability Extension Endorsement**

- a. the **Named Insured's** acts or omissions; or
 - b. the acts or omissions of those acting on the **Named Insured's** behalf,
in the performance of the **Named Insured's** ongoing operations at the trade show event premises during the trade show event.
2. The coverage granted by this paragraph does not apply to **bodily injury** or **property damage** included within the **products-completed operations hazard**.

2. ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY TO ADDITIONAL INSURED'S INSURANCE

The **Other Insurance** Condition in the **COMMERCIAL GENERAL LIABILITY CONDITIONS** Section is amended to add the following paragraph:

If the **Named Insured** has agreed in writing in a contract or agreement that this insurance is primary and non-contributory relative to an additional insured's own insurance, then this insurance is primary, and the Insurer will not seek contribution from that other insurance. For the purpose of this Provision 2., the additional insured's own insurance means insurance on which the additional insured is a named insured. Otherwise, and notwithstanding anything to the contrary elsewhere in this Condition, the insurance provided to such person or organization is excess of any other insurance available to such person or organization.

3. BODILY INJURY – EXPANDED DEFINITION

Under **DEFINITIONS**, the definition of **bodily injury** is deleted and replaced by the following:

Bodily injury means physical injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the physical injury, sickness or disease.

4. BROAD KNOWLEDGE OF OCCURRENCE/ NOTICE OF OCCURRENCE

Under **CONDITIONS**, the condition entitled **Duties in The Event of Occurrence, Offense, Claim or Suit** is amended to add the following provisions:

A. BROAD KNOWLEDGE OF OCCURRENCE

The **Named Insured** must give the Insurer or the Insurer's authorized representative notice of an **occurrence**, offense or **claim** only when the **occurrence**, offense or **claim** is known to a natural person **Named Insured**, to a partner, executive officer, manager or member of a **Named Insured**, or an **employee** designated by any of the above to give such notice.

B. NOTICE OF OCCURRENCE

The **Named Insured's** rights under this **Coverage Part** will not be prejudiced if the **Named Insured** fails to give the Insurer notice of an **occurrence**, offense or **claim** and that failure is solely due to the **Named Insured's** reasonable belief that the **bodily injury** or **property damage** is not covered under this **Coverage Part**. However, the **Named Insured** shall give written notice of such **occurrence**, offense or **claim** to the Insurer as soon as the **Named Insured** is aware that this insurance may apply to such **occurrence**, offense or **claim**.

5. BROAD NAMED INSURED

WHO IS AN INSURED is amended to delete its Paragraph 3. in its entirety and replace it with the following:

3. Pursuant to the limitations described in Paragraph 4. below, any organization in which a **Named Insured** has management control:
 - a. on the effective date of this **Coverage Part**; or

**Contractors' General Liability Extension Endorsement**

- B. Solely for the purpose of the coverage provided by this **PROPERTY DAMAGE – ELEVATORS** Provision, the **Other Insurance** conditions is amended to add the following paragraph:

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is Property insurance covering property of others damaged from the use of elevators.

23. SUPPLEMENTARY PAYMENTS

The section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** is amended as follows:

- A. Paragraph 1.b. is amended to delete the \$250 limit shown for the cost of bail bonds and replace it with a \$5,000. limit; and
- B. Paragraph 1.d. is amended to delete the limit of \$250 shown for daily loss of earnings and replace it with a \$1,000. limit.

24. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If the **Named Insured** unintentionally fails to disclose all existing hazards at the inception date of the **Named Insured's Coverage Part**, the Insurer will not deny coverage under this **Coverage Part** because of such failure.

25. WAIVER OF SUBROGATION - BLANKET

Under **CONDITIONS**, the condition entitled **Transfer Of Rights Of Recovery Against Others To Us** is amended to add the following:

The Insurer waives any right of recovery the Insurer may have against any person or organization because of payments the Insurer makes for injury or damage arising out of:

1. the **Named Insured's** ongoing operations; or
2. **your work** included in the **products-completed operations hazard**.

However, this waiver applies only when the **Named Insured** has agreed in writing to waive such rights of recovery in a written contract or written agreement, and only if such contract or agreement:

1. is in effect or becomes effective during the term of this **Coverage Part**; and
2. was executed prior to the **bodily injury, property damage or personal and advertising injury** giving rise to the claim.

26. WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS

Note: The following provision does not apply to any public construction project in the state of Oklahoma, nor to any construction project in the state of Alaska, that is not permitted to be insured under a **consolidated (wrap-up) Insurance program** by applicable state statute or regulation.

If the endorsement **EXCLUSION – CONSTRUCTION WRAP-UP** is attached to this policy, or another exclusionary endorsement pertaining to Owner Controlled Insurance Programs (O.C.I.P.) or Contractor Controlled Insurance Programs (C.C.I.P.) is attached, then the following changes apply:

- A. The following wording is added to the above-referenced endorsement:

With respect to a **consolidated (wrap-up) Insurance program** project in which the **Named Insured** is or was involved, this exclusion does not apply to those sums the **Named Insured** become legally obligated to pay as **damages** because of:

1. **Bodily injury, property damage, or personal or advertising injury** that occurs during the **Named Insured's** ongoing operations at the project, or during such operations of anyone acting on the **Named Insured's** behalf; nor



CONTRACTORS EXTENDED COVERAGE ENDORSEMENT - BUSINESS AUTO PLUS

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

I. LIABILITY COVERAGE

A. Who Is An Insured

The following is added to **Section II, Paragraph A.1., Who Is An Insured:**

1. a. Any incorporated entity of which the Named Insured owns a majority of the voting stock on the date of inception of this Coverage Form; provided that,
 - b. The insurance afforded by this provision **A.1.** does not apply to any such entity that is an **insured** under any other liability "policy" providing **auto** coverage.
2. Any organization you newly acquire or form, other than a limited liability company, partnership or joint venture, and over which you maintain majority ownership interest.

The insurance afforded by this provision **A.2.:**

- a. Is effective on the acquisition or formation date, and is afforded only until the end of the policy period of this Coverage Form, or the next anniversary of its inception date, whichever is earlier.
- b. Does not apply to:
 - (1) **Bodily injury or property damage** caused by an **accident** that occurred before you acquired or formed the organization; or
 - (2) Any such organization that is an **insured** under any other liability "policy" providing **auto** coverage.
3. Any person or organization that you are required by a written contract to name as an additional insured is an **insured** but only with respect to their legal liability for acts or omissions of a person, who qualifies as an **insured** under **SECTION II – WHO IS AN INSURED** and for whom Liability Coverage is afforded under this policy. If required by written contract, this insurance will be primary and non-contributory to insurance on which the additional insured is a Named Insured.
4. An **employee** of yours is an **insured** while operating an **auto** hired or rented under a contract or agreement in that **employee's** name, with your permission, while performing duties related to the conduct of your business.

"Policy", as used in this provision **A. Who Is An Insured**, includes those policies that were in force on the inception date of this Coverage Form but:

1. Which are no longer in force; or
2. Whose limits have been exhausted.

B. Bail Bonds and Loss of Earnings

Section II, Paragraphs A.2. (2) and A.2. (4) are revised as follows:

1. In **a.(2)**, the limit for the cost of bail bonds is changed from \$2,000 to \$5,000; and
2. In **a.(4)**, the limit for the loss of earnings is changed from \$250 to \$500 a day.

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 12; Page: 1 of 4

Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 7015418557

Policy Effective Date: **8/29/23**

Policy Page: 71 of 94



C. Fellow Employee

Section II, Paragraph B.5 does not apply.

Such coverage as is afforded by this provision C. is excess over any other collectible insurance.

II. PHYSICAL DAMAGE COVERAGE

A. Glass Breakage – Hitting A Bird Or Animal – Falling Objects Or Missiles

The following is added to **Section III, Paragraph A.3.:**

With respect to any covered **auto**, any deductible shown in the Declarations will not apply to glass breakage if such glass is repaired, in a manner acceptable to us, rather than replaced.

B. Transportation Expenses

Section III, Paragraph A.4.a. is revised, with respect to transportation expense incurred by you, to provide:

- a. \$60 per day, in lieu of \$20; subject to
- b. \$1,800 maximum, in lieu of \$600.

C. Loss of Use Expenses

Section III, Paragraph A.4.b. is revised, with respect to loss of use expenses incurred by you, to provide:

- a. \$1,000 maximum, in lieu of \$600.

D. Hired "Autos"

The following is added to **Section III, Paragraph A.:**

5. Hired "Autos"

If Physical Damage coverage is provided under this policy, and such coverage does not extend to Hired Autos, then Physical Damage coverage is extended to:

- a. Any covered **auto** you lease, hire, rent or borrow without a driver; and
- b. Any covered **auto** hired or rented by your **employee** without a driver, under a contract in that individual **employee's** name, with your permission, while performing duties related to the conduct of your business.
- c. The most we will pay for any one **accident** or **loss** is the actual cash value, cost of repair, cost of replacement or \$75,000, whichever is less, minus a \$500 deductible for each covered **auto**. No deductible applies to **loss** caused by fire or lightning.
- d. The physical damage coverage as is provided by this provision is equal to the physical damage coverage(s) provided on your owned **autos**.
- e. Such physical damage coverage for hired **autos** will:
 - (1) Include loss of use, provided it is the consequence of an **accident** for which the Named Insured is legally liable, and as a result of which a monetary loss is sustained by the leasing or rental concern.
 - (2) Such coverage as is provided by this provision will be subject to a limit of \$750 per **accident**.

E. Airbag Coverage

The following is added to **Section III, Paragraph B.3.:**

The accidental discharge of an airbag shall not be considered mechanical breakdown.

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 12; Page: 2 of 4

Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 7015418557

Policy Effective Date: 8/29/23

Policy Page: 72 of 94



F. Electronic Equipment

Section III, Paragraphs B.4.c and B.4.d. are deleted and replaced by the following:

- c. Physical Damage Coverage on a covered **auto** also applies to **loss** to any permanently installed electronic equipment including its antennas and other accessories
- d. A \$100 per occurrence deductible applies to the coverage provided by this provision.

G. Diminution In Value

The following is added to **Section III, Paragraph B.6.:**

Subject to the following, the **diminution in value** exclusion does not apply to:

- a. Any covered **auto** of the private passenger type you lease, hire, rent or borrow, without a driver for a period of 30 days or less, while performing duties related to the conduct of your business; and
- b. Any covered **auto** of the private passenger type hired or rented by your **employee** without a driver for a period of 30 days or less, under a contract in that individual **employee's** name, with your permission, while performing duties related to the conduct of your business.
- c. Such coverage as is provided by this provision is limited to a **diminution in value** loss arising directly out of accidental damage and not as a result of the failure to make repairs; faulty or incomplete maintenance or repairs; or the installation of substandard parts.
- d. The most we will pay for **loss** to a covered **auto** in any one accident is the lesser of:
 - (1) \$5,000; or
 - (2) 20% of the **auto's** actual cash value (ACV).

III. Drive Other Car Coverage – Executive Officers

The following is added to **Sections II and III:**

- 1. Any **auto** you don't own, hire or borrow is a covered **auto** for Liability Coverage while being used by, and for Physical Damage Coverage while in the care, custody or control of, any of your "executive officers", except:
 - a. An **auto** owned by that "executive officer" or a member of that person's household; or
 - b. An **auto** used by that "executive officer" while working in a business of selling, servicing, repairing or parking **autos**.

Such Liability and/or Physical Damage Coverage as is afforded by this provision.

- (1) Equal to the greatest of those coverages afforded any covered **auto**; and
- (2) Excess over any other collectible insurance.

- 2. For purposes of this provision, "executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document, and, while a resident of the same household, includes that person's spouse.

Such "executive officers" are **insureds** while using a covered **auto** described in this provision.

IV. BUSINESS AUTO CONDITIONS

A. Duties In The Event Of Accident, Claim, Suit Or Loss

The following is added to **Section IV, Paragraph A.2.a.:**

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 12; Page: 3 of 4

Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 7015418557

Policy Effective Date: 8/29/23

Policy Page: 73 of 94



- (4) Your **employees** may know of an **accident** or **loss**. This will not mean that you have such knowledge, unless such **accident** or **loss** is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

The following is added to **Section IV, Paragraph A.2.b.**:

- (6) Your **employees** may know of documents received concerning a claim or **suit**. This will not mean that you have such knowledge, unless receipt of such documents is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

B. Transfer Of Rights Of Recovery Against Others To Us

The following is added to **Section IV, Paragraph A.5. Transfer Of Rights Of Recovery Against Others To Us**:

We waive any right of recovery we may have, because of payments we make for injury or damage, against any person or organization for whom or which you are required by written contract or agreement to obtain this waiver from us.

This injury or damage must arise out of your activities under a contract with that person or organization.

You must agree to that requirement prior to an **accident** or **loss**.

C. Concealment, Misrepresentation or Fraud

The following is added to **Section IV, Paragraph B.2.**:

Your failure to disclose all hazards existing on the date of inception of this Coverage Form shall not prejudice you with respect to the coverage afforded provided such failure or omission is not intentional.

D. Other Insurance

The following is added to **Section IV, Paragraph B.5.**:

Regardless of the provisions of Paragraphs **5.a.** and **5.d.** above, the coverage provided by this policy shall be on a primary non-contributory basis. This provision is applicable only when required by a written contract.

That written contract must have been entered into prior to **Accident** or **Loss**.

E. Policy Period, Coverage Territory

Section IV, Paragraph B. 7.(5).(a). is revised to provide:

- a. 45 days of coverage in lieu of 30 days.

V. DEFINITIONS

Section V. paragraph C. is deleted and replaced by the following:

Bodily injury means bodily injury, sickness or disease sustained by a person, including mental anguish, mental injury or death resulting from any of these.

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 12; Page: 4 of 4

Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 7015418557

Policy Effective Date: **8/29/23**

Policy Page: 74 of 94

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

**ANY PERSON OR ORGANIZATION FOR WHOM THE NAMED INSURED IS
REQUIRED UNDER WRITTEN CONTRACT TO FURNISH THIS WAIVER,
FOR FLORIDA OPERATIONS ONLY.**

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective **08/29/2023** Policy No. **WFL 5061934 02**
Insured **BANDES CONSTRUCTION CO INC**
Insurance Company **INSURANCE COMPANY OF THE WEST**

Endorsement No.
Premium \$ **INCL.**

Countersigned By _____



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/27/2024

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

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

PRODUCER Bowen, Miclette & Britt of Florida, LLC 850 Concourse Parkway S Suite #105 Maitland FL 32751		CONTACT NAME: Michelle Rushing PHONE (A/C, No. Ext): 407-647-1616 E-MAIL ADDRESS: mrushing@bmbinc.com FAX (A/C, No): 407-628-1635	
		INSURER(S) AFFORDING COVERAGE	
		INSURER A: North River Insurance Co.	
		INSURER B: Insurance Co of the West	
		INSURER C: National Fire Ins Co of Hartford	
		INSURER D: Continental Casualty Co.	
		INSURER E:	
		INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** 2005481145 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
C	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC OTHER:	Y	Y	7015418560	8/29/2023	8/29/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Deductible \$ 10,000
D	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☒ ALL OWNED AUTOS ☒ HIRED AUTOS ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS	Y	Y	7015418557	8/29/2023	8/29/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☐ UMBRELLA LIAB ☒ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 0	Y	Y	5821219107	8/29/2023	8/29/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 10,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y	N/A	WFL508193402	8/29/2023	8/29/2024	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
The following policy provisions and/or endorsements form part of the policies of insurance represented by this certificate of insurance. The terms contained in the policies and/or endorsements supersede the representations made herein. Electronic copies of the policy provisions and/or endorsements listed below are available by emailing contact person shown above.

When required by written contract, those parties listed in said contract, including the certificate holder, are added as an additional insured with respect to the general liability, including on-going and completed operations, auto liability and umbrella liability as afforded by the policy and/or endorsements.

When required by written contract, waiver of subrogation, with respect to the general liability, auto liability, worker's compensation and umbrella is granted to See Attached...

CERTIFICATE HOLDER Town of Fort Myers Beach 2525 Estero Blvd. Fort Myers Beach FL 33931	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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**ADDITIONAL REMARKS SCHEDULE**Page 1 of 1

AGENCY Bowen, Miclette & Britt of Florida, LLC		NAMED INSURED Bandes Construction Co., Inc. 1368 Spalding Rd Ste C Dunedin FL 34698
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

those parties listed in said contract, including the certificate holder.

The general liability, auto liability, & umbrella liability certified herein are primary and non-contributory to other insurance available, but only to the extent required by written contract.

30-day notice of cancellation applies.

**CNA PARAMOUNT****Contractors' General Liability Extension Endorsement**

It is understood and agreed that this endorsement amends the **COMMERCIAL GENERAL LIABILITY COVERAGE PART** as follows. If any other endorsement attached to this policy amends any provision also amended by this endorsement, then that other endorsement controls with respect to such provision, and the changes made by this endorsement with respect to such provision do not apply.

TABLE OF CONTENTS

- | |
|---|
| 1. Additional Insureds |
| 2. Additional Insured - Primary And Non-Contributory To Additional Insured's Insurance |
| 3. Bodily Injury – Expanded Definition |
| 4. Broad Knowledge of Occurrence/ Notice of Occurrence |
| 5. Broad Named Insured |
| 6. Broadened Liability Coverage For Damage To Your Product And Your Work |
| 7. Contractual Liability - Railroads |
| 8. Electronic Data Liability |
| 9. Estates, Legal Representatives and Spouses |
| 10. Expected Or Intended Injury – Exception for Reasonable Force |
| 11. General Aggregate Limits of Insurance – Per Project |
| 12. In Rem Actions |
| 13. Incidental Health Care Malpractice Coverage |
| 14. Joint Ventures/Partnership/Limited Liability Companies |
| 15. Legal Liability – Damage To Premises / Alienated Premises / Property In The Named Insured's Care, Custody or Control |
| 16. Liquor Liability |
| 17. Medical Payments |
| 18. Non-owned Aircraft Coverage |
| 19. Non-owned Watercraft |
| 20. Personal And Advertising Injury – Discrimination or Humiliation |
| 21. Personal And Advertising Injury - Contractual Liability |
| 22. Property Damage - Elevators |
| 23. Supplementary Payments |
| 24. Unintentional Failure To Disclose Hazards |
| 25. Waiver of Subrogation – Blanket |
| 26. Wrap-Up Extension: OCIP CCIP, or Consolidated (Wrap-Up) Insurance Programs |

CNA74705XX (1-15)

Page 1 of 17

VALLEY FORGE INSURANCE COMPANY

Insured Name: BANDES CONSTRUCTION COMPANY, INC.

Policy No: 7015418560

Endorsement No:

Effective Date: 08/29/2023

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**Contractors' General Liability Extension Endorsement****1. ADDITIONAL INSURED**

- a. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization described in paragraphs A. through H. below whom a **Named Insured** is required to add as an additional insured on this **Coverage Part** under a written contract or written agreement, provided such contract or agreement:

(1) is currently in effect or becomes effective during the term of this **Coverage Part**; and

(2) was executed prior to:

(a) the **bodily injury** or **property damage**; or

(b) the offense that caused the **personal and advertising injury**,

for which such additional insured seeks coverage.

- b. However, subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

(1) a higher limit of insurance than required by such contract or agreement; or

(2) coverage broader than required by such contract or agreement, and in no event broader than that described by the applicable paragraph A. through H. below.

Any coverage granted by this endorsement shall apply only to the extent permissible by law.

A. Controlling Interest

Any person or organization with a controlling interest in a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of:

1. such person or organization's financial control of a **Named Insured**; or

2. premises such person or organization owns, maintains or controls while a **Named Insured** leases or occupies such premises;

provided that the coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

B. Co-owner of Insured Premises

A co-owner of a premises co-owned by a **Named Insured** and covered under this insurance but only with respect to such co-owner's liability for **bodily injury**, **property damage** or **personal and advertising injury** as co-owner of such premises.

C. Lessor of Equipment

Any person or organization from whom a **Named Insured** leases equipment, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** caused, in whole or in part, by the **Named Insured's** maintenance, operation or use of such equipment, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease.

D. Lessor of Land

Any person or organization from whom a **Named Insured** leases land but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the ownership, maintenance or use of such land, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease. The

**Contractors' General Liability Extension Endorsement**

coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

E. Lessor of Premises

An owner or lessor of premises leased to the **Named Insured**, or such owner or lessor's real estate manager, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of the ownership, maintenance or use of such part of the premises leased to the **Named Insured**, and provided that the occurrence giving rise to such **bodily injury or property damage**, or the offense giving rise to such **personal and advertising injury**, takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

F. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver of premises but only with respect to such mortgagee, assignee or receiver's liability for **bodily injury, property damage or personal and advertising injury** arising out of the **Named Insured's** ownership, maintenance, or use of a premises by a **Named Insured**.

The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

G. State or Governmental Agency or Subdivision or Political Subdivisions – Permits

A state or governmental agency or subdivision or political subdivision that has issued a permit or authorization but only with respect to such state or governmental agency or subdivision or political subdivision's liability for **bodily injury, property damage or personal and advertising injury** arising out of:

1. the following hazards in connection with premises a **Named Insured** owns, rents, or controls and to which this insurance applies:
 - a. the existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - b. the construction, erection, or removal of elevators; or
 - c. the ownership, maintenance or use of any elevators covered by this insurance; or
2. the permitted or authorized operations performed by a **Named Insured** or on a **Named Insured's** behalf.

The coverage granted by this paragraph does not apply to:

- a. **Bodily injury, property damage or personal and advertising injury** arising out of operations performed for the state or governmental agency or subdivision or political subdivision; or
- b. **Bodily injury or property damage** included within the **products-completed operations hazard**.

With respect to this provision's requirement that additional insured status must be requested under a written contract or agreement, the Insurer will treat as a written contract any governmental permit that requires the **Named Insured** to add the governmental entity as an additional insured.

H. Trade Show Event Lessor

1. With respect to a **Named Insured's** participation in a trade show event as an exhibitor, presenter or displayer, any person or organization whom the **Named Insured** is required to include as an additional insured, but only with respect to such person or organization's liability for **bodily injury, property damage or personal and advertising injury** caused by:

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**Contractors' General Liability Extension Endorsement**

- a. the **Named Insured's** acts or omissions; or
 - b. the acts or omissions of those acting on the **Named Insured's** behalf,
- in the performance of the **Named Insured's** ongoing operations at the trade show event premises during the trade show event.
2. The coverage granted by this paragraph does not apply to **bodily injury** or **property damage** included within the **products-completed operations hazard**.

2. ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY TO ADDITIONAL INSURED'S INSURANCE

The **Other Insurance** Condition in the **COMMERCIAL GENERAL LIABILITY CONDITIONS** Section is amended to add the following paragraph:

If the **Named Insured** has agreed in writing in a contract or agreement that this insurance is primary and non-contributory relative to an additional insured's own insurance, then this insurance is primary, and the Insurer will not seek contribution from that other insurance. For the purpose of this Provision 2., the additional insured's own insurance means insurance on which the additional insured is a named insured. Otherwise, and notwithstanding anything to the contrary elsewhere in this Condition, the insurance provided to such person or organization is excess of any other insurance available to such person or organization.

3. BODILY INJURY – EXPANDED DEFINITION

Under **DEFINITIONS**, the definition of **bodily injury** is deleted and replaced by the following:

Bodily injury means physical injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the physical injury, sickness or disease.

4. BROAD KNOWLEDGE OF OCCURRENCE/ NOTICE OF OCCURRENCE

Under **CONDITIONS**, the condition entitled **Duties In The Event of Occurrence, Offense, Claim or Suit** is amended to add the following provisions:

A. BROAD KNOWLEDGE OF OCCURRENCE

The **Named Insured** must give the Insurer or the Insurer's authorized representative notice of an **occurrence**, offense or **claim** only when the **occurrence**, offense or **claim** is known to a natural person **Named Insured**, to a partner, executive officer, manager or member of a **Named Insured**, or an **employee** designated by any of the above to give such notice.

B. NOTICE OF OCCURRENCE

The **Named Insured's** rights under this **Coverage Part** will not be prejudiced if the **Named Insured** fails to give the Insurer notice of an **occurrence**, offense or **claim** and that failure is solely due to the **Named Insured's** reasonable belief that the **bodily injury** or **property damage** is not covered under this **Coverage Part**. However, the **Named Insured** shall give written notice of such **occurrence**, offense or **claim** to the Insurer as soon as the **Named Insured** is aware that this insurance may apply to such **occurrence**, offense or **claim**.

5. BROAD NAMED INSURED

WHO IS AN INSURED is amended to delete its Paragraph 3. in its entirety and replace it with the following:

3. Pursuant to the limitations described in Paragraph 4. below, any organization in which a **Named Insured** has management control:
- a. on the effective date of this **Coverage Part**; or

**Contractors' General Liability Extension Endorsement**

- B. Solely for the purpose of the coverage provided by this **PROPERTY DAMAGE – ELEVATORS** Provision, the **Other Insurance** conditions is amended to add the following paragraph:

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is Property insurance covering property of others damaged from the use of elevators.

23. SUPPLEMENTARY PAYMENTS

The section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** is amended as follows:

- A. Paragraph 1.b. is amended to delete the \$250 limit shown for the cost of bail bonds and replace it with a \$5,000. limit; and
- B. Paragraph 1.d. is amended to delete the limit of \$250 shown for daily loss of earnings and replace it with a \$1,000. limit.

24. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If the **Named Insured** unintentionally fails to disclose all existing hazards at the inception date of the **Named Insured's Coverage Part**, the Insurer will not deny coverage under this **Coverage Part** because of such failure.

25. WAIVER OF SUBROGATION - BLANKET

Under **CONDITIONS**, the condition entitled **Transfer Of Rights Of Recovery Against Others To Us** is amended to add the following:

The Insurer waives any right of recovery the Insurer may have against any person or organization because of payments the Insurer makes for injury or damage arising out of:

1. the **Named Insured's** ongoing operations; or
2. **your work** included in the **products-completed operations hazard**.

However, this waiver applies only when the **Named Insured** has agreed in writing to waive such rights of recovery in a written contract or written agreement, and only if such contract or agreement:

1. is in effect or becomes effective during the term of this **Coverage Part**; and
2. was executed prior to the **bodily injury, property damage or personal and advertising injury** giving rise to the claim.

26. WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS

Note: The following provision does not apply to any public construction project in the state of Oklahoma, nor to any construction project in the state of Alaska, that is not permitted to be insured under a **consolidated (wrap-up) insurance program** by applicable state statute or regulation.

If the endorsement **EXCLUSION – CONSTRUCTION WRAP-UP** is attached to this policy, or another exclusionary endorsement pertaining to Owner Controlled Insurance Programs (O.C.I.P.) or Contractor Controlled Insurance Programs (C.C.I.P.) is attached, then the following changes apply:

- A. The following wording is added to the above-referenced endorsement:

With respect to a **consolidated (wrap-up) insurance program** project in which the **Named Insured** is or was involved, this exclusion does not apply to those sums the **Named Insured** become legally obligated to pay as **damages** because of:

1. **Bodily injury, property damage, or personal or advertising injury** that occurs during the **Named Insured's** ongoing operations at the project, or during such operations of anyone acting on the **Named Insured's** behalf; nor



CONTRACTORS EXTENDED COVERAGE ENDORSEMENT - BUSINESS AUTO PLUS

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

I. LIABILITY COVERAGE

A. Who Is An Insured

The following is added to **Section II, Paragraph A.1., Who Is An Insured:**

1. a. Any incorporated entity of which the Named Insured owns a majority of the voting stock on the date of inception of this Coverage Form; provided that,
 - b. The insurance afforded by this provision **A.1.** does not apply to any such entity that is an **insured** under any other liability "policy" providing **auto** coverage.
2. Any organization you newly acquire or form, other than a limited liability company, partnership or joint venture, and over which you maintain majority ownership interest.

The insurance afforded by this provision **A.2.:**

- a. Is effective on the acquisition or formation date, and is afforded only until the end of the policy period of this Coverage Form, or the next anniversary of its inception date, whichever is earlier.
- b. Does not apply to:
 - (1) **Bodily injury or property damage** caused by an **accident** that occurred before you acquired or formed the organization; or
 - (2) Any such organization that is an **insured** under any other liability "policy" providing **auto** coverage.
3. Any person or organization that you are required by a written contract to name as an additional insured is an **insured** but only with respect to their legal liability for acts or omissions of a person, who qualifies as an **insured** under **SECTION II – WHO IS AN INSURED** and for whom Liability Coverage is afforded under this policy. If required by written contract, this insurance will be primary and non-contributory to insurance on which the additional insured is a Named Insured.
4. An **employee** of yours is an **insured** while operating an **auto** hired or rented under a contract or agreement in that **employee's** name, with your permission, while performing duties related to the conduct of your business.

"Policy", as used in this provision **A. Who Is An Insured**, includes those policies that were in force on the inception date of this Coverage Form but:

1. Which are no longer in force; or
2. Whose limits have been exhausted.

B. Bail Bonds and Loss of Earnings

Section II, Paragraphs A.2. (2) and A.2. (4) are revised as follows:

1. In **a.(2)**, the limit for the cost of bail bonds is changed from \$2,000 to \$5,000; and
2. In **a.(4)**, the limit for the loss of earnings is changed from \$250 to \$500 a day.

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 12; Page: 1 of 4

Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 7015418557

Policy Effective Date: 8/29/23

Policy Page: 71 of 94



C. Fellow Employee

Section II, Paragraph B.5 does not apply.

Such coverage as is afforded by this provision C. is excess over any other collectible insurance.

II. PHYSICAL DAMAGE COVERAGE

A. Glass Breakage – Hitting A Bird Or Animal – Falling Objects Or Missiles

The following is added to **Section III, Paragraph A.3.:**

With respect to any covered **auto**, any deductible shown in the Declarations will not apply to glass breakage if such glass is repaired, in a manner acceptable to us, rather than replaced.

B. Transportation Expenses

Section III, Paragraph A.4.a. is revised, with respect to transportation expense incurred by you, to provide:

- a. \$60 per day, in lieu of \$20; subject to
- b. \$1,800 maximum, in lieu of \$600.

C. Loss of Use Expenses

Section III, Paragraph A.4.b. is revised, with respect to loss of use expenses incurred by you, to provide:

- a. \$1,000 maximum, in lieu of \$600.

D. Hired "Autos"

The following is added to **Section III, Paragraph A.:**

5. Hired "Autos"

If Physical Damage coverage is provided under this policy, and such coverage does not extend to Hired Autos, then Physical Damage coverage is extended to:

- a. Any covered **auto** you lease, hire, rent or borrow without a driver; and
- b. Any covered **auto** hired or rented by your **employee** without a driver, under a contract in that individual **employee's** name, with your permission, while performing duties related to the conduct of your business.
- c. The most we will pay for any one **accident** or **loss** is the actual cash value, cost of repair, cost of replacement or \$75,000, whichever is less, minus a \$500 deductible for each covered **auto**. No deductible applies to **loss** caused by fire or lightning.
- d. The physical damage coverage as is provided by this provision is equal to the physical damage coverage(s) provided on your owned **autos**.
- e. Such physical damage coverage for hired **autos** will:
 - (1) Include loss of use, provided it is the consequence of an **accident** for which the Named Insured is legally liable, and as a result of which a monetary loss is sustained by the leasing or rental concern.
 - (2) Such coverage as is provided by this provision will be subject to a limit of \$750 per **accident**.

E. Airbag Coverage

The following is added to **Section III, Paragraph B.3.:**

The accidental discharge of an airbag shall not be considered mechanical breakdown.

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 12; Page: 2 of 4

Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 7015418557

Policy Effective Date: 8/29/23 ?

Policy Page: 72 of 94



F. Electronic Equipment

Section III, Paragraphs B.4.c and B.4.d. are deleted and replaced by the following:

- c. Physical Damage Coverage on a covered **auto** also applies to **loss** to any permanently installed electronic equipment including its antennas and other accessories
- d. A \$100 per occurrence deductible applies to the coverage provided by this provision.

G. Diminution In Value

The following is added to **Section III, Paragraph B.6.:**

Subject to the following, the **diminution in value** exclusion does not apply to:

- a. Any covered **auto** of the private passenger type you lease, hire, rent or borrow, without a driver for a period of 30 days or less, while performing duties related to the conduct of your business; and
- b. Any covered **auto** of the private passenger type hired or rented by your **employee** without a driver for a period of 30 days or less, under a contract in that individual **employee's** name, with your permission, while performing duties related to the conduct of your business.
- c. Such coverage as is provided by this provision is limited to a **diminution in value** loss arising directly out of accidental damage and not as a result of the failure to make repairs; faulty or incomplete maintenance or repairs; or the installation of substandard parts.
- d. The most we will pay for **loss** to a covered **auto** in any one accident is the lesser of:
 - (1) \$5,000; or
 - (2) 20% of the **auto's** actual cash value (ACV).

III. Drive Other Car Coverage – Executive Officers

The following is added to **Sections II and III:**

- 1. Any **auto** you don't own, hire or borrow is a covered **auto** for Liability Coverage while being used by, and for Physical Damage Coverage while in the care, custody or control of, any of your "executive officers", except:
 - a. An **auto** owned by that "executive officer" or a member of that person's household; or
 - b. An **auto** used by that "executive officer" while working in a business of selling, servicing, repairing or parking **autos**.

Such Liability and/or Physical Damage Coverage as is afforded by this provision.

- (1) Equal to the greatest of those coverages afforded any covered **auto**; and
- (2) Excess over any other collectible insurance.

- 2. For purposes of this provision, "executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document, and, while a resident of the same household, includes that person's spouse.

Such "executive officers" are **insureds** while using a covered **auto** described in this provision.

IV. BUSINESS AUTO CONDITIONS

A. Duties In The Event Of Accident, Claim, Suit Or Loss

The following is added to **Section IV, Paragraph A.2.a.:**

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 12; Page: 3 of 4

Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 7015418557

Policy Effective Date: 8/29/23

Policy Page: 73 of 94



- (4) Your **employees** may know of an **accident** or **loss**. This will not mean that you have such knowledge, unless such **accident** or **loss** is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

The following is added to **Section IV, Paragraph A.2.b.:**

- (6) Your **employees** may know of documents received concerning a claim or **suit**. This will not mean that you have such knowledge, unless receipt of such documents is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

B. Transfer Of Rights Of Recovery Against Others To Us

The following is added to **Section IV, Paragraph A.5. Transfer Of Rights Of Recovery Against Others To Us:**

We waive any right of recovery we may have, because of payments we make for injury or damage, against any person or organization for whom or which you are required by written contract or agreement to obtain this waiver from us.

This injury or damage must arise out of your activities under a contract with that person or organization.

You must agree to that requirement prior to an **accident** or **loss**.

C. Concealment, Misrepresentation or Fraud

The following is added to **Section IV, Paragraph B.2.:**

Your failure to disclose all hazards existing on the date of inception of this Coverage Form shall not prejudice you with respect to the coverage afforded provided such failure or omission is not intentional.

D. Other Insurance

The following is added to **Section IV, Paragraph B.5.:**

Regardless of the provisions of Paragraphs 5.a. and 5.d. above, the coverage provided by this policy shall be on a primary non-contributory basis. This provision is applicable only when required by a written contract.

That written contract must have been entered into prior to **Accident** or **Loss**.

E. Policy Period, Coverage Territory

Section IV, Paragraph B. 7.(5).(a). is revised to provide:

- a. 45 days of coverage in lieu of 30 days.

V. DEFINITIONS

Section V. paragraph C. is deleted and replaced by the following:

Bodily injury means bodily injury, sickness or disease sustained by a person, including mental anguish, mental injury or death resulting from any of these.

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 12; Page: 4 of 4

Underwriting Company: Transportation Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: BUA 7015418557

Policy Effective Date: 8/29/23

Policy Page: 74 of 94

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

**ANY PERSON OR ORGANIZATION FOR WHOM THE NAMED INSURED IS
REQUIRED UNDER WRITTEN CONTRACT TO FURNISH THIS WAIVER,
FOR FLORIDA OPERATIONS ONLY.**

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective **08/29/2023** Policy No. **WFL 5061934 02**
Insured **BANDES CONSTRUCTION CO INC**
Insurance Company **INSURANCE COMPANY OF THE WEST**

Endorsement No.
Premium \$ **INCL.**

Countersigned By _____



CRUM & FORSTER®
A FAIRFAX COMPANY

Policy #5821219107
Effective Dates: 08/29/2023-08/29/2024

EXCESS LIABILITY COVERAGE FORM

Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine rights, duties and what is and is not covered.

Throughout this Policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this Policy. The words "we", "us" and "our" refer to the company providing this insurance. The word "insured" means any person or organization qualifying as such under the "controlling underlying insurance".

Other words and phrases that appear in quotation marks in this Policy have special meaning. Refer to **SECTION IV – DEFINITIONS**. Other words and phrases that are not defined under this Policy but defined in the "controlling underlying insurance" will have the meaning described in the policy of "controlling underlying insurance".

SECTION I – COVERAGES

1. Insuring Agreement

- a. We will pay on behalf of the insured the "ultimate net loss" in excess of the "retained limit" because of "injury or damage" to which this insurance applies.

We will have the right and duty to defend the insured against any "suit" seeking damages for such "injury or damage" when the "retained limit" has been paid in full. When we have no duty to defend, we will have the right to defend, or to associate in the defense of, the insured against any "suit" seeking damages for "injury or damage".

However, we will have no duty to defend the insured against any "suit" seeking damages for which insurance under this Policy does not apply.

At our discretion, we may investigate any "event" that may involve this insurance and settle any resultant claim or "suit".

But:

- (1) The amount we will pay for "ultimate net loss" is limited as described in **SECTION II – LIMITS OF INSURANCE**; and
- (2) Our right and duty to defend ends when we have paid the applicable limit of insurance in the payment of judgments or settlements under this Policy. However, if the policy of "controlling underlying insurance" specifies that limits are reduced by defense expenses, our right and duty to defend ends when we have paid the applicable limit of insurance in the payment of defense expenses, judgments, or settlements under this Policy.
- b. The insurance under this Policy will follow the same provisions, exclusions, conditions and limitations that are contained in the applicable "controlling underlying insurance", unless otherwise directed by this Policy. To the extent such provisions differ or conflict, the provisions of this Policy will apply. However, the coverage under this Policy will not be broader than that provided by any "underlying insurance".
- If any applicable "underlying insurance" does not pay for "ultimate net loss" for any reason other than the exhaustion of its applicable limit of insurance by payment of claims or "suits", then this Policy will not cover such "ultimate net loss".
- c. There may be more than one "controlling underlying insurance" listed in the Schedule of Underlying Insurance, and there may be terms and provisions in those respective policies that are in conflict and which are not superseded by the provisions of this Policy. In such a case, the provisions, exclusions and

limitations of the "controlling underlying insurance" applicable to the particular "event" for which a claim is made or "suit" is brought will apply.

- d. If any other limit, such as a sublimit, is specified in the "underlying insurance", this insurance does not apply to "injury or damage" arising out of that exposure unless that limit is specified in the Schedule of Underlying Insurance.
- e. Any person or entity qualifying as an additional insured under the "controlling underlying insurance" will be an additional insured under this Policy. If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the minimum amount of insurance required by the contract or agreement less any amounts payable by "underlying insurance" and all other insurance available to the additional insured. Under no circumstances will we pay on behalf of the additional insured an amount exceeding the available Limit of Insurance applicable under this Policy.

Additional insured coverage, as provided by this Policy, will not be broader than coverage provided by any "underlying insurance".

2. Exclusions

Insurance provided under this Policy does not apply to:

a. Asbestos

"Injury or damage", loss, cost or expense directly or indirectly caused by, resulting from, in consequence of, or in any way involving asbestos or any materials containing asbestos in whatever form or quantity.

This exclusion applies regardless of any other contributing or aggravating cause or "event" that contributes concurrently or in any sequence to the "injury or damage", loss, cost or expense.

b. Auto

"Injury or damage", loss, cost or expense payable under or resulting from any of the following auto coverages:

- (1) First-party physical damage coverage;
- (2) No-fault coverage;
- (3) Personal injury protection or auto medical payments coverage; or
- (4) Uninsured or underinsured motorists' coverage.

c. Pollution

(1) "Injury or damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release, or escape of "pollutants" at any time.

(2) Any loss, cost or expense arising out of any:

- (a) Request, demand, order, or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, or in any way responding to, or assessing the effects of "pollutants".

This exclusion applies whether or not such "pollutants" have any function in your business, operations, premises, site, or location.

d. Workers' Compensation and Similar Laws

Any obligation of any insured under a workers' compensation, disability benefits, unemployment compensation law, or any similar law.

SECTION II – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought or number of vehicles involved;
 - c. Persons or organizations making claims or bringing "suits"; or
 - d. Limits available under any "underlying insurance".
2. The Limits of Insurance as shown in the Declarations will apply as follows:
 - a. This insurance only applies in excess of the "retained limit".
 - b. The Total Policy Aggregate Limit, if stated in the Declarations, is the most we will pay for the sum of all "ultimate net loss" for all "injury or damage" covered under this Policy other than any claims for damages arising out of the ownership, maintenance, or use of a covered auto. The Total Policy Aggregate Limit applies regardless of the sums indicated in the Declarations for any General Aggregate Limit or Products-Completed Operations Aggregate Limit, and applies collectively, rather than separately, to all locations or projects.
 - c. Subject to 2.b. above, the General Aggregate Limit, if stated in the Declarations, is the most we will pay for the sum of all "ultimate net loss" for all "injury or damage" covered under this Policy other than any claims for damages falling within the products-completed operations hazard or arising out of the ownership, maintenance or use of a covered auto.

Subject to 2.b. above, the Products-Completed Operations Aggregate Limit, if stated in the Declarations, is the most we will pay for the sum of all "ultimate net loss" for all "injury or damage" included within the products-completed operations hazard.

However, if any "underlying insurance" does not provide separate aggregate limits for "ultimate net loss" within the products-completed operations hazard, the General Aggregate set forth above is the most we will pay for all "ultimate net loss", including "ultimate net loss" within the products-completed operations hazard. Under such circumstances, any limit appearing in the Declarations for a Products-Completed Operations Aggregate Limit does not apply.
 - d. Subject to Paragraph 2.b. and 2.c. above, the Each Occurrence Limit is the most we will pay for the sum of all "ultimate net loss" under this Policy because of all "injury or damage" arising out of any one "event".
 - e. If the Limits of Insurance of the "controlling underlying insurance" are reduced by defense expenses by the terms of that policy, any payments for defense expenses we make will reduce our applicable Limits of Insurance in the same manner.
3. The Aggregate Limits of "underlying insurance", where applicable, shall be unimpaired at the attachment date of this Policy, and for the purpose of this insurance, only "events" to which this insurance applies, taking place during the Policy Period of this Policy, shall be considered in determining the extent of any exhaustion of the Aggregate Limits of "underlying insurance", where applicable.
4. If this Policy and any other policy issued by us, or by any other affiliated insurance company within the Crum & Forster group of companies, applies to the same incident, "event," act, offense, claim, "suit," or occurrence for which any insured under this Policy is legally liable, then the maximum limit of insurance payable for all "injury or damage" covered under the policies will not exceed the highest applicable Each Occurrence limit of insurance available under any one policy for the incident, "event," act, offense, claim, "suit," or occurrence. However, this does not apply to any other insurance issued to you by us, or by any affiliated insurance company within the Crum & Forster group of companies, which is specifically written to be either primary or in excess of this Policy.

The General Aggregate Limit, the Products-Completed Operations Aggregate Limit, and the Total Policy Aggregate Limit of this Policy apply separately to each consecutive annual period of this Policy and to any remaining period of this Policy of less than 12 months, starting with the beginning of the Policy Period shown in

the Declarations, unless the Policy Period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION III – CONDITIONS

The following conditions apply:

1. Appeals

If any "underlying insurer" or insured elects not to appeal a judgment in excess of the amount of the "retained limit", we may do so at our own expense. We also will pay for taxable court costs, pre and post judgment interest and disbursements associated with such appeal. In no event will this provision increase our liability beyond the applicable Limits of Insurance described in **SECTION II – LIMITS OF INSURANCE**.

2. Bankruptcy

a. Bankruptcy or Insolvency of Insured

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Policy.

b. Bankruptcy of Underlying Insurer

Bankruptcy or insolvency of any "underlying insurer" will not relieve us of our obligations under this Policy. However, insurance provided under this Policy will not replace any "underlying insurance" in the event of bankruptcy or insolvency of the "underlying insurer". The insurance provided under this Policy will apply as if the "underlying insurance" were in full effect and recoverable.

3. Cancellation

a. The first Named Insured shown in the Declarations may cancel this Policy by mailing or delivering to us advance written notice of cancellation.

b. We may cancel this Policy by mailing or delivering to the first Named Insured written notice of cancellation at least:

(1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or

(2) 30 days before the effective date of cancellation if we cancel for any other reason.

c. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.

d. Notice of cancellation will state the effective date of cancellation. The Policy Period will end on that date.

e. If this Policy is cancelled, subject to any audit, we will send the first Named Insured any premium refund due. If we cancel, any refund will be pro rata. If the first Named Insured cancels, any refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.

f. If notice is mailed, proof of mailing will be sufficient proof of notice.

4. Changes

This Policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured is authorized by all other insureds to make changes in the terms and conditions of this Policy, with our consent, provided, however, that this Policy's terms and conditions can be amended or waived only by written endorsement issued by us and made a part of this Policy.

5. Duties in the Event of a Claim, Event, or Suit

a. You must see to it that we are notified as soon as practicable of an "event", regardless of the amount, which may result in a claim under this Policy. To the extent possible, notice should include:

(1) How, when and where the "event" took place;

- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any "injury or damage" arising out of the "event".
- b. If a claim is made or "suit" is brought against any insured, you must:
 - (1) Immediately record the specifics of the claim or "suit" and the date received; and
 - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. You and any other insured involved must:
 - (1) Immediately send us copies of any demands, notices, summonses, or legal papers received in connection with the claim or "suit";
 - (2) Authorize us to obtain records and other information;
 - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
 - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of "injury or damage" to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

6. Examination of Your Books and Records

We may examine and audit your books and records as they relate to this Policy at any time during the Policy Period and up to three years afterward.

7. First Named Insured Duties

The first Named Insured is the person or organization first named in the Declarations and is responsible for the payment of all premiums. The first Named Insured will act on behalf of all other insureds for giving and receiving of notice of cancellation or the receipt of any return premium that may become payable.

The first Named Insured will furnish us, as soon as practicable, with a complete copy of any "underlying insurance" and any subsequently issued endorsements or policies which may in any way affect the insurance provided under this Policy.

8. Legal Action Against Us

No person or organization has a right under this Policy to join us as a party or otherwise bring us into a "suit" asking for damages from an insured or to sue us on this Policy unless all of its terms have been fully complied with. A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured, but we will not be liable for damages that are not payable under the terms of this Policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured, "underlying insurer" and the claimant or the claimant's legal representative.

9. Loss Payable

Liability under this Policy does not apply to a given claim unless and until the insured or insured's "underlying insurer" has become obligated to pay the "retained limit", and the obligation of the insured to pay the "ultimate net loss" in excess of the "retained limit" has been determined by a final settlement or judgment or written agreement among the insured, claimant, "underlying insurer" (or a representative of one or more of these) and us.

10. Maintenance of/Changes to Underlying Insurance

Any "underlying insurance" must be maintained in full effect during the Policy Period of this Policy, without change of coverage or reduction of limits except for the reduction of aggregate limits in accordance with the provisions of such "underlying insurance" that results from "injury or damage" to which this insurance applies. Such exhaustion or reduction of limits is not a failure to maintain "underlying insurance".

Failure to maintain "underlying insurance" will not invalidate insurance provided under this Policy, but insurance provided under this Policy will apply as if the "underlying insurance" were in full effect.

The first Named Insured must notify us in writing, as soon as practicable, if any "underlying insurance" is cancelled, not renewed, replaced, otherwise terminated, or if the limits or scope of coverage of any "underlying insurance" is changed.

11. Other Insurance

- a. If other insurance that is not "underlying insurance" applies to any claim or "suit" that is also covered under this Policy, then this Policy shall apply in excess of and shall not contribute with such other insurance.
- b. When a person or organization that is an additional insured under all "underlying insurance" requires in a written contract with you that this insurance be non-contributory, then we shall not seek contribution from other insurers that provide coverage to the additional insured as a Named Insured for "ultimate net loss" sustained by such additional insured after all underlying limits have been exhausted. If an additional insured has coverage under any other policy[ies] as an additional insured, this Policy applies excess of all such insurance, and this Policy will not contribute to any "ultimate net loss". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where this Policy is required by written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

The provisions of this Other Insurance condition will not apply if such other insurance is specifically written to be excess of this Policy. If no other insurer defends, we may undertake to do so in accordance with the defense provisions set forth elsewhere in this Policy, but we will be entitled to the insured's rights against all those other insurers.

12. Premium

The premium, as stated in the Declarations of this Policy, is a flat premium, unless there is a rate per an exposure base shown on this Policy, and an endorsement stating such is attached to this Policy. In that case, the premium is subject to adjustment in accordance with the terms of that endorsement.

The premium, as stated in the Declarations of this Policy, may be adjusted if an additional premium charge is made to the "underlying insurance" or if there is an increase in the risk assumed by us during the Policy Period of this Policy.

13. Transfer of Defense

a. Defense Transferred to Us

When the "retained limit" has been paid in full, we will cooperate in the transfer of control to us of any outstanding claims or "suits" seeking damages to which this insurance applies and which would have been covered by the "underlying insurance" had the applicable "retained limit" not been exhausted.

Where the settlement of any "suit" defended by any "underlying insurer" results, or will result, in the exhaustion of the "retained limit" and also will require the payment of a portion of the Limits of Insurance under this Policy in order to effectuate the settlement, we will have the right, but not the duty, to assume the transfer of the defense of the insured with respect to that "suit", but we will be under no obligation to have the defense transferred to us unless and until the "retained limit" has been paid in full.

Where the satisfaction of any judgment entered against the insured in a "suit" defended by any "underlying insurer" results, or will result, in the exhaustion of the "retained limit" and also will require the payment of a portion of the Limits of Insurance under this Policy in order to effectuate the satisfaction of that judgment, we will have the right, but not the duty, to defend the insured with respect to that "suit", but we will be under no obligation to have the defense transferred to us.

b. Defense Transferred by Us

When our limits of insurance have been exhausted, our duty to provide a defense will cease. We will cooperate in the transfer of control of defense to any insurer specifically written as excess over this Policy of any outstanding claims or "suits" seeking damages to which this insurance applies and which would have been covered had the applicable limit not been exhausted.

In the event that there is no insurance written as excess over this Policy, we will cooperate in the transfer of control to the insured and its designated representative.

14. Transfer of Rights of Recovery Against Others to Us

If you have rights to recover all or part of any payment we have made under this Policy, those rights are transferred to us. You must do nothing after loss to impair them. At our request, you will bring "suit" or transfer those rights to us and help us enforce them.

If you and any insurer providing "underlying insurance", prior to the time of an "event", waive in writing any right of recovery against a specific person or organization for any liability, we also will waive any rights we may have against such person or organization to the same extent waived by you and any insurer providing "underlying insurance".

The amount recovered shall be apportioned in the inverse order of payment of the "ultimate net loss" to the extent of the actual payment. The expenses of all such recovery proceedings shall be apportioned in the ratio of respective recoveries.

SECTION IV – DEFINITIONS

As used in this Policy:

1. **"Controlling underlying insurance"** means a policy of insurance listed in the Schedule of Underlying Insurance and identified as "controlling underlying insurance".
2. **"Event"** means an occurrence, offense, accident, act, or other event to which the applicable "controlling underlying insurance" applies.
3. **"Injury or damage"** means any injury or damage covered in the applicable "controlling underlying insurance" arising from an "event".
4. **"Pollutants"** mean any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned, or reclaimed.
5. **"Retained limit"** means the sum of all applicable "underlying insurance" shown in the Schedule of Underlying Insurance and any other insurance or self-insurance applicable to the claim or "suit", except insurance specifically written to apply in excess of this Policy.
6. **"Suit"** means a civil proceeding in which damages because of "injury or damage" to which this insurance applies are alleged. "Suit" includes:
 - a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent or the "underlying insurer's" consent.
7. **"Ultimate net loss"** means the total sum, after reduction for recoveries or salvages collectible, that the insured becomes legally obligated to pay as damages by reason of:
 - a. Settlements, judgments, binding arbitration; or
 - b. Other binding alternate dispute resolution proceeding entered into with our consent.

"Ultimate net loss" includes defense expenses if the "controlling underlying insurance" specifies that limits are reduced by defense expenses.
8. **"Underlying insurance"** means the policy or policies (including any renewal or replacement of such policies) of insurance listed in the Schedule of Underlying Insurance including the "controlling underlying insurance" and any self-insured retentions.
9. **"Underlying insurer"** means any insurer that provides a policy of insurance listed in the Schedule of Underlying Insurance.

**SECOND AMENDMENT TO NON-EXCLUSIVE
RIGHT OF WAY LICENSE AGREEMENT**

THIS SECOND AMENDMENT is to that certain Non-Exclusive Right of Way Agreement, dated the 14th day of February, as amended on the 10th day of July _____, (“Agreement”) and is made and entered into this 10th day of July 2024, (“Amendment”), by and between the **TOWN OF FORT MYERS BEACH**, a Florida municipal corporation, (hereinafter, the “Town” or “Licensor”), and **BANDES CONSTRUCTION COMPANY, INC.**, a Florida Corporation, their successors and assigns, (collectively hereinafter, “Bandes” or “Licensee”).

WITNESSETH:

WHEREAS, the Town and Bandes entered into the Agreement to allow Bandes to use eleven (11) metered parking spaces on the Town’s property located at the corner of Old San Carlos Blvd. & Estero Blvd., Fort Myers Beach, as shown in Exhibit “A” of the Agreement, (the “Property”), for the location of construction equipment and dumpsters, which will remain on the Property, subject to the terms of the Agreement; and

WHEREAS, the Agreement expired on July 1, 2024; and

WHEREAS, the Town and Bandes mutually desire to extend the duration of the Agreement retroactively from July 1, 2024 through September 1, 2024; and

WHEREAS, the extension is in the best interests of the Town and is consistent with promotion of the health, safety, and welfare of its residents.

NOW, THEREFORE, in consideration of the covenants to be kept and performed by each of the parties hereto, and other good and valuable consideration paid by Bandes to the Town, receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

1. **DURATION.** Paragraph 7 of the Agreement, as amended, is hereby further amended to extend the duration of the Agreement, as amended, to September 1, 2024.
2. **REMAINING TERMS.** Other than the duration of the Agreement, as amended, all other terms and conditions of the Agreement, as amended, shall remain in full force and effect.
3. **EFFECTIVE DATE.** The effective date of this Second Amendment shall be retroactive to July 1, 2024.

IN WITNESS WHEREOF, the Town and Bandes have executed this Second Amendment as of the date and year first above written.

[Signatures and Attestation on the Following Page]

WITNESSES:

Yolanda Lynch
1st Witness Signature

Yolanda Lynch
1st Witness Print Name

[Signature]
2nd Witness Signature

Jeremy Brown
2nd Witness Print Name

LICENSEE: Bandes Construction Company,
Inc.

Robert Bandes
Print Name

President
Print Title

LICENSOR: Town of Fort Myers Beach

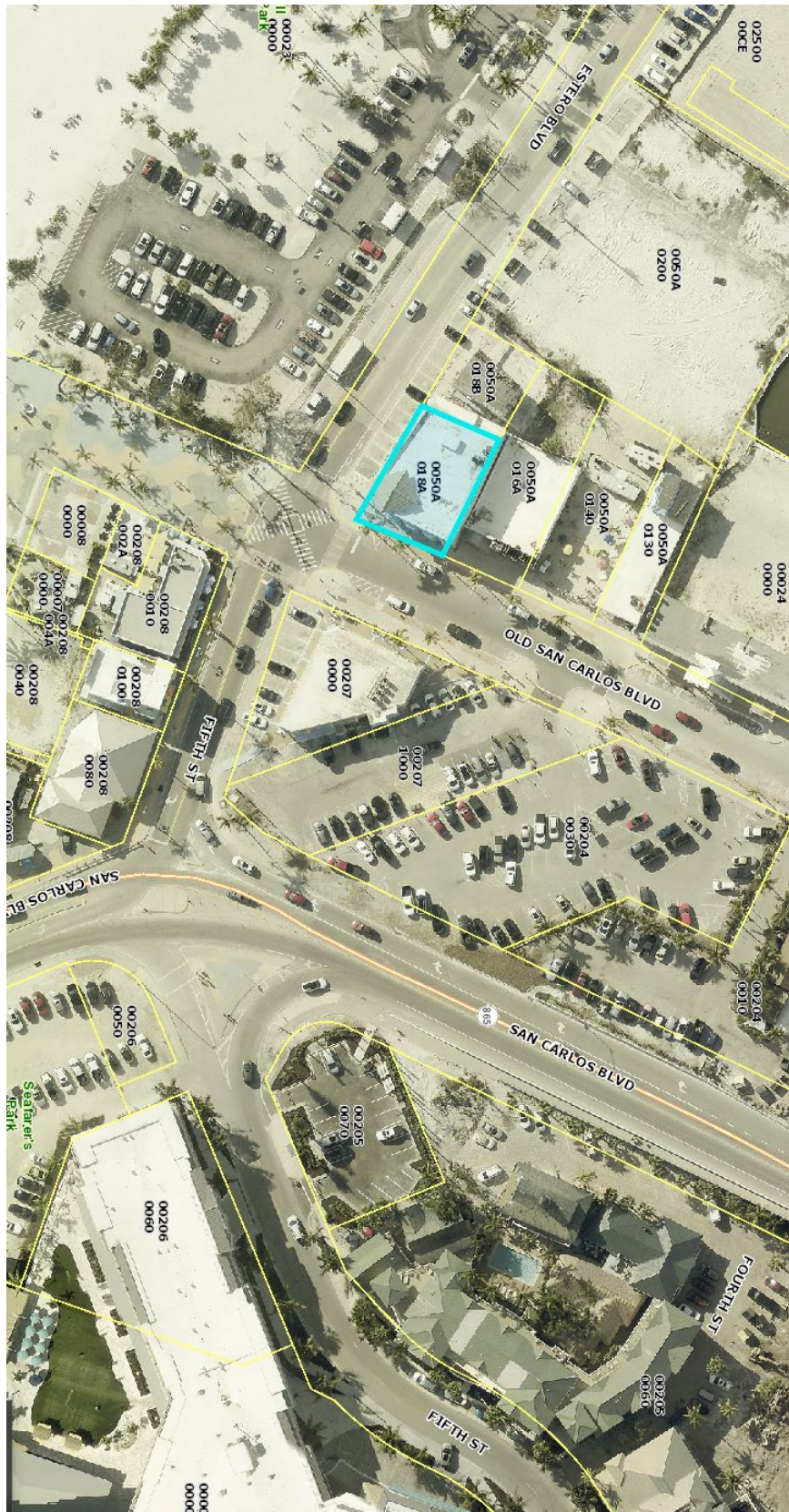
Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney



**THIRD AMENDMENT TO NON-EXCLUSIVE RIGHT OF WAY LICENSE
AGREEMENT**

THIS THIRD AMENDMENT TO NON-EXCLUSIVE RIGHT OF WAY LICENSE AGREEMENT, is made and entered into this 23rd day of September, (“Amendment”), and is by and between the **TOWN OF FORT MYERS BEACH**, a political subdivision of the State of Florida, (hereinafter, the “Town” or “Licensor”), and **BANDES CONSTRUCTION COMPANY, INC.**, a Florida Corporation, their successors and assigns, (collectively hereinafter, “Bandes” or “Licensee”), and amends that certain **NON-EXCLUSIVE RIGHT OF WAY LICENSE AGREEMENT** entered into on the 14th day of February, 2024 (“Agreement”); and

WHEREAS, the Town and Bandes entered into the Agreement to allow Bandes to use the Town’s property located at the corner of Old San Carlos Blvd. & Estero Blvd., Fort Myers Beach, situating eleven (11) metered parking spaces, which is more explicitly identified and reflected in Exhibit “A” of the Agreement, (the “Property”), for the location of construction equipment and dumpsters, which will remain on the Property, subject to the terms of the Agreement; and

WHEREAS, the Agreement expired on September 1, 2024; and

WHEREAS, the Town and Bandes mutually desire to extend the duration of the Agreement retroactively from September 1, 2024 through November 1, 2024; and

WHEREAS, the extension is in the best interests of the Town and is consistent with promotion of the health, safety, and welfare of its residents.

NOW, THEREFORE, in consideration of the covenants to be kept and performed by each of the parties hereto, and other good and valuable consideration paid by Bandes to the Town, receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

1. **DURATION.** Paragraph 7 of the Agreement is hereby amended to grant unto Bandes the continued non-exclusive right of way license to use the Property, retroactively from July 1, 2024 through October 1, 2024.

1. **REMAINING TERMS.** Other than the duration of the Agreement, which duration shall be extended retroactively from September 1, 2024 through November 1, 2024, all other terms and conditions of the Agreement shall remain in force and effect.

IN WITNESS WHEREOF, the Town and Bandes have executed this Amendment to the Agreement as of the date and year first above written.

[Signatures and Attestation on the Following Page]

WITNESSES:

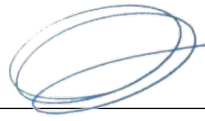
Yolanda Lynch
1st Witness Signature

Yolanda Lynch
1st Witness Print Name

Lisa Miller
2nd Witness Signature

Lisa Miller
2nd Witness Print Name

LICENSEE: Bandes Construction Company,
Inc.


Print Name

Robert Bandes, President
Print Title

LICENSOR: Town of Fort Myers Beach

Dan Allers, Mayor of Fort Myers Beach

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney