



Fort Myers Beach Town Council

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

Agenda

Monday, November 18, 2024

9:00 AM

ORDER OF BUSINESS

I. CALL TO ORDER

II. INVOCATION

III. PLEDGE OF ALLEGIANCE

IV. CERTIFICATION OF ELECTION RESULTS

A. Resolution 24-250; Certification of 2024 Municipal Election

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, CERTIFYING THE RESULTS OF THE 2024 TOWN ELECTION FOR SEATS THREE, FOUR AND FIVE; DETERMINING COUNCIL MEMBER SEAT ASSIGNMENTS; AND PROVIDING AN EFFECTIVE DATE.

V. INAUGURATION

A. Oath of Office

Based on the approval of Resolution 24-250, the motion is to request administration of the Oath of Office to:

Daniel L. Allers, Seat #3

Jim Atterholt, Seat #4

Scott Safford, Seat #5

and completion of the Oath of Office attached to this agenda item.

VI. REORGANIZATION OF COUNCIL OF NEWLY ELECTED OFFICIALS

A. Selection of Mayor and Vice Mayor

Selection of Mayor and Vice Mayor in accordance with the Town Charter.

VII. APPROVAL OF FINAL AGENDA

VIII. PUBLIC COMMENT

IX. LOCAL ACHIEVEMENTS AND RECOGNITIONS

X. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

XI. APPROVAL OF MINUTES

- A. Town Council - November 4, 2024
- B. Management & Planning Session - November 7, 2024

XII. CONSENT AGENDA

- A. Resolution 24-254; FMB Endorsement of Bonita Estero Rail Trail
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA IN SUPPORT OF EFFORTS BY THE FRIENDS OF BONITA ESTERO RAIL TRAIL TO DEVELOP THE EXISTING TRAIL WITH THE POSSIBILITY OF CONNECTIVITY TO FORT MYERS BEACH IN ORDER TO PROVIDE TRANSPORTATION ALTERNATIVES AND RECREATIONAL OPPORTUNITIES FOR RESIDENTS OF THE TOWN AS WELL AS ITS VISITORS; AND PROVIDING AN EFFECTIVE DATE.
- B. Resolution 24-246; Advisory Committee Votes
A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 5 OF RESOLUTION 23-182 AS AMENDED BY RESOLUTION 24-178, TO INCLUDE CERTIFICATION OF THE VOTE BY THE TOWN COUNCIL BEFORE A VOTE TO APPOINT MEMBERS TO THE TOWN'S ADVISORY BOARDS, COMMITTEES, AGENCY AND COMMISSIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

XIII. ITEMS REMOVED FROM CONSENT AGENDA

XIV. PUBLIC HEARINGS

- A. Motion for Reconsideration - Estero Island Beach Club (Ordinance 24-28)
Rehearing of AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA 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.
- B. Ordinance 24-34; DA20240170, Seagate/Home Rule Development Agreement
Second Reading of proposed Ordinance 24-34 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A HOME RULE DEVELOPMENT AGREEMENT FOR PROPERTY LOCATED AT 3001 ESTERO BOULEVARD, 2943 ESTERO BOULEVARD, 2932 ESTERO BOULEVARD, 211 DONORA BOULEVARD, FORT MYERS BEACH, FL, STRAP NOS. 29-46-24-W1-00145.1000, 29-46-24-W1-00145.5000, 30-46-24-W2-00001.0000, 29-46-24-W1-0120A.0010 AND OWNED BY SEAGATE FORT MYERS BEACH LLC, AS AUTHORIZED BY

SECTION 2-100 OF THE TOWN'S LAND DEVELOPMENT CODE AND IN COMPLIANCE WITH THE PROCEDURES FOR APPLICATION AND APPROVAL OF DEVELOPMENT AGREEMENTS WITH DEVIATIONS SET FORTH IN RESOLUTION NUMBER 24-73 FOR THE PURPOSE OF REDEVELOPMENT OF THE PROPERTY PREVIOUSLY KNOWN AS THE RED COCONUT RV PARK; PROVIDING FOR TERMS AND CONDITIONS INCLUDING BUT NOT LIMITED TO THE IDENTIFICATION OF THE PROPOSED USE OF THE PROPERTY, A FINDING OF CONSISTENCY WITH THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN, COMMITMENTS AND DEVELOPMENT OBLIGATIONS, DEVIATIONS NEEDED FOR DEVELOPMENT; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

C. Ordinance 24-30; Unsafe Building Code Appeals

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.

XV. ADMINISTRATIVE AGENDA

A. Resolution 24-246, Certification of Votes for Appointments

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 5 OF RESOLUTION 23-182 AS AMENDED BY RESOLUTION 24-178, TO INCLUDE CERTIFICATION OF THE VOTE BY THE TOWN COUNCIL BEFORE A VOTE TO APPOINT MEMBERS TO THE TOWN'S ADVISORY BOARDS, COMMITTEES, AGENCY AND COMMISSIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

1. Anchorage Advisory Committee (AAC)

Appoint members to the FY2024-2025 Anchorage Advisory Committee (AAC) and if necessary, waive any prohibition for service on more than

one committee

2. Audit Committee
Appoint Members to the FY2024-2025 Audit Committee and if necessary, waive any prohibition for service on more than one committee
3. Bay Oaks Recreational Campus Advisory Board
Appoint Members to the FY2024-2025 Bay Oaks Recreational Campus Advisory Board (BORCAB) and if necessary, waive any prohibition for service on more than one committee
4. Cultural and Environmental Learning Center Advisory Board
Appoint Members to the FY2024-2025 Cultural and Environmental Learning Center Advisory Board (CELCAB) and if necessary, waive any prohibition for service on more than one committee
5. Marine and Environmental Resources Task Force
Appoint Members to the FY2024-2025 Marine and Environmental Resources Task Force (MERTF) and if necessary, waive any prohibition for service on more than one committee
6. Public Safety Committee
Appoint Members to the FY2024-2025 Public Safety Committee (PSC) and if necessary, waive any prohibition for service on more than one committee
- B. Public Safety Committee
Appoint a new member to the FY2024-2025 Public Safety Committee (PSC)
- C. Proposed 2025 Town Council Schedule
Discuss and approve the monthly schedule for Town Council meetings for calendar year 2025
- D. Resolution 24-251; Uniform Method for the Levy, Collection and Enforcement of Non-Ad Valorem Assessments
A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA ADOPTING THE UNIFORM METHOD FOR THE LEVY, COLLECTION AND ENFORCEMENT OF NON-AD VALOREM ASSESSMENTS PURSUANT TO SECTION 197.3632, FLORIDA STATUTES FOR DEMOLITION OF UNSAFE STRUCTURES DETERMINED BY THE BUILDING OFFICIAL AND REMOVAL OF RESULTING DEBRIS, ANY TITLE SEARCH FEES, ANY AND ALL COSTS ASSOCIATED WITH APPELLATE REVIEW OF A PROPERTY OWNER'S APPEAL OF THE TOWN'S BUILDING OFFICIAL'S DETERMINATION DEEMING A STRUCTURE UNSAFE UNDER CHAPTER 34 OF THE TOWN'S LAND DEVELOPMENT CODE, AS AMENDED FROM TIME TO TIME, FOR THE FISCAL YEAR BEGINNING ON OCTOBER 1, 2024 AND SUBSEQUENT FISCAL YEARS, WITHIN THE TERRITORIAL BOUNDARIES OF THE TOWN; AND PROVIDING FOR AN EFFECTIVE DATE.

- E. Resolution 24-247; Development Agreements with Deviations
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING RESOLUTION 24-73, CONTAINING THE PROCEDURES FOR DEVELOPMENT AGREEMENTS WITH DEVIATIONS TO CLARIFY THAT THESE DEVELOPMENT AGREEMENTS ARE HOME RULE DEVELOPMENT AGREEMENTS AND TO AMEND RELATED NOTICE REQUIREMENTS FOR CONSISTENCY WITH NOTICE REQUIREMENTS IN SECTION 2-98 AND CHAPTER 34 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE AND REQUIRE A RECOMMENDATION FROM THE TOWN MANAGER REGARDING THE PROPOSED DEVELOPMENT AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.
- F. Resolution 24-221, Authorizing Contract with Tyler Technologies
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH AUTHORIZING THE TOWN MANAGER TO ENTER INTO A CONTRACT WITH TYLER TECHNOLOGIES TO PROVIDE SOFTWARE AS A SERVICE (SAAS) AND ANNUAL SUPPORT AND IMPLEMENTATION SERVICES TO REPLACE THE TOWN'S FINANCIAL AND ACCOUNTING SOFTWARE WITH TYLER ERP PRO, REPRESENTING AN INITIAL STARTUP FEE OF \$66,620 AND ANNUAL RECURRING FEES OF \$60,921; AUTHORIZING THE TOWN MANAGER TO SIGN THE CONTRACT AND ANY DOCUMENTS PERTAINING TO THE CONTRACT; AND PROVIDING FOR AN EFFECTIVE DATE.
- G. Resolution 24-253, Budget Amendment #8 - FY24 Year-End Adjustments
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, APPROVING YEAR-END BUDGET ADJUSTMENT #8 FOR FISCAL YEAR 2024; AND PROVIDING AN EFFECTIVE DATE.
- H. Resolution 24-252, Budget Amendment #7 - Allocation of FY24 Savings to Emergency Reserves
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, APPROVING BUDGET AMENDMENT #7 TO THE TOWN GENERAL FUND AND EMERGENCY FUND; PROVIDING AUTHORITY; EFFECTIVE DATE.

XVI. FINAL PUBLIC COMMENT

XVII. TOWN MANAGER'S ITEMS

XVIII. TOWN ATTORNEY'S ITEMS

XIX. COUNCILMEMBERS ITEMS AND REPORTS

XX. 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.

1. **Request:**

Meeting Date: November 18, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, CERTIFYING THE RESULTS OF THE 2024 TOWN ELECTION FOR SEATS THREE, FOUR AND FIVE; DETERMINING COUNCIL MEMBER SEAT ASSIGNMENTS; AND PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

This action follows the election requirements of the Town Charter.

What the action accomplishes:

This action effectuates the Town election of November 5, 2024, as required by the Town Charter.

2. **Agenda:**

CERTIFICATION OF ELECTION
RESULTS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

Certified results were not available at the time of publication of this agenda. The UNOFFICIAL results of the election at the time of publication were as below. Official, certified numbers will be announced and the draft resolution will be updated prior to filing with the Town Clerk.

<u>Choice</u>	<u>Total Votes</u>	<u>Percentage</u>
Dan Allers	2,043	31.95%
Jim Atterholt	1,956	30.59%
Scott Safford	1,258	19.67%
Greg Scasny	1,137	17.78%

Attachments:

1. 24-250, Certifying 2024 Election Results
2. UNOFFICIAL 2024 Municipal Election Results 11.6.2024

Financial Impact:

6. **Alternative Action**

There is no alternative action which is compliant with the Town Charter.

7. **Management Recommendations:**

8. **Recommended Approval:**

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

Created/Initiated - 11/5/2024
Approved - 11/12/2024
Approved - 11/13/2024
Final Approval - 11/13/2024

RESOLUTION NUMBER 24-250

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, CERTIFYING THE RESULTS OF THE 2024 TOWN ELECTION FOR SEATS THREE, FOUR AND FIVE; DETERMINING COUNCILMEMBER SEAT ASSIGNMENTS; AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, Article X of the Fort Myers Beach 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 Charter requires periodic elections for membership on the Town Council; and

WHEREAS, pursuant to the above authority, the Town Council called an election in the Town of Fort Myers Beach, which was duly held on November 5, 2024, for the purpose of having all the qualified electors within the Town determine the members of the Town Council for seats #3, #4 and #5; and

NOW, THEREFORE, IT IS RESOLVED BY THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA THAT:

Section 1. The above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein.

Section 2. The Lee County Canvassing Board has canvassed the ballots and certified same to the Lee County Supervisor of Elections (“SOE”); and, the SOE has in turn, certified the election results to the Town Council of the Town of Fort Myers Beach, Florida. The Town Council accepts and certifies the results of the election as provided by the SOE.

Section 3. The votes received by the candidates for Councilmember Seats 3, 4 and 5 are as follows (Exhibit “A”).

<u>NAME</u>	<u>NUMBER OF VOTES</u>
Daniel L. Allers	
Jim Atterholt	
Scott Safford	
Greg Scasny	

Section 4. In accordance with Town Charter Section 4.01 (b) “assignment of open seat numbers shall be alphabetically by incoming Council Members’ last names” and declares Daniel L. Allers elected as Council Member for **Seat #3**, Jim Atterholt elected as Council Member for **Seat #4**, and Scott Safford elected as Council Member for **Seat #5**.

Section 7. 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 a vote, the result was as follows:

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

ADOPTED this 18th day of November 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 November 2024.

☆ **Town of Fort Myers Beach Town Council (Vote For 3)**

Participating Precincts Reporting: 2 / 2

 [Precinct Details](#)



[Show Graphical View](#)

Choice	Election Day	Early Votes	Vote By Mail	Provisional	Total Votes	Percentage
Dan Allers (NON) 	370	567	1,106	0	2,043	31.95%
Jim Atterholt (NON) 	312	543	1,101	0	1,956	30.59%
Scott Safford (NON) 	225	366	667	0	1,258	19.67%
Greg Scasny (NON) 	213	281	643	0	1,137	17.78%

Tommy Doyle, Supervisor of Elections



LEE COUNTY
ELECTIONS



"Our mission is to deliver superior election services to the voters of Lee County."

2024 General Election

(Website last updated at: 11/05/2024 11:19:58 pm)

Election Date: 11/5/2024

Registered Voters:490,639

Ballots Cast:396,591

Voter Turnout:80.83%

Precincts Reporting:99 / 99

Election Day:Completely Reported

Early Votes:Completely Reported

Vote By Mail:Completely Reported

Summary Results

 Filter Races

Select a race:Town of Fort Myers Beach Town Council

Vote Type View:Detailed

A dash (-) represents detailed groups (Election Day, Vote By Mail, Early Votes, Provisional) with between 1 and 29 votes in accordance with Florida Statute 98.0981(3)(a)

309 Show Graphical View

Choice	Election Day	Early Votes	Vote By Mail	Provisional	Total Votes	Percentage
Dan Allers (NON)	163	167	325	0	655	31.03%
Jim Atterholt (NON)	147	163	314	0	624	29.56%
Scott Safford (NON)	108	108	188	0	404	19.14%
Greg Scasny (NON)	108	97	223	0	428	20.27%

321 Show Graphical View

Choice	Election Day	Early Votes	Vote By Mail	Provisional	Total Votes	Percentage
Dan Allers (NON)	207	400	781	0	1,388	32.41%
Jim Atterholt (NON)	165	380	787	0	1,332	31.10%
Scott Safford (NON)	117	258	479	0	854	19.94%
Greg Scasny (NON)	105	184	420	0	709	16.55%

1. **Request:**

Meeting Date: November 18, 2024

Based on the approval of Resolution 24-250, the motion is to request administration of the Oath of Office to:

Daniel L. Allers, Seat #3

Jim Atterholt, Seat #4

Scott Safford, Seat #5

and completion of the Oath of Office attached to this agenda item.

Why the action is necessary:

Complies with Art. II Sec. 5(b), Fla. Const.)

What the action accomplishes:

2. **Agenda:**

INAUGURATION

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

Attachments:

1. dsde56 Oath of Office

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 - 11/5/2024

Approved - 11/12/2024

Approved - 11/13/2024

Final Approval - 11/13/2024

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

STATE OF FLORIDA

County of _____

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

(Full Name of Office – Abbreviations Not Accepted)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words “so help me God.” See § 92.52, Fla. Stat.]

Signature

(Affix Seal Below)

Sworn to and subscribed before me by means of _____ physical presence

Or _____ online notarization this _____ day of _____, 20____.

Signature of Officer Administering Oath or of Notary Public

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☐ or Produced Identification ☐

Type of Identification Produced _____

ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: Home ☐ Office ☐

Street or Post Office Box

Print Name

City, State, Zip Code

Signature

1. **Request:**

Meeting Date: November 18, 2024

Selection of Mayor and Vice Mayor in accordance with the Town Charter.

Why the action is necessary:

Complies with the Town Charter

What the action accomplishes:

Fills the requirement for a Mayor and Vice Mayor per the Town Charter

2. **Agenda:**

REORGANIZATION OF COUNCIL
OF NEWLY ELECTED OFFICIALS

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

Per the Town Charter:

Sec. 4.02. Mayor.

At the first meeting after the second Tuesday in November, the council, by majority vote, shall elect from its membership a mayor. The mayor shall serve as chairperson during meetings of the council and shall serve as the head of municipal government for the purpose of execution of legal documents as required by ordinance. The mayor shall also serve as the ceremonial head of the town.

Sec.4.03. Vice mayor.

At the first meeting after the second Tuesday in November, the council, by a majority vote, shall elect from among its membership a vice mayor who shall serve as mayor during the absence or disability of the mayor and, if a vacancy occurs, shall become interim mayor pursuant to section 4.08 of this charter.

Attachments:

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 - 11/5/2024
Approved - 11/12/2024
Approved - 11/13/2024
Final Approval - 11/13/2024



Fort Myers Beach Town Council

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

Minutes

Monday, November 4, 2024

9:00 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

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

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

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

The motion carried unanimously.

V. PUBLIC COMMENT

Not recorded.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member King thanked Commissioner Ray Sandelli for his service. He thanked the spouses of the Council members.

Vice Mayor Atterholt agreed with everything Council Member King said.

Council Member Safford noted that all the shifts were full for sand sculpting, except for Sunday afternoon. He thanks Commissioner Sandelli.

Mayor Allers thanked Commissioner Sandelli and commented that the Town now has good communication with the county.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

Sam Lurie, Chair of the Anchorage Advisory Committee, indicated that the 2025 Cruiser's Appreciation Day party would be after Easter, with the time and place to be determined.

A. Andrew Site Work - Tier 1 Project Update

Chad Baker, Project Manager with Andrew Site Work noted the progress on the project was 57.7%. He provided a brief summary of the work and noted the project was broken into Phases A, B, C, and D. Phase A is 62% complete and is anticipated to be 100% complete by April 2025. Phase B is 63% complete and is anticipated to be 100% by March 2025. Phase C is 45% complete and is anticipated to be 100% complete by July 2025. Phase D is 58% complete and is anticipated to be 100% by April 2025.

Phase A includes Anchor, St. Peters, Hibiscus, Coconut, Sable, Randy, Williams, Avenida, Indian Bayou, Widgeon, Flamingo, Curlew, Egret, Ibis, Bayview, Estrellita and Bahia Via. Phase B includes Fairview Isles, Albatross, Fairview, Clearview, Sunview and Palmview. Phase C includes Shell Mound, Madison, Andre Mar, Mandalay and Gulfview. Phase D includes Mid Island, Bayland, Sterling, Seminole and Pepita.

All the water mains have been installed and the storm drains have been started. Completion is anticipated to be July 2025, which cuts the contract timeline in half.

Mr. Baker confirmed they worked with the residents to address problems and explained how the new storm drains increased capacity. Swales were graded to encourage drainage. He described how Bahia Via was repaired and indicated that residents should notice a difference during the next rain event. Operations & Compliance Director Frankie Kropacek described how Crescent was being improved to prevent flooding. Streets that have received new outfalls or upsized outfalls are Bayview, Williams, Bahia Via, Fairview, Shell Mound, Madison, Sterling and Pepita.

Director Kropacek reviewed the history of the infrastructure. Mayor Allers voiced his concerns that the work was inadequate for the future. He suggested that they find a way to connect to Bonita Springs water source. Director Kropacek stated that Bonita Springs tapped into Lee County. He noted that a second opinion regarding the system should be available by the December M&P. Mr. Baker commented that the capacity was there, but the design was flat instead of a 1% fall and there was no pressure to push the water out. He noted that it was too late to fix what was already done, but now they adjusted the design to ensure the water flowed. He indicated they could add a pump, but it would be costly.

VIII. APPROVAL OF MINUTES**A. Town Council - October 21, 2024**

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

The motion carried unanimously.

IX. CONSENT AGENDA

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

The motion carried unanimously.

A. Resolutions 24-223 through 24-226; Extension of Local Emergency - Hurricane Ian

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

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

The motion carried unanimously.

B. Resolutions 24-227 through 24-230; Extension of Local Emergency - Hurricane Idalia

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

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

The motion carried unanimously.

C. Resolutions 24-231 through 24-234; Extension of Local Emergency - 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.

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

The motion carried unanimously.

- D. Resolutions 24-235 through 24-238; Extension of Local Emergency - Hurricane Helene

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 HELENE (FORMERLY KNOWN AS POTENTIAL TROPICAL CYCLONE NINE) 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.

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

The motion carried unanimously.

- E. Resolutions 24-239 through 24-245: Extending Local State of Emergency, Hurricane Milton

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 MILTON, 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.

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

The motion carried unanimously.

X. ITEMS REMOVED FROM CONSENT AGENDA

None.

XI. PUBLIC HEARINGS

- A. Ordinance 24-34; DA20240170, Seagate/Home Rule Development Agreement

Continued to November 18, 2024 due to state required advertising requirements: Second Reading of proposed Ordinance 24-34 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A HOME RULE DEVELOPMENT AGREEMENT FOR PROPERTY LOCATED AT 3001 ESTERO BOULEVARD, 2943 ESTERO BOULEVARD, 2932 ESTERO BOULEVARD, 211 DONORA BOULEVARD, FORT MYERS BEACH, FL, STRAP NOS. 29-46-24-W1-00145.1000, 29-46-24-W1-00145.5000, 30-46-24-W2-00001.0000, 29-46-24-W1-0120A.0010 AND OWNED BY SEAGATE FORT MYERS BEACH LLC, AS AUTHORIZED BY SECTION 2-100 OF THE TOWN'S LAND DEVELOPMENT CODE AND IN COMPLIANCE WITH THE PROCEDURES FOR APPLICATION AND APPROVAL OF DEVELOPMENT AGREEMENTS WITH DEVIATIONS SET FORTH IN RESOLUTION NUMBER 24-73 FOR THE PURPOSE OF REDEVELOPMENT OF THE PROPERTY PREVIOUSLY KNOWN AS THE RED COCONUT RV PARK; PROVIDING FOR TERMS AND CONDITIONS INCLUDING BUT NOT LIMITED TO THE IDENTIFICATION OF THE PROPOSED USE OF THE PROPERTY, A FINDING OF CONSISTENCY WITH THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN, COMMITMENTS AND DEVELOPMENT OBLIGATIONS, DEVIATIONS NEEDED FOR DEVELOPMENT; 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.

Council Member King moved to continue the hearing to November 18, 2024, seconded by Council Member Woodson.

The motion carried unanimously by roll call vote.

XII. ADMINISTRATIVE AGENDA

- A. Resolution 24-219, Ratification of \$170,000 Sweeper Purchase and Budget Adjustment #2

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING TOWN MANAGER'S PURCHASE OF A SWEEPER FOR \$170,000.00; AUTHORIZING BUDGET ADJUSTMENT #2; AND PROVIDING AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Finance Director Joe Onzick stated this action ratified the emergency purchase and it included a budget adjustment. Town Manager Hyatt commented that they were scheduling contractors to clean the side streets.

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

The motion carried unanimously by roll call vote.

B. Resolution 24-222, Turtle Time Agreement Addendum

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN ADDENDUM TO THE CONTRACT BETWEEN THE TOWN OF FORT MYERS BEACH AND TURTLE TIME, INC., TO ADD ADDITIONAL TERMS AND CONDITIONS TO ALLOW THE USE OF FEDERAL EMERGENCY MANAGEMENT FUNDS FOR REIMBURSEMENT OF EXPENSES INCURRED BY THE TOWN AND TERMS AND CONDITIONS REQUIRED BY FLORIDA LAW; AUTHORIZING THE TOWN MANGER OR MAYOR TO SIGN THE ADDENDUM; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Director Onzick stated that FEMA (Federal Emergency Management Agency) required this resolution to qualify for reimbursement.

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

The motion carried unanimously by roll call vote.

XIII. FINAL PUBLIC COMMENT

Frederick Alt, resident, was concerned about the height request by Seagate. He felt it was too tall for the island.

XIV. TOWN MANAGER'S ITEMS

Environmental Project Manager Chadd Chustz stated that the sand renourishment project would not affect the Sand Sculpture event at DiamondHead. He noted that the net sand loss from the hurricanes was 11,000 cubic yards and would be addressed in the future. He indicated that the berm at Creciente would be built if the town received approval, but it would occur after the renourishment project.

Town Manager Hyatt stated that work was ongoing at Bayside Veterans Park and that \$150.00 per hour rental fees would be reinstated in January 2025. Debris removal continued and FEMA added right-of-way debris removal for commercial entities. He noted that everything was set for the election and the town's swearing-in would now occur in the trailers.

Director Kropacek addressed drywall permit rejections and indicated the material requested was not compliant at or below flood. The rejections were reversed after the correct product was utilized. He encouraged people to email him with questions. Mayor Allers noted that residents said the permit rejections were inconsistent. Some were rejected because they did not have a picture of the water line and some because they did not have receipts. Director Kropacek stated that he would look into it. Town Attorney Stuparich will work with the building official and Director Kropacek regarding owner/builder permits and irrevocable trust documents.

XV. TOWN ATTORNEY'S ITEMS

Town Attorney Stuparich stated that the Management & Planning agenda had gone out, but she would like to amend the agenda with two items. The first item was possible changes to existing procedures, notably the MERTF (Marine and Environmental Resources Task Force) vote. The second was related to Seagate and procedural rules for development agreements. The changes focused on transparency, fairness and consistency. She reviewed procedural rule changes.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Safford thanked members for giving him an opportunity to serve. Mayor Allers noted that two previously discussed signs were not installed in the 5th and Crescent area. Town Manager Hyatt will look into it. He will follow up with FDOT (Florida Department of Transportation) regarding getting a lane open before season to alleviate traffic.

No items from other members.

XVII. ADJOURNMENT

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

The meeting was adjourned at 10:08 a.m.



Fort Myers Beach Management & Planning Session

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

Minutes

Thursday, November 7, 2024

9:00 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

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

II. PLEDGE OF ALLEGIANCE

III. ITEMS FOR DISCUSSION

A. Presentation: Bonita Estero Rail Trail

Ms. Deb Orton, President - Friends of BERT (Bonita Estero Rail Trail)

Ms. Orton utilized PowerPoint for her presentation. Slides included Who We Are, What We Do, BERT Video, About BERT, Rail Corridor Funding Strategy - Partial List, Benefits BERT Will Bring, Florida Gulf Coast Trail, Florida Gulf Coast Trail Lee County Segment and What Happens Next. Ms. Orton asked the council to vote to endorse the project. The Town Council endorsed the project and Town Attorney Stuparich will draft a resolution. Town Attorney Stuparich described Trail Town and Ms. Orton elaborated. Natalie White of Schenkel Shultz Architecture described how BERT benefited Southwest Florida.

B. Public Benefits

Summary of LPA discussion of public benefits

Town Attorney Stuparich stated that the LPA (Local Planning Agency) requested a joint meeting to discuss the summary in the agenda packet. Vice Mayor Atterholt suggested adding essential, semi-essential services and early entrance as categories. Council Member Safford indicated there had to be a delta if they used a formula. Council Member Woodson noted that overall economic benefits and transportation were also discussed at the LPA meeting. She suggested adding monetary investment to keep the canals and waterways dredged and clean. Mayor Allers was not a fan of the point system

because smaller developments may be unable to provide what larger developments could. He described how water ferries were a public benefit if the visitors paid for them rather than taxpayers. Town Manager Hyatt indicated he would try to schedule a meeting next week.

C. Development Agreements with Deviations - Notice Requirements

Discussion regarding

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING RESOLUTION 24-73, CONTAINING THE PROCEDURES FOR DEVELOPMENT AGREEMENTS WITH DEVIATIONS TO CLARIFY THAT THESE DEVELOPMENT AGREEMENTS ARE HOME RULE DEVELOPMENT AGREEMENTS AND TO AMEND RELATED NOTICE REQUIREMENTS FOR CONSISTENCY WITH NOTICE REQUIREMENTS IN SECTION 2-98 AND CHAPTER 34 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; AND PROVIDING AN EFFECTIVE DATE.

Town Attorney Stuparich read the title of the resolution and noted the item would be on the November 18, 2024 agenda. She indicated that the resolution had nothing to do with Seagate and was focused on procedures. She highlighted the changes in the document and described the differences between the notice requirements for a statutory development agreement and notice requirements for a planned development approval. She added that the changes were for consistency. Town Attorney Stuparich referred to page 31 regarding beginning the negotiation process.

Mayor Allers stated the town manager was not a planner, but the development agreement allowed him or his designee to make negotiations non-binding to bring to the council. The CPD (Commercial Planned Development) process allowed the staff to make a recommendation before going to the LPA and then to the town council. He felt that the development agreement circumvented the LPA process. He added that there was a lot of flexibility and latitude for developers but not the town and questioned what they could add to give the town more teeth. Town Attorney Stuparich replied that staff should have a clearer direction after special and public benefits were clarified in the joint meeting. Mayor Allers questioned where the guardrails were in the development agreement when special or public benefits were met. Town Attorney Stuparich responded that a formulation could be recommended based on the guidelines at the joint meeting.

Patrick Vanasse, resident and former LPA member, stated that initially, the LPA looked for a streamlined process to get smaller projects approved. He felt that the resolution was fine, and the town had the opportunity to ask what they wanted during negotiations because the town council made the final decision. Developers had to justify that the benefits commensurate with the ask. He noted the guardrails were the LDC and comp plan if the development agreement was incompatible with them. Mr. Vanasse questioned whether making the ordinance more stringent would conflict with Senate Bill 250.

Town Attorney Stuparich will research the Bill.

Mayor Allers preferred that the town manager and staff provide a recommendation before it went to the LPA and the town council. Town Attorney Stuparich read the language to add to the resolution. Vice Mayor Atterholt suggested that approvals or denials be based on a subjective decision, pro or con. Council Member King wondered whether an LPA recommendation became a crutch, and he did not do as much work as he should. He also mentioned that it became a ploy to attack the council for not following the LPA recommendations. Mayor Allers added that the resolution had to be consistent with everything else and clarifying why decisions were made was key. Town Attorney Stuparich will add language to 3.2.3 and 3.3.1.

D. Electric Bikes

Discussion Regarding the Town's Bicycle Ordinance and Electric Bicycle Regulations

Town Attorney Stuparich reviewed Florida statutes regarding e-bikes as stated on the green sheet. She noted that there was no definition of assisted bicycles and the town's code did not specifically reference electric bicycles, although the statute does. She asked for direction on what they would like to see.

Council Member Safford was fine with electric bikes on sidewalks, but he felt the fine for bad behavior had to be higher. Rental companies would have to provide a brochure with the penalties included. Mayor Allers suggested that short-term rentals add the rules to their information.

Council members agreed to discuss e-bikes on sidewalks and the beach. Council Member Woodson favored e-bikes with speed limits because many people use bikes as their primary transportation. She questioned the list of prohibited vehicles and said she did not want golf carts on sidewalks.

Vice Mayor Atterholt indicated that law enforcement agencies did not have the equipment to gauge speed, which made enforcement challenging. He referred to the memo by Philip Miglioratti included in the packet. Mr.

Miglioratti suggested they pass pedestrians at a speed that allowed them to maintain control of the bike and use audible notifications when approaching from behind. Vice Mayor Atterholt agreed that code enforcement had to have the tools to deal with bad behavior.

Council Member King questioned who would enforce it. He would like to go forward with it and study pedestrians' concerns, whether e-bikes or regular bikes. He would like to revisit the issue in a year when data is available.

Mayor Allers stated that bikes going in the wrong direction could be enforced. Operations & Compliance Manager Thomas Yozzo stated they could not do a forced stop, so they had to call the LCSO (Lee County Sheriff's Office). He added that people generally complied, so they rarely had to call LCSO. He was allowed to inform bicyclists if they were traveling in the wrong direction.

He voiced concerns regarding liability issues with allowing bikes on the beach. Mayor Allers felt that most people would not ride e-bikes on the beach because of sand damage. He noted there were no accidents in five years and agreed with revisiting it in a year.

Manager Yozzo indicated that adding language similar to Mr. Miglioratti's would allow him to stop people and ask them to slow down. Mayor Allers was okay with that language because it would help with potential liability litigation. Vice Mayor Atterholt shared his experiences riding his bike on the beach and avoiding people, wildlife and little kids. He mentioned bikes disrupting serene walks on the beach. Mayor Allers brought up people who could not walk on the beach anymore but could use e-bikes to get where they needed to go.

Manager Yozzo pointed out that enforcement was first-person. The ranger or officer had to observe the violation. He stated that the beach should be a safe space for children because they did not pay attention, and parents were not looking out for speeding bikes.

Council Member King wondered if they were trying to solve a problem that did not exist, especially since there had not been an accident in five years. Council Member Safford questioned whether they could allow riding on the beach during the off-season. Manager Yozzo replied that he would be worried about subjective enforcement.

Town Attorney Stuparich will come back with language to change the ordinance. Town Manager Hyatt added that they would work on creating a safety brochure. Council Member Safford suggested that the Public Safety Committee draft it. Manager Yozzo recommended that bikes be allowed on sidewalks with a directional provision. He felt the beach was a dangerous space for e-bikes. Mayor Allers was fine with keeping the beach the way it was. Vice Mayor Atterholt was a hard no on the beach. A consensus was reached to leave the beach as is and send the matter to the Public Safety Committee.

E. Certification of Vote of Appointed Advisory Board Members

Discussion regarding

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 5 OF RESOLUTION 23-182 AS AMENDED BY RESOLUTION 24-178, TO INCLUDE CERTIFICATION OF THE VOTE BY THE TOWN COUNCIL BEFORE A VOTE TO APPOINT MEMBERS TO THE TOWN'S ADVISORY BOARDS, COMMITTEES, AGENCY AND COMMISSIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

Town Attorney Stuparich read the title of the resolution and reviewed the changes as stated on the green sheet. She discussed section 5, regarding the method of voting. Concerns were raised about the lack of transparency. She proposed that council members announce who they voted for, and the town clerk or deputy clerk would record the votes on an Excel spreadsheet so the public could see how the votes were calculated. She suggested that ties be added back to the pot and vote on those who were left. Regarding ties, Council Member Woodson suggested that people who did not receive a vote be excluded from the pot.

Town Attorney Stuparich said they would go back and vote again on MERTF (Marine and Environmental Task Force) on November 18, 2024, and also go through the votes for other committees.

F. Fireworks**A discussion regarding New Years Eve fireworks.**

Culture, Parks & Recreation Director Jeff Hauge stated they had a contract for the fireworks and the barge, but the funding did not come through. Due to the barge, the cost was about \$80,000. Town Manager Hyatt indicated he would meet with Finance Director Onzick to find the funds. Director Hauge noted that the alternative was not to have them. Council members supported fireworks on New Year's Eve. Donations were welcome.

G. Downtown Lights**At Council's request, a discussion about light pole decorating along Estero Blvd.**

Mayor Allers described decorating electric poles but asked if power would be available.

Director Hauge received three quotes for replacing the lights and the electrical system at Bayside Veteran's Park. The plan was to redo all the wiring, pull the pavers and redo the conduit, including down Old San Carlos. He did not have a timeline. Town Manager Hyatt stated that the repairs were considered an emergency and reimbursable by FEMA (Federal Emergency Management Agency). The work will be done as soon as possible.

IV. AGENDA MANAGEMENT

A. November 2024

The joint meeting with the LPA will be on November 13, 2024, at 8:30 a.m.

V. ADJOURNMENT

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

1. **Request:**

Meeting Date: November 18, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA IN SUPPORT OF EFFORTS BY THE FRIENDS OF BONITA ESTERO RAIL TRAIL TO DEVELOP THE EXISTING TRAIL WITH THE POSSIBILITY OF CONNECTIVITY TO FORT MYERS BEACH IN ORDER TO PROVIDE TRANSPORTATION ALTERNATIVES AND RECREATIONAL OPPORTUNITIES FOR RESIDENTS OF THE TOWN AS WELL AS ITS VISITORS; AND PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Attachments:

1. Resolution 25-254, BERT

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 - 11/7/2024
Approved - 11/12/2024
Approved - 11/13/2024
Final Approval - 11/13/2024

RESOLUTION NUMBER 24-254

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA IN SUPPORT OF EFFORTS BY THE FRIENDS OF BONITA ESTERO RAIL TRAIL TO DEVELOP THE EXISTING TRAIL WITH THE POSSIBILITY OF CONNECTIVITY TO FORT MYERS BEACH IN ORDER TO PROVIDE TRANSPORTATION ALTERNATIVES AND RECREATIONAL OPPORTUNITIES FOR RESIDENTS OF THE TOWN AS WELL AS ITS VISITORS; 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, on November 7, 2024, the Friends of Bonita Estero Rail Trail made presentation to the Town Council of the Town of Fort Myers Beach regarding the benefits of bike trails and ongoing projects in Southwest Florida related to the Bonita Estero Rail Trail; and

WHEREAS, expansion of the Bonita Estero Rail Trail could in the future connect to Fort Myers Beach providing residents and visitors with an alternative mode of transportation on and off Estero Island; and

WHEREAS, the Town Council considers bicycle and pedestrian transportation to be of utmost importance to the Town as well as to Southwest Florida by providing the region with recreation and transportation opportunities as well as the possibilities of economic and community development; and

WHEREAS, the Town Council finds it is in the best interest of the residents of the Town to support the Friends of Bonita Estero Rail Trails efforts to achieve these stated goals.

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 adopts this Resolution, which shall be effective upon adoption by the Town Council.

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, 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.

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 _____ 2024.

1. **Request:**

Meeting Date: November 18, 2024

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 5 OF RESOLUTION 23-182 AS AMENDED BY RESOLUTION 24-178, TO INCLUDE CERTIFICATION OF THE VOTE BY THE TOWN COUNCIL BEFORE A VOTE TO APPOINT MEMBERS TO THE TOWN'S ADVISORY BOARDS, COMMITTEES, AGENCY AND COMMISSIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Nancy Stuparich, Town
Attorney

5. **Background:**

On October 21, 2024, the Town Council appointed individuals to its committees, boards, and commissions in compliance with its adopted Rules of Procedure. However, several concerns were raised regarding the transparency of the voting process. The concerns were discussed at the November Management and Planning Meeting and the draft Resolution was prepared with discussed changes for consideration at the November 18, 2024 meeting.

Attachments:

1. Final Resolution 24-246 Amending Section 5 of the Town's Procedures 11-12-2024 - BVNS

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

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

Created/Initiated - 11/8/2024
Approved - 11/12/2024
Approved - 11/13/2024
Final Approval - 11/13/2024

RESOLUTION NUMBER 24-246

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 5 OF RESOLUTION 23-182 AS AMENDED BY RESOLUTION 24-178, TO INCLUDE CERTIFICATION OF THE VOTE BY THE TOWN COUNCIL BEFORE A VOTE TO APPOINT MEMBERS TO THE TOWN'S ADVISORY BOARDS, COMMITTEES, AGENCY AND COMMISSIONS; 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 again on October 28, 2024 by Resolution 24-178; and

WHEREAS, the Town Council desires to now further amend Section 5 of its procedural rules to include a vote certifying the results following a public announcement of each vote cast to be followed by appointment of individuals receiving the most votes to provide greater transparency to the appointment process; and

WHEREAS, adoption of this Resolution promotes public participation and enhanced transparency in the best interest of the Town and its residents.

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 Section 5 of the Town Council's Policies and Procedures Manual, as amended in Exhibit "A," are approved.

Section 4. This Resolution shall take effect immediately upon its adoption by the Town Council.

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 roll call 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”

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

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

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.

Voting:

1. Each Council member makes selections, marking no more than the total number of seats available (or writes the names down), and signs his or her ballot. Each Council member and the Mayor or the Town Clerk publicly announce their votes. The Town Clerk records each vote and announces the number of votes each individual received.
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 of the remainder of candidates who were not otherwise selected and received at least 1 vote.
4. Once the Town Clerk announces the results, and the Mayor will ask for a motion to certify the results. Once the votes have been certified, Council will vote to appoint the individuals, who have been chosen in accordance with the above procedure.
5. Thereafter, the Council should consider waiver of the prohibition against serving on more than one Town advisory board, commission, agency or committee, if applicable.

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 unselected 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

1. **Request:**

Meeting Date: November 18, 2024

Rehearing of AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA 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.

Why the action is necessary:

This action will determine if the decision to deny the application is with or without prejudice, as stated in LDC sec. 34-84

What the action accomplishes:

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Nancy Stuparich, Town
Attorney

5. **Background:**

The Town Council voted to DENY this application at their October 21st, 2024 meeting.

However, Town Council did not state whether the application was denied with or without prejudice, which is referenced in the Land Development Code LDC sec. 34-84(d). The applicant is requesting a reconsideration for the record to clarify.

Attachments:

1. 20241023 EIBC Motion for Rehearing to Town of FMB
2. DENIAL 24-28, CPD EIBC CPD Ordinance 1st TC
3. Sec. 34-84. General procedures for actions on specific zoning applications.
4. Final TC Meeting Minutes 10.21.24

Financial Impact:

Unknown

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Jason Freeman, Deputy Town Clerk / Legislative Liaison
Judith Frankel, Principal Planner
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk

Created/Initiated - 11/6/2024
Approved - 11/6/2024
Approved - 11/6/2024
Approved - 11/12/2024
Approved - 11/13/2024



October 23, 2024

VIA EMAIL ONLY

Mr. Andy Hyatt, Town Manager
Town of Fort Myers Beach
2731 Oak Street
Fort Myers Beach, FL 33931

Re: Estero Island Beach Club Motion for Rehearing
CPD20240015

Dear Mr. Hyatt:

Please find the enclosed Motion for Rehearing filed on behalf of the Estero Island Beach Club. As stated in the Motion, the relief sought is not a rehearing of the merits of the case presented at the Town Council meeting on October 21, 2024; rather, EIBC simply seeks to have the Town Council's denial with prejudice modified to either a continuance or a denial without prejudice. This would confirm that EIBC will be able to apply for a CPD with a revised master concept plan before October 2025.

Please do not hesitate to contact our office with any questions or requests for additional information. Your attention to this matter is greatly appreciated.

Very truly yours,

ROETZEL & ANDRESS, LPA

Amy S. Thibaut

Enclosure

Estero Island Beach Club Motion for Rehearing dated October 23, 2024

**TOWN COUNCIL
FOR THE TOWN OF FORT MYERS BEACH, FLORIDA**

**ESTERO ISLAND BEACH CLUB
ASSOCIATION, INC.,**

CASE NO. CPD20240015

Applicant.

MOTION FOR REHEARING

Pursuant to Section 34-93, Town of Fort Myers Beach Land Development Code (“**LDC**”), Petitioner **ESTERO ISLAND BEACH CLUB ASSOCIATION, INC. (“EIBC”)** moves the Town Council for a rehearing of the denial rendered in Case No. CPD20240015 (“**Request**”) on October 21, 2024, against EIBC and states as follows in support of this motion:

A motion for rehearing pursuant to the LDC is available to aggrieved parties who seek to modify or rescind a decision of Town Council in a zoning case. See Sec. 34-93(a), LDC. A motion for rehearing calls to the Town Council’s attention “new evidence or the points of law or fact which the aggrieved person argues the town council has overlooked or misunderstood.” See Id. at (b). A motion for rehearing is timely when filed within fifteen (15) days of the “date of the public hearing at which the Town Council made such decision by oral motion.” See Id. at (a). This motion timely calls for a rehearing to modify the Town Council’s denial of the Request, which was denied with prejudice (“**Denial**”).

There are new points of law that have been overlooked that underpin this Motion. Namely, Town Council is not required to deny, with prejudice, a request that simply requires modification to obtain approval. In lieu of denial with prejudice, Town Council is also empowered to continue the proceedings or to deny the request without prejudice.

Petitioner does not move to rehear the Request as it was presented to Town Council on October 21, 2024. Rather, Petitioner seeks an avenue to allow for the Request to be revised, reviewed by staff and LPA, and heard by Town Council without need to wait twelve (12) months, as currently required.

I. Overview/History of Request

Petitioner's purpose for bringing the Request to the Town is to rebuild on its property at 1840 Estero Boulevard (the "**Property**"). The Property was developed at some time in the 1950s as a hotel/motel use, which use ultimately transitioned to a 75-unit timeshare condominium. Petitioner is the timeshare condominium association.

On September 28, 2022, Hurricane Ian made landfall on Fort Myers Beach and the Property was substantially damaged as a result. Prior to Hurricane Ian, the previously existing structures were lawful nonconforming structures due to a variety of factors including partial location waterward of the Coastal Construction Control Line ("CCCL"); construction below FEMA base flood elevation and the Florida Department of Environmental Protection design flood elevation; Florida Accessibility Code insufficiencies; and other miscellaneous zoning and building code issues.

Petitioner originally sought to rebuild under Section 34-3238, LDC, which is commonly known as the "Post-Disaster Build Back" ordinance. However, given the loss of previously developable land due to the location of the CCCL,¹ various LDC property development regulations, and other requirements, Petitioner and Town staff agreed that it would be infeasible, if not impossible, to rebuild within the parameters of the Post-Disaster Build Back Ordinance. Thus, Petitioner sought the approval of a commercial planned development that would allow for certain relief from strict adherence to all LDC requirements, in the form of deviations.

On October 21, 2024, Petitioner presented its Request, which included a building with heights up to ten (10) stories. Town Council issued the Denial at the conclusion of the hearing, finding that the proposed 10-story heights were not supported by sufficient public benefit to justify approval of the Request.

It is imperative to note that Petitioner's primary goal is not to construct a 10-story building; rather, Petitioner seeks to rebuild the 75 units that were destroyed in Hurricane Ian in a manner that best meets all applicable local, state and federal regulations. The 10-story building was the product of this goal as influenced by a previous LPA hearing, at which time the LPA requested enhanced view corridors to support the need for increased height. There is insufficient acreage on the Property to accommodate both the enhanced view corridors and a shorter building, which ultimately resulted in the 10-story proposal. The goal is, and always has been, the approval of a plan that would allow Petitioner to rebuild all 75 units so that the timeshare owners may resume their use and enjoyment of the Property, in the beach town they have treasured for decades.

Accordingly, Petitioner seeks to revise its plans and present said revised plans to the LPA and Town Council as soon as possible to avoid further delays in building back the project. *The*

¹ As stated in the Town Council Hearing, the State of Florida does not prohibit development waterward of the CCCL, but requires CCCL permits. However, the Town has zoned all lands waterward of the CCCL to the "EC" district. Sec. 34-652, LDC, prohibits "major structures," such as commercial timeshare buildings, within that the EC district. Therefore, previously developable/developed land is no longer usable for Petitioner's rebuild.

purpose of this Motion is to prevent unnecessary delays, not to present the same plan a second time.

II. LDC Authorizes Town Council to Continue Request or Deny without Prejudice

A. Continuance of Case

When deciding planned development rezoning requests, Town Council has the option of the following: (1) approval, with or without conditions; (2) denial; or (3) continuance “until additional information is provided by applicant or the director or until the applicant makes changes in the application, subject to re-review by the director and the local planning agency as required.” See Section 34-216(b)(1), LDC.

In the case at bar, the Denial was issued due to Town Council concerns related to height and insufficient ancillary public benefit proposed. Petitioner now seeks to modify the design presented to Town Council on October 21, 2024, with guidance from Town Council regarding the types of modifications that must be effectuated to render the Request approvable. Petitioner does not seek to circumvent staff or LPA review of these revised plans. Therefore, a continuance of the Request with more detailed direction on how to revise the plans is authorized under the LDC and appropriate in this case.

B. Denial Without Prejudice

The LDC authorizes Town Council to choose between two (2) types of denials of zoning requests: (1) with prejudice, barring submittal of an application that is “substantially” similar to the denied request within twelve (12) months of denial; and (2) without prejudice, which allows for similar zoning applications to be filed within twelve (12) months of denial. See Section 34-84(d), LDC. A denial of a zoning request is, unless otherwise stated with specificity, a denial with prejudice. See Section 34-84(d)(1)a, LDC. However, a denial without prejudice “is an indication that, although the specifically requested action is denied, the town council is willing to consider the same request after modifications have been made” within twelve (12) months of the denial of the first application. See *Id.* at (d)(2)a. *The Denial did not specifically state that it was without prejudice, and therefore the Request was denied with prejudice.*

Town Council’s concerns were primarily related to height and public benefits, which can be revised. However, the LDC does not define what would render a change to the plans “substantial,” and it is unclear whether a forthcoming revised design would create a “substantial” change to the Request. Only a continuance or a denial without prejudice would confirm Petitioner’s right to obtain such review and decision before October 21, 2025. Therefore, Petitioner seeks rehearing to obtain a decision from Town Council that would unequivocally allow Petitioner to submit revised plans prior to October 23, 2024.

III. Petitioner’s Requested Relief

WHEREFORE, Petitioner respectfully requests a rehearing to rescind and substitute the Denial with prejudice, and to provide one (1) of the following two (2) forms of relief:

(1) a continuance, to include both staff and LPA review and instruction on what revisions must be made for the Request to be approvable; or

(2) a denial without prejudice to allow review of Petitioner's modified Request within twelve (12) months of October 21, 2024.

/s/ Amy S. Thibaut

Amy S. Thibaut, Fla. Bar No 1013569

athibaut@ralaw.com

Roetzel & Andress, LPA

2320 First Street, Suite 1000

Fort Myers, FL 33901

239.337.3850

239.337.0970

Attorneys for Petitioner

ORDINANCE 24-28
(Estero Island Beach Club)

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA 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 September 3, 2024, at which time the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, as required by Section 34-85 of the Town of Fort Myers Beach Land Development Code ("LDC") and recommended approval by a 5 to 2 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

WHEARAS, a Business Impact Estimate was prepared and timely published on the Town's website in anticipation of review by the Town Council on September 23, 2024; and

WHEREAS, on September 23, 2024 the Town Council approved a request from the applicant to continue the matter to a date certain of October 7, 2024; and

WHEREAS, the October 7, 2024 Town Council meeting was cancelled due to the threat of Hurricane Helene and the rezoning was re-scheduled for a first reading on October 15, 2024 then again rescheduled due to the threat of Hurricane Milton for first reading to October 21, 2024; and

WHEREAS, on October 21, 2024, the Town Council held the 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 thereafter determined that denial of the application was in the best interest of the health, safety and welfare of the residents of the Town of Fort Myers Beach for the reasons stated herein.

WHEREAS, following the October 21, 2024 public hearing, the applicant made a request for a rehearing on November 18, 2024 at which time no new testimony was heard by the Town Council and the Town Council provided further clarification that its denial on October 21, 2024 was without prejudice.

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 has determined that the Applicant did not satisfy its burden of proof that the requested rezoning in Ordinance No. 24-28 was consistent with and met 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 without prejudice** the requested rezoning for the following reason:

The significant increase in height should be the last resort, and the public benefit did not warrant the additional height, which was a design choice by the Applicant.

Section 3. 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 4. 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 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 as a whole, or any part thereof, other than the part so declared.

Section 6. This Ordinance will take effect immediately upon a vote of the Town Council following its rehearing on November 18, 2024.

The foregoing Ordinance, following its rehearing regarding clarification of the denial, 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, Council Member	_____
Scott Safford, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this ____ day of November 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 November 2024.

Sec. 34-84. General procedures for actions on specific zoning applications.

- (a) *Function.* The town council shall hold public hearings (see §§ 34-231 through 34-265 of this chapter) on the following applications: rezonings, appeals from administrative actions, variances, special exceptions, and developments of regional impact.
- (b) *Prior hearings.* Public hearings before the town council shall be held after the local planning agency has held its hearing on these applications and rendered its formal recommendation to the town council, except for appeals of administrative actions, applications for interpretations of this code, and certain interpretations of the comprehensive plan, which shall require only a single public hearing before the town council.
- (c) *Decisions and authority.*
 - (1) In exercising its authority, the town council shall consider the recommendation of the local planning agency where applicable, but may, in conformity with the provisions of this chapter, reverse, affirm, or modify the recommendation, or remand the recommendation to afford due process.
 - (2) The town council shall not approve any zoning action other than that published in the newspaper unless such change is more restrictive than the proposed zoning published.
 - (3) The town council has the authority to attach special conditions to any approval of a request for a special exception, development of regional impact, planned development rezoning, or variance within their purview, deemed necessary for the protection of the health, safety, comfort, convenience, or welfare of the general public. Such special conditions must be reasonably related to the action requested.
 - (4) The decision of the town council on any matter listed in this section is final. If a decision of approval is not obtained, or if a tie vote results from a motion to grant a request or from a motion to deny a request, then the matter being considered shall be deemed to have been denied, unless a majority of the members present and voting agree by motion, before the next agenda item is called, to take some other action in lieu of denial. Such other action may be moved or seconded by any member, regardless of his vote on any earlier motion.
- (d) *Denials.*
 - (1) *Denial with prejudice.*
 - a. Except when specifically stated otherwise, a denial by the town council is a denial with prejudice.
 - b. If an application is denied with prejudice, no similar application for rezoning, special exception, or variance covering the same property, or portion of the property, shall be resubmitted or initiated for a period of 12 months from the date of denial. However, this shall not preclude the application for a different rezoning, special exception, or variance which in the opinion of the director is substantially different from the request originally denied.
 - (2) *Denial without prejudice.*
 - a. When the town council denies without prejudice any application, it is an indication that, although the specifically requested action is denied, the town council is willing to consider the same request after modifications have been made, or an application for other action, without the applicant having to wait 12 months before applying for consideration of the modified request or other action.
 - b. Any resubmitted application shall clearly state the modifications which have been made to the original request or other changes made in the application.

-
- (e) *Rehearings.* Any rehearings of decisions under this section shall be in accordance with § 34-93 of this chapter.
 - (f) *Special magistrate.* Final decisions under this section may be the subject of a request for relief under F.S. §§ 70.51 or 70.001 (see §§ 34-94 and 34-95 of this chapter).
 - (g) *Judicial review.* Judicial review of final decisions under this section shall be in accordance with section 34-96 of this chapter.



Fort Myers Beach Town Council

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

Minutes

Monday, October 21, 2024

9:00 AM

ORDER OF BUSINESS

FINAL

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

Mayor Allers stated that the LPA Chair asked that they postpone appointing members to the LPA. Also, a discussion regarding utilizing the library for after-school programs would be added as item L. under the Administrative Agenda.

Council Member King moved to approve the final agenda as discussed, seconded by Council Member Woodson.

The motion carried unanimously.

V. PUBLIC COMMENT

Rose Larkin, resident and MERTF member explained that MERTF did not exceed their boundary. She described the contributions, knowledge and experience of MERTF members Jennifer Rusk, Robert Howell and Steve Johnson.

Eddie Rood, resident, explained why he wanted to be appointed to MERTF. Steve Johnson, resident, discussed sand renourishment and those who did not sign easements. He asked that the town put the maximum amount of sand on the beach.

John Koss discussed the ILA (interlocal agreement) with the library and encouraged council members to approve it. He thanked everyone who reached out to him with support. He stated that enrollment increased by over 25% last year.

Thomas Houghton, owner of La Ola, described how he evacuated his trailers before the storm. He felt that his bar and restrooms should be allowed to remain

and asked that council members and others contact FEMA to accept their evacuation plan and remove them from the targeted property list.

Leah Gregg, resident, requested clarification regarding the appeal process in Ordinance 24-30 and described meetings regarding Building Official Joe Specht's decisions.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member King recognized residents, town manager and staff, town staff, Ed Ryan from Beach Talk Radio and council members for their hard work after hurricanes Helene and Milton.

Council Member Woodson thanked the town manager and town staff for the planning compared to two years ago.

Council Member Safford thanked those who helped after the storms.

Vice Mayor Atterholt and Mayor Allers agreed with all the comments.

A. Resolution 24-188; Florida City Government Week

Town Clerk Baker read the title of the resolution.

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

The motion carried unanimously by roll call vote.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

No reports.

VIII. APPROVAL OF MINUTES

A. Town Council - September 23, 2024

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

The motion carried unanimously.

B. Town Council Budget Hearings - September 23, 2024

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

The motion carried unanimously.

C. Joint Session, Town Council w/CELCAB - September 18, 2024

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

The motion carried unanimously.

IX. CONSENT AGENDA

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

The motion carried unanimously.

- A. Resolutions 24-193 through 24-196; Extension of Local Emergency - Hurricane Ian

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

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

The motion carried unanimously.

- B. Resolutions 24-197 through 24-200; Extension of Local Emergency - Hurricane Idalia

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

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

The motion carried unanimously.

- C. Resolutions 24-201 through 24-204; Extension of Local Emergency - 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.

- D. Resolutions 24-205 through 24-208; Extension of Local Emergency - Hurricane Helene

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 HELENE (FORMERLY KNOWN AS POTENTIAL TROPICAL CYCLONE NINE) 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.

- A. Ordinance 24-28; CPD20240015 1836 & 1840 Estero Blvd - EIBC

First reading and public hearing on proposed ordinance entitled: **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.**

Mayor Allers read the title of the ordinance. Ex parte communications: all council members participated in a meeting(s) and received emails for and against the project. Town Clerk Baker stated that the applicants were not provided copies of the emails and would make them available before the vote.

Anthony Ashford described his 27 years in architecture and his qualifications. Council Member King moved to accept Mr. Ashford as an expert in his field, seconded by Council Member Safford.

The motion carried unanimously.

The applicant confirmed receipt of the agenda and backup materials. Community Development Senior Planner Jason Smalley reviewed the background of the request, and the deviations as stated on the blue sheet. He noted the applicant removed deviation 5.

Building Official Joe Specht stated that a new building had to comply 100% with ADA (Americans with Disabilities Act) accessibility requirements, although not every unit had to be accessible. Remodels were allowed 20% of the costs to add accessibility features.

Attorney Amy Thibaut from Roetzel & Andress represented the applicant and thanked the town staff for their hard work. Planner Fred Drovdlc utilized slides in his presentation, starting with the Location, Zoning, Future Land Use, History & Existing Conditions, The Past, Architectural Design, View Corridors, LDC Analysis: Post-Disaster Buildback, Post-Disaster Buildback Analysis, Historical Rooms and Post-Disaster Buildback Comparison, Historical Floor Area Comparison, Site Plan - Past to Present, Master Concept Plan, Conceptual Landscape Plan, Deviations, LDC Compliance, Compliance & Consistency, Public Benefits, Things to Consider and Conclusion.

Town Attorney Stuparich noted she was in the process of providing copies of the emails sent to council members.

John Shaw, the property manager, explained the discrepancy regarding unit sizes and noted that the square footage was not on the website and the figures came from a brochure not approved by the board of directors. Mayor Allers noted they previously met regarding a completely different design under the buildback and he questioned what changed to make them redesign the building. Mr. Shaw replied that the original design was not recommended by staff and was a preliminary drawing.

Public comment:

Dave Leigh, resident and neighbor, commented that the project should have been easy to build with three stories over flood. He did not support the project and stated the height request was why the town incorporated.

Margaritaville was the de facto standard for the town, with three stories over flood. He noted that public benefit had to be defined and used Margaritaville as an example. He provided examples of public benefits.

Michael Breith, resident, commented that Diamondhead's height was the reason the town incorporated, and he did not support the request. He encouraged the town council to deny their request.

Mathew Wadd, an owner, opposed the project and distributed documents. He requested that this item be tabled until the owners addressed the situation. He described how the board had not followed the by-laws and why he was a whistleblower.

Anthony Ashford, an owner, did not support the project and pointed out discrepancies.

Barbara Hill, resident, questioned why this was on the agenda since Town Manager Hyatt was going to schedule a meeting regarding the project. She opposed a ten-story building on the beach and was concerned about the discrepancies in the presentation.

Public comment closed.

Attorney Thibault commented that they reviewed the emails.

Mr. Ashford provided a historical analysis of the Estero Island Beach Club (EIBC). He reviewed the exhibits and explained the square footage of the units and what was being presented. He revealed that the ownership had not voted on the current plan. He added that if the units were 200 square feet smaller, it would be less money and the building could be five stories instead of ten. He provided an alternative concept design to the board, but it was rejected.

Attorney Thibault questioned Mr. Ashford's experience. Mr. Ashford confirmed that he submitted his building design to the town in 2022 and to the EIBC last month, but it was rejected. He listed the information he submitted to the owners and noted some of it was provided to him by RAL and the rest was public record. Attorney Thibault objected to Mr. Ashford being considered an expert.

Senior Planner Smalley stated that the town agreed to meet with Mr. Ashford before the hurricanes hit and they would reschedule it if Mr. Ashford was interested.

Attorney Thibault provided a rebuttal. She clarified that this was a zoning hearing and Mr. Ashford and Mr. Wadd's concerns were irrelevant.

Michael Sheely introduced himself and reviewed his experience as a licensed architect.

Vice Mayor Atterholt moved to accept Mr. Sheeley as an expert in his field, seconded by Mayor Allers,
The motion carried unanimously.

Mr. Sheeley answered Attorney Thibault's questions about the project. Mr. Sheeley noted that they proposed that all units be accessible per the Florida Building Code since it was more like a hotel. He discussed maintaining the view corridor and his reasons for designing the building. He stated that Mr. Ashford misquoted the dimensions and square footage. He agreed that without considering the view corridor, he could design a 75-unit building that met all the requirements without any deviations from the Town's LDC (Land Development Code) and Comprehensive Plan.

Council Member Woodson was confused since the EIBC came back with a new design based on what the LPA requested. She questioned why they were discussing the height at this point.

Attorney Thibault indicated that the town's experts found that the request met the criteria for approval and she requested that they vote in their favor.

Vice Mayor Atterholt felt that significant increases in height should be the last resort and the public benefit did not warrant the additional height.

Mayor Allers did not think the LPA had the same information they had when they voted. He disagreed with the staff's decision and felt the project was a design choice.

Community Development Planner Sarah Propst clarified that staff evaluated deviations based on what the code said.

Mayor Allers moved to deny moving the ordinance to a second reading for the reasons stated, seconded by Vice Mayor Atterholt.

The motion carried 4-1 by roll call, with Council Member Woodson dissenting.

B. EMERGENCY ORDINANCE 24-33; Advisory Committees

AN EMERGENCY 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 AGENCY, BOARDS, COMMITTEES OR COMMISSIONS, AND ADDING A VOTING REGISTRATION REQUIREMENT FOR MEMBERS OF THE LOCAL PLANNING AGENCY AND AUDIT COMMITTEE; ELIMINATING DUPLICATIVE AND UNENFORCEABLE LANGUAGE; 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 law allowed them to adopt the emergency ordinance by a single reading of the title and apply the new proposed criteria to their advisory committee appointment decisions later in the meeting. She indicated that Item C. was the first reading of a similar ordinance that would get them back into the process of two readings.

She reviewed the changes in the ordinance and noted they could add a clause to allow anyone on committees with a Fort Myers Beach zip code except for the Audit Committee and LPA.

No public comment.

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

The motion carried unanimously by roll call vote.

C. Ordinance 24-17; Advisory Committees

First Reading and introduction of a proposed Ordinance 24-17 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 AGENCY, BOARDS, COMMITTEES OR COMMISSIONS AND ADDING A VOTING REGISTRATION REQUIREMENT FOR MEMBERS OF THE LOCAL PLANNING AGENCY AND AUDIT COMMITTEE; ELIMINATING DUPLICATIVE AND UNENFORCEABLE LANGUAGE; 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. Open the public hearing and schedule for second reading and final adoption on October 28, 2024 at 9:00 AM

Mayor Allers read the title of the proposed ordinance. Town Attorney Stuparich recommended adding the additional language from the emergency ordinance. She confirmed that the requirement to fill out financial disclosures on form six was overturned.

No public comment.

Council Member King moved to approve the ordinance with the amendment, seconded by Council Member Woodson.

The motion carried unanimously by roll call vote.

D. Resolution 24-178; Updating Town Council Policies and Procedures 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 recommended no action on this item because it would come back to them on the second reading of the prior ordinance.

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

The motion carried unanimously by roll call vote.

E. Ordinance 24-31; Codification of 2020 Charter Amendments

First reading and Public Hearing on proposed Ordinance 24-31 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTIONS 4.02 "MAYOR," 4.03 "VICE MAYOR," 5.01 "ELECTIONS," AND 5.03 "TERMS OF OFFICE" OF FORT MYERS BEACH TOWN CHARTER, TO CODIFY CHANGES TO THE DATE OF TOWN ELECTIONS FROM MARCH TO NOVEMBER AND TO ESTABLISH FOUR (4) YEAR TERMS OF OFFICE FOR TOWN COUNCIL MEMBERS, AS APPROVED BY THE VOTERS AT THE MARCH 2020 MUNICIPAL ELECTION; 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 Monday, October 28, 2024 at 9:00 AM

Mayor Allers read the title of the proposed ordinance. Town Attorney Stuparich commented that the ordinance included an update to the Code of Ordinances to reflect the change.

No public comment.

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

The motion carried unanimously by roll call vote.

F. Ordinance 24-32; Amendment to Ordinance 05-04

First Reading and Public Hearing on proposed Ordinance 24-32 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 2 OF ORDINANCE 2005-04 TO REFLECT THE CHANGES TO THE TOWN CHARTER APPROVED BY THE TOWN VOTERS AT THE MUNICIPAL ELECTION ON MARCH 17, 2020; 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 October 28, 2024 at 9:00 AM.

Mayor Allers read the title of the proposed ordinance. Town Attorney Stuparich explained that this was a housekeeping follow up.

No public comment.

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

The motion carried unanimously by roll call vote.

XII. ADMINISTRATIVE AGENDA**A. Resolution 24-191; Marine Debris & Vegetation Removal**

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AGREEMENT FOR DISASTER RECOVERY SERVICES FOR DEBRIS & VEGETATION REMOVAL FROM WATERWAYS, CANALS AND NATURAL CREEKS WITH AFTERMATCH DISASTER RECOVERY, INC., BASED ON COMPETITIVE PRICING PROCURED BY LEE COUNTY; AUTHORIZING THE MAYOR OR TOWN MANAGER TO SIGN THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Operations & Compliance

Director Frankie Kropacek noted this was to clean up the canals.

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

The motion carried unanimously by roll call vote.

B. DOAH Amended and Restate Contract for Special Magistrate Services

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND RESTATING ITS CONTRACT WITH THE FLORIDA DEPARTMENT OF ADMINISTRATIVE HEARINGS FOR DELIVERY OF SPECIAL MAGISTRATE SERVICES; AUTHORIZING THE TOWN MANAGER OR MAYOR TO SIGN THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Attorney Stuparich reviewed the reason for the resolution as stated on the blue sheet. She addressed the public comment regarding the expired interlocal agreement with Fort Myers Beach regarding appeals.

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

The motion carried unanimously by roll call vote.

C. Resolution 24-209, Budget Amendment #1 - Purchase of 6221 Estero Blvd

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, APPROVING BUDGET ADJUSTMENT (#1) TO FUND PURCHASE OF 6221 ESTERO BLVD; PROVIDING AUTHORITY; EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Finance Director Joe Onzick stated this was a budget adjustment.

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

The motion carried unanimously by roll call vote.

D. Fee waiver - Salty Sam's

Waive fees associated with pumping out the Salty Sam's pirate ship.

Council Member Safford moved to waive the fees, seconded by Council Member Woodson

The motion carried unanimously by roll call vote.

Council Member Safford moved to approve the hold harmless agreement between the town and Salty Sam's pirate ship, seconded by Council Member Woodson.

The motion carried unanimously by roll call vote.

E. Local Planning Agency (LPA)

Appoint Members to the FY2024-2025 Local Planning Agency (LPA)

Mayor Aller moved to reschedule appointments to the LPA to Monday, October 28, 2024, seconded by Council Member Safford.

The motion carried unanimously by roll call vote.

John Dunlap expressed his desire to remain on the LPA.

F. Anchorage Advisory Committee

Appoint Members to the FY2024-2025 Anchorage Advisory Committee (AAC)

Vice Mayor Atterholt moved to approve the AAC appointees, seconded by Mayor Allers.

The motion carried unanimously.

Theodore Lawwill, Sam Lurie, John Wesley Nash, Jennifer Rusk and Rebecca Weber were appointed.

G. Audit Committee

Appoint Members to the FY2024-2025 Audit Committee

Council Member Safford moved to approve the Audi Committee appointees, seconded by Council Member Woodson.

The motion carried unanimously.

Debbie Dutton, Jack Leson, David Sanberg, and Bryan Thomas were appointed.

H. Bay Oaks Recreational Campus Advisory Board

Appoint Members to the FY2024-2025 Bay Oaks Recreational Campus Advisory Board (BORCAB)

Michelle Cherney stated why she was interested in joining BORCAB.

Mayor Allers moved to approve BORCAB appointees, seconded by Council Member Safford.

The motion carried unanimously.

John Dussliere, Betty Simpson and Ed Schoonover were appointed.

I. Cultural & Environmental Learning Center Advisory Board

Appoint Members to the FY2024-2025 Cultural and Environmental Learning Center Advisory Board (CELCAB)

Vice Mayor Atterholt moved to approve the CELCAB appointees, seconded by Council Member Safford.

The motion carried unanimously.

Barbara Hill, Betty Simpson, Cherie Smith and Kerrie Henderson were appointed.

J. Marine & Environmental Resources Task Force

Appoint Members to the FY2024-2025 Marine and Environmental Resources Task Force (MERTF)

Sharon Hegstrom expressed her interest in joining MERTF. Steve Johnson withdrew his application because he felt that the town council had started politicizing the advisory boards. He discussed his negative feelings regarding Council Member King's actions.

Mayor Allers moved to approve MERTF appointees, seconded by Council Member Safford.

The motion carried unanimously.

Sharon Hegstrom, Ed Rood, Jennifer Rusk, Leo Sand and Robert Howell were appointed.

K. Public Safety Committee

Appoint Members to the FY2024-2025 Public Safety Committee (PSC)

Cynthia Johnson pulled her application.

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

The motion carried unanimously.

Todd Capela and Keran Farrell were appointed.

L. Interlocal Agreement with the Library for the Beach School

Mayor Allers read the title of the resolution. Vice Mayor Atterholt thanked several people who were involved.

Mayor Allers moved to approve the interlocal agreement with the library, seconded by Council Member King.

The motion carried unanimously.

XIII. FINAL PUBLIC COMMENT

Leah Gregg, resident, commented on the interlocal agreement and the appeal process regarding decisions made by the building official. She noted that Lee County stated that anyone could appeal the building official's decision regardless of whether they were the property owner. She asked why the town changed its process because now there was no oversight.

XIV. TOWN MANAGER'S ITEMS

Town Manager Hyatt commented that debris removal continued. The annual report was complete and available for distribution. Environmental Projects Manager Chadd Chustz stated that anyone who wants to put sand back on the beach should email him first. Town Manager Hyatt noted that the Town Hall took on some water from the storms, but it was remediated. He expected to start installing carpet and painting within the next couple of weeks. He thanked the Lee County Sheriff's Office and the Fort Myers Beach Fire District for their help with Milton. Town Manager Hyatt indicated that he was working on organizing charrettes regarding the comp plan.

The town received an extension for the recreation grant for the park. Town Manager Hyatt explained the appeal process and noted it was an economic decision to save residents \$1,000.00.

Culture, Parks & Recreation Director Jeff Hauge stated that the insurance company assessed Bay Oaks and started the remediation process. He expected a report soon. Kirkwood Electric was building a new switchgear to prevent interruptions.

Projects Manager Chustz indicated that the beach renourishment had started back up and he was waiting for a new schedule.

Director Hauge confirmed that residents with pools can fill out a form and get a water credit for 9,000 gallons. Vice Mayor Atterholt asked whether people using pressure washers were eligible for a credit. Director Hauge replied that he would discuss it with the town manager.

XV. TOWN ATTORNEY'S ITEMS

A. Collection of Demolition Costs

Town Attorney Stuparich noted that demolishing three structures would cost about \$100,000.00. She described an upcoming resolution to recover the funds on the tax roll and the advertisement in the paper. Director Kropacek reviewed the demolition process.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

Vice Mayor Atterholt noted that Linda Miller asked if she could temporarily move the Farmer's Market to Santini Plaza until Times Square was cleaned up. Director Kropacek replied positively.

Council Member King addressed the situation with Tom's trailers and FEMA. Town Manager Hyatt indicated that FEMA was well aware of La Ola. Director Kropacek sent a copy of Tom's video to FEMA in Atlanta a couple of months ago showing how quickly he could evacuate, but FEMA has not responded. Director Kropacek explained the Special Magistrate process. Town Manager Hyatt revealed that he received an email from FEMA on Friday stating that issuing notices of violation was insufficient. The trailers and containers had to be moved by November 18, 2024. Director Kropacek described how FEMA disregarded the town's process, but the town will continue the Special Magistrate process. Mayor Allers stated that FEMA continued to move the goalposts and refused to provide answers. He noted they had to keep trying to get answers. A consensus was reached to send FEMA a letter.

Council Member King responded to Steve Johnson's earlier comments.

XVII. ADJOURNMENT

Council Member King moved to adjourn the meeting, seconded by Council Member Safford.

The motion carried unanimously.

The meeting was adjourned at 2:28 p.m.

Minutes adopted as presented, November 4, 2024. Motion by Council Member King and seconded by Council Member Woodson. Passed 5-0.



Amy Baker, Town Clerk

1. **Request:**

Meeting Date: November 18, 2024

Second Reading of proposed Ordinance 24-34 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A HOME RULE DEVELOPMENT AGREEMENT FOR PROPERTY LOCATED AT 3001 ESTERO BOULEVARD, 2943 ESTERO BOULEVARD, 2932 ESTERO BOULEVARD, 211 DONORA BOULEVARD, FORT MYERS BEACH, FL, STRAP NOS. 29-46-24-W1-00145.1000, 29-46-24-W1-00145.5000, 30-46-24-W2-00001.0000, 29-46-24-W1-0120A.0010 AND OWNED BY SEAGATE FORT MYERS BEACH LLC, AS AUTHORIZED BY SECTION 2-100 OF THE TOWN'S LAND DEVELOPMENT CODE AND IN COMPLIANCE WITH THE PROCEDURES FOR APPLICATION AND APPROVAL OF DEVELOPMENT AGREEMENTS WITH DEVIATIONS SET FORTH IN RESOLUTION NUMBER 24-73 FOR THE PURPOSE OF REDEVELOPMENT OF THE PROPERTY PREVIOUSLY KNOWN AS THE RED COCONUT RV PARK; PROVIDING FOR TERMS AND CONDITIONS INCLUDING BUT NOT LIMITED TO THE IDENTIFICATION OF THE PROPOSED USE OF THE PROPERTY, A FINDING OF CONSISTENCY WITH THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN, COMMITMENTS AND DEVELOPMENT OBLIGATIONS, DEVIATIONS NEEDED FOR DEVELOPMENT; 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 Town Council hears and decides approval or denial of development agreement requests.

What the action accomplishes:

The Town Council can deny or approve the adoption of development agreements.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Development Agreement

4. **Submitter of Information:**

Sarah Propst, Community
Development, Planning
Manager

5. **Background:**

Seagate Fort Myers Beach, LLC, is requesting approval of a home rule development agreement (DA) for the redevelopment of property previously known as the Red Coconut RV Park. This property is approximately 10.73 acres in size and 9.43 acres of land is zoned Village and 1.3 acres of the land is zoned EC. Only the 9.43 acres are subject to the proposed home rule development agreement. The Red Coconut RV Park was previously developed with a density of 27 RVs or mobile homes per acre and included residential units, transient guest spaces, recreational amenities, and commercial uses, including restaurants and a nail salon, most recently.

A first reading of the ordinance was held on October 28, 2024 with notice of a second reading on November 4, 2024. However, due to statutory advertising deadlines, publication of the required advertising was not possible. Consequently, an advertisement was published for second reading of the ordinance on the 5th day of November 2024, in excess of 10 days before the final public hearing on November 18, 2024.

Attachments:

1. Ord. 24-34 Red Coconut 10-24-24 Final
2. Development Agreement with Attached Exhibits 10.23.24

3. Staff Report 2nd TC
4. Exhibit A to Staff Report
5. Exhibit B to Staff Report - Resolution 24-73, Development Agreement with Deviations Procedures
6. Applicant's Report
7. Project Narrative
8. Schedule of Deviations
9. Completed Application
10. Business Impact Estimate 10-22-24 mr
11. Notice of Public Hearing Seagate Development Agreement Ordinance 10-20-2024 NS
12. Affidavit of Publication Seagate

Financial Impact:

Unknown

6. Alternative Action

7. Management Recommendations:

Ask questions of the applicant and approve or not approve the development agreement.

8. Recommended Approval:

Sarah Propst, Community Development, Planning Manager
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 11/5/2024
Approved - 11/12/2024
Approved - 11/13/2024
Final Approval - 11/13/2024

ORDINANCE NO. 24-34

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A HOME RULE DEVELOPMENT AGREEMENT FOR PROPERTY LOCATED AT 3001 ESTERO BOULEVARD, 2943 ESTERO BOULEVARD, 2932 ESTERO BOULEVARD, 211 DONORA BOULEVARD, FORT MYERS BEACH, FL, STRAP NOS. 29-46-24-W1-00145.1000, 29-46-24-W1-00145.5000, 30-46-24-W2-00001.0000, 29-46-24-W1-0120A.0010 AND OWNED BY SEAGATE FORT MYERS BEACH LLC, AS AUTHORIZED BY SECTION 2-100 OF THE TOWN'S LAND DEVELOPMENT CODE AND IN COMPLIANCE WITH THE PROCEDURES FOR APPLICATION AND APPROVAL OF DEVELOPMENT AGREEMENTS WITH DEVIATIONS SET FORTH IN RESOLUTION NUMBER 24-73 FOR THE PURPOSE OF REDEVELOPMENT OF THE PROPERTY PREVIOUSLY KNOWN AS THE RED COCONUT RV PARK; PROVIDING FOR TERMS AND CONDITIONS INCLUDING BUT NOT LIMITED TO THE IDENTIFICATION OF THE PROPOSED USE OF THE PROPERTY, A FINDING OF CONSISTENCY WITH THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN, COMMITMENTS AND DEVELOPMENT OBLIGATIONS, DEVIATIONS NEEDED FOR DEVELOPMENT; 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, Seagate Fort Myers Beach, LLC (the "Developer") wishes to develop certain parcels of land in the Town of Fort Myers Beach, as more explicitly described in the Home Rule Development Agreement, attached hereto as Exhibit "A" (the "Development Agreement"); and

WHEREAS, the Developer presented the Development Agreement to the Town's Local Planning Agency ("LPA") at the October 22, 2024 meeting and the LPA voted to recommend denial of the Development Agreement; and

WHEREAS, the Town Council held its first reading and public hearing on the Development Agreement at its October 28, 2024 Town Council meeting, during which the Town Council determined that the Development Agreement and the accompanying application [**satisfied or did not satisfy**] the guidelines and criteria set forth in Sections 2-100 and 2-96 of the Town's Code of Ordinances and the procedures for approval of development agreements in Exhibit A to Resolution Number 24-73; and

WHEREAS, on November 4, 2024, the Town Council held the second and final reading and public hearing on the Development Agreement; 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 final reading of the proposed Ordinance as required by Section 166.041, Florida Statutes; 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 are hereby incorporated herein by reference and adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Council hereby formally approves the Development Agreement attached hereto as Exhibit “A” and authorizes the Developer to proceed with the development as further outlined therein.

Section 3. The Town Clerk is directed to record a copy of the Development Agreement in the Official Records of Lee County, Florida.

Section 4. 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 Safford, Council Member	_____

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

TOWN OF FORT MYERS BEACH

Dan Allers, 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.

HOME RULE DEVELOPMENT AGREEMENT **(Draft 109-243-24)**

THIS DEVELOPMENT AGREEMENT (hereinafter, "Agreement" or "Development Agreement") is entered into this _____ day of _____, 20____, by and between **THE TOWN OF FORT MYERS BEACH, FLORIDA**, a municipality of the State of Florida (hereinafter "Town"), having its principal office at 2731 Oak Street, Fort Myers Beach, FL, and **SEAGATE FORT MYERS BEACH, LLC**, a Florida limited liability company (hereinafter "Developer"), whose address is 9921 Interstate Commerce Drive, Fort Myers, FL.

WHEREAS, Section 2-100 of the Town's Land Development Code, authorizes it to enter into a home rule development agreement pursuant to article VIII, § 1(f), of the Constitution of the State of Florida and F.S. chs. 163, 166 and 380, and specifically recognized by the State Legislature in F.S. § 163.3220(5); and

WHEREAS, the Developer has requested approval of this Development Agreement pursuant to Section 2-96 of the Town's Land Development Code and Resolution 24-73; and

WHEREAS, Seagate owns approximately 10.72 +/- acres of land located within the Town, said property, of which 9.43 acres are located landward of the 1978 Coastal Construction Control Line (hereinafter "CCCL"), being legally described in Exhibit "A" attached hereto (hereinafter, "the Property"); and

WHEREAS, the Town and the Developer desire to enter into this Agreement to provide for the approval and a comprehensive understanding of the development parameters consistent with the Town's Land Development Code and Comprehensive Plan as set forth herein; and

WHEREAS, a public hearing was held before the Town of Fort Myers Beach Local Planning Agency("LPA") on the 22ndgth day of October, 2024, and the LPA reviewed the request and by a vote of ____ to ____ recommended _____ to the Town Council; and

WHEREAS, the Town conducted two public hearings on the 28th1st day of October, 2024, and the 4th day of November, 2024, prior to entering into this Agreement, both of which were properly noticed on the Town's website and by mailing to affected property owners within a 500 foot radius of the boundaries of the real property at the addresses of such property owners found on the Lee County Property Appraiser's website prior to the first public hearings; and

WHEREAS, the Town Council has determined after consideration of the recommendation of the LPA, Town staff, and following two public hearings, which provided an opportunity for comment, testimony and evidence from the Developer, Town staff, and the public, the Town Council has determined that the Development Agreement is reasonable and not arbitrary and in the best interest of the Town and the residents of

the Town Fort Myers Beach.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein, for the purposes set forth in Section 2-100 and 2-96 of the Town's Land Development Code, the benefits to accrue to each party, and for other good and valuable consideration, the receipt of which the parties hereby acknowledge, the Town and the Developer agree as follows:

1. Recitals. The foregoing recitations are true and correct and are incorporated herein by reference. All exhibits to this Agreement are deemed a part hereof.

2. Property Subject to this Agreement. The real property described in Exhibit "A" is subject to the terms and conditions of this Agreement ("Property").

3. Ownership. Developer represents that it is the legal and equitable owner, having an interest in the Property pursuant to Instrument No.: 2023000309279 recorded as Doc Type D, Pages 7 on September 20, 2023 in the Official Records of Lee County, Florida, and as such may lawfully enter into this Agreement. The Town is in receipt of a title opinion from a Florida attorney upon which it can rely for the purpose of confirmation of the Developer's ownership representation.

4. Proposed Development and Use of the Property. The proposed Uses and development of the Property shall be consistent with the following:

A. Residential Density. A maximum of 141 residential units to be developed as 4 single and 137 multi-family units on the North side of Estero Blvd., as shown on Page 2 of the Conceptual Plans and Renderings, dated the 4th day of September, 2024 and attached as Exhibit B. Density from other properties owned by the Developer within the Town may be transferred for 8 additional single family units (to be located north of proposed Seahorse Street) and up to a maximum of 149 units.

B. Vehicular Access. The residential multi-family units shall be accessible through a maximum of 2 ingress/egress points from Donora Boulevard and, 1 ingress/egress from Estero Boulevard. Additional separate delivery, and service, and solid waste pick up access points may will be provided collocated on from Donora Boulevard for solid waste pickup and delivery for the building and for the restaurant to occur within the building footprint. 4 single family residential units shall be accessed through a new east/west local street extending from Donora Boulevard.

C. Rental Restrictions. Rental of any permitted dwelling unit will be limited to a single renting entity during any one month period, with a minimum stay of thirty days one week and a total of three

rental periods per calendar year.

- D. Parking. Parking for the residential uses and commercial restaurant shall be provided consistent with the regulations at the time of building permit. An additional 75 membership spaces will be provided to support the beach club.
- E. Commercial Area. Up to 10,000 square feet of commercial uses as identified in the Village Zoning Category. The commercial uses shall be open to the public, including but not and limited to commercial personal services, such as hair and nail salons, a laundry service, daycares, a small scale convenience retail, a restaurants, and coffee shops.
- F. Beach Club. A beach club not to exceed 29,000 square feet of enclosed air conditioned space with private recreational amenities and a private membership organization. At least 25% of the memberships in the beach club will be available to non-residents of the Property. The beach club shall provide the following uses and amenities: pool and pool deck, event space for members and their guests only (including conference center, wedding venue, and meeting space and similar uses), umbrellas, chairs, cabanas, and a restaurant with consumption on premises (indoor and outdoor) and terrace.
- G. Parks and Access Areas. All parks and access areas will be maintained by the Developer or an association of property owners. A minimum of three (3) parks and access areas upon which the Town will be provided an easement for public use and located as follows (and substantially as shown in Exhibit C):
- (1) Matanzas Pass Preserve Park. To provide public recreation and access to Matanzas Pass Preserve to be coordinated with Lee County and the Town; and
 - (2) a linear park providing pedestrian and cyclist access from Donora Blvd. to Estero Blvd. through the property a minimum of 20ft wide at all points with a minimum of 8ft wide multi-use path. The Developer will coordinate with the Town regarding directional and safety signage; and
 - (3) The area west of the private beach club and not utilized for public and private vehicular access will be improved to include park like features; such as, bike racks, picnic tables, shade structures and/or landscaping. aAn enhanced beach access to include: a 10ft wide pedestrian-only beach access between Estero Blvd., and the beach (while also maintaining a beach access on the southern portion of the Property). The public beach access may not

be located with the existing private platted beach access; and

(4) 2943 Estero Blvd. to provide a public recreation park.

The dedication of the parks and access areas shall be by easement acceptable to the Town Attorney, together with evidence of title in a form acceptable to the Town Attorney prepared by an attorney who is a member of the Florida Bar, or a title company licensed in Florida, all depicting who is the owner in fee simple of the land subject to the conveyance or dedication, and the holders of any other interest or liens affecting said land.

- H. Height. ~~No building shall be more than 15 stories over 2 stories of structured parking in height.~~ The maximum height of the tallest residential multi-family tower shall not exceed a total of 15 stories over 2 stories of structured parking and 235 feet above base flood elevation. Additional height limitations must be in substantial compliance with Page 2 of the Conceptual Plans and Renderings, dated the 4th day of September, 2024 and attached as Exhibit B.
- I. Area. The combined square footage of all the ~~all~~-structures within this development, other than the detached single-family residences and the covered motor vehicle parking structures, shall not exceed 616,156.2 sf which is the equivalent of a FAR of 1.5.
- J. Mixed Use Structure Setbacks. 10 ft setbacks from all street right-of-ways ~~s~~ and 10ft rear setbacks along the proposed Linear Park. The beach-facing property line for the beach club may be built to the 1978 CCCL.
- K. Single Family Lot Setbacks. 10 ft setbacks from the street right-of-way, 20 ft rear setback along the Matanzas Pass Preserve property line for the principal structure and 5 ft rear setback for accessory structures and 5 ft side setbacks.
- L. Other Permitted Uses. Other permitted uses of the land shall be those allowed in the underlying zoning district unless otherwise specifically provided herein.
- M. Internal Traffic Circulation. Pedestrian travel is identified in the conceptual plan, a copy of which is attached as Exhibit B on Sheet 3 of the Conceptual Plans and Renderings dated the 4th of September 2024, which shows the proposed layout, streets, lots, green areas, bikeways, parks, public facilities, and other such amenities.
- N. Environmentally Sensitive Land. There are no environmentally sensitive lands on-site.

- O. Threatened and Endangered Species. There are no threatened or endangered species on-site.
- P. Conflicts. Any conflict between the matters set forth in this paragraph and paragraph 9 and other paragraphs in this Agreement shall be resolved in favor of the terms and conditions in this Paragraph and paragraph 9. Moreover, this Agreement identifies known instances in which the proposed redevelopment conflicts with the Town's existing Land Development Code. Any ambiguity with respect to whether this Development Agreement or an ordinance is to control shall be interpreted to favor the ordinance. Failure of this Development Agreement to address a particular permit condition, term or restriction shall not relieve the owner or developer of the necessity of complying with the laws governing said permitting requirements, conditions, terms or restriction. Any matter or action required under existing ordinances of the town shall not be otherwise amended, modified or waived, unless such modification, amendment or waiver is expressly provided for in the Development Agreement with specific reference to the Code provision so waived, modified or amended ("Deviations").

~~5. Consistency with Comprehensive Plan. The Town finds that the proposed development for the Property set forth above is consistent with the Town of Fort Myers Beach Comprehensive Plan and Land Development Code as provided in this Agreement. Review and approval of this Agreement through the process outlined in Resolution 24-73 is commensurate and tantamount to approval through the Town's planned development rezoning process. Notwithstanding the foregoing, the deviations identified in paragraph 9 are approved.~~

56. Public Facilities. The following public facilities will serve the Proposed Development on the Property:

A. Potable Water:

Potable water will be supplied by Town of Fort Myers Beach and is presently adequate to serve the Proposed Development. Notwithstanding the foregoing, nothing in this Agreement shall be interpreted nor is it the intent of the parties to create a reservation of capacity. Capacity for the project shall be based on its availability at the time of submission of a Development Order.

B. Sanitary Sewer:

Wastewater services will be provided solely by Lee County, which are presently adequate to serve the Proposed Development. Notwithstanding the foregoing, nothing in this Agreement shall

be interpreted nor is it the intent of the parties to create a reservation of capacity. Capacity for the project shall be based on availability at the time of submission of a Development Order.

C. Solid Waste:

Developer shall coordinate solid waste services with Lee County, the Town, or a third party service provider, adequate to serve the Proposed Development, prior to issuance of the development order. Notwithstanding the foregoing, this does not create a reservation of capacity. Capacity for the project shall be based on availability at the time of submission of a building permit.

D. Drainage:

Drainage will be in accordance with the applicable environmental resource permit ("ERP") to be issued by the South Florida Water Management District ("SFWMD") for the Property. Prior to issuance of the development order, if applicable, Developer shall provide plans related to storm water run-off into the Town's system to the Town.

E. Fire and Rescue

Fire control and rescue services will be provided by the Fort Myers Beach Fire Control District, and Emergency Medical Services will be provided by Lee County Emergency Medical Services. It is the responsibility of the developer to verify the adequacy of service available from the designated entities at the time of development order approval.

F. Transportation

Developer agrees to assist with installation and maintenance of a transit shelter and shall coordinate the availability of bus service and associated infrastructure with Lee Tran and Lee County School District prior to issuance of development order.

G. Public Schools.

Developer shall provide a letter of capacity from Lee County School District prior to issuance of development order. Impact fees may be required.

H. Recreation

Developer will record an easement

acceptable to the Town Attorney dedicating access to the parks for public usage.

In the event new or additional facilities are needed to serve the project, the Developer shall bear the burden of the cost of such facilities to be constructed and provide a schedule to the Town to assure that the public facilities and services shall be available concurrent with the impact of the development project.

76. Impact Fees. Impact fees, ~~if-when~~ adopted by Town Ordinance for all new development and change in use, shall be calculated at time of issuance of a development order and payment shall be required prior to building permit approval. Offsite impacts will be evaluated by the Town at the time of development order application.

87. Development Permits Needed for Proposed Development. A list of all known governmental permits needed for the Proposed Development is set forth below:

Town of Fort Myers Beach Development Order
Town of Fort Myers Beach Building Permit
South Florida Water Management District Environmental Resource Permit
South Florida Water Management District Water Use Permit (dewatering)
South Florida Water Management District Water Use Permit (irrigation)
FDEP Wastewater Permit
LCDOH Potable Water Permit

The failure of this Agreement to address a particular permit, condition, term or restriction shall not relieve the Developer of the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions. The Developer shall be responsible at its sole cost for obtaining any required approval and shall not in any manner obligate the Town or any other governmental agency to grant other required permit approvals. Any reliance on this Agreement or expenditures in pursuance of its terms or any rights accruing to the Developer shall not vest any development right in the Developer or the project to a continuation of this Agreement.

98. Developer Commitments and Obligations. For and in consideration of the benefits received pursuant to this Agreement, the Developer agrees to the following commitments, obligations and associated public benefits; which are deemed to be in the public interest:

- a. The Developer will not utilize the post disaster build-back provisions for 27 dwelling units an acre;
- b. Project density will be limited to 15 dwelling units per acre for a total density of 141 dwelling units consistent with the Village zoning district;

- c. All permitted density of the gulf side parcels (at least 21 units) (south of Estero Boulevard) will be transferred to the bay side parcels (north of Estero Boulevard) (these units are already included in the 141 units identified in paragraph 4(A));
- d. Development of the bay side parcels (north of Estero Boulevard) will be limited to single family and multi-family residential, approved commercial uses and public parks;
- e. Development of the gulf side parcels (south of Estero Boulevard) will be limited to a beach club that provides a private recreational facility and private membership organization significantly reducing the intensity of the previous development and potential disruption to the surrounding neighborhood than the permitted uses of the Village zoning district;
- f. Increase the view corridor to the Gulf from the required 50 feet to 240 feet;
- g. Establish an enhanced beach access with 10 foot pedestrian beach access point, consistent with Exhibit C at no cost to the Town and record a perpetual public access easement;
- h. A private elevated pedestrian crossover above Estero Boulevard will be provided for future residents and guests to eliminate negative impacts to traffic flow;
- i. Establish a public park adjacent to Matanzas Pass Preserve, consistent with Exhibit C at no cost to the Town and record a perpetual public access easement. The Developer will work with Town Staff to establish appropriate programming, infrastructure, and a maximum of 2 public parking spaces for this park;
- j. Establish a public park adjacent to the western property boundary and Estero Boulevard that incorporates the origination point for the linear park with multi-use path, consistent with Exhibit C at no cost to the Town and record a perpetual public access easement. The Developer will work with Town Staff to establish appropriate programming and infrastructure for this park;
- k. Implement the Hidden Paths infrastructure within the bay side property through:
 - a. A linear park interconnecting Estero Boulevard and Donora Boulevard;

- b. An east/west pedestrian and bicycle access connecting Donora Boulevard to the western property boundary;
 - c. Portions of the linear park and pedestrian/bicycle access may occur within the same easement;
 - d. Pedestrian connectivity to Matanzas Pass Preserve through the proposed park;
 - e. Pedestrian connectivity to the Gulf through the proposed park;
 - f. Site specific wayfinding signage along Estero and Donora Boulevards adjacent to the project limits for the linear park, beach access and Matanzas Pass access areas;
 - g. 4 informational and education panels regarding Matanzas Pass resources will be designed with Town Staff and erected prior to Temporary Certificate of Occupancy.
- l. Maintain a sidewalk along the north side of Estero Boulevard and provide a sidewalk along the south side of Estero Boulevard;
- m. Provide a sidewalk along Donora Boulevard;
- n. Along Estero and Donora Boulevards enhanced streetscaping with shade trees will be provided to improve the visual aesthetic for vehicular and pedestrian traffic;
- o. Required landscaping for the development will incorporate Florida Friendly plantings that do not require irrigation;
- p. Vehicular access to the property from Estero Boulevard will be limited to a single access for the north side and a single access for the south side to maintain traffic flow on Estero Boulevard;
- q. The residential multi-family units shall be accessible through a maximum of 2 ingress/egress points from Donora Boulevard and 1 ingress/egress from Estero Boulevard. Additional separate delivery, service, and solid waste pick up access points will be collocated on Donora Boulevard within the building footprint. 4 single family residential units shall be accessed through a new east/west local street extending from Donora Boulevard.~~Vehicular access to the property from Donora Boulevard will be limited to two access points for the multifamily residential units. Additional delivery and service points may be provided from Donora Boulevard for solid waste pickup and delivery for the building and for the restaurant to occur within the building footprint.;~~
- r. One Public Art installation (i.e. sculpture; mural) viewable from Donora Boulevard and location identified during the Development Order process will be installed prior to Certificate of Occupancy.

910.
Agreement:

Deviations. The following deviations are granted pursuant to this

- a. Deviation from LDC Section 34-693(h): Allowable height for the multi-family residential towers of the mixed use structure is increased to 15 stories over 2 stories of structured parking and 235 feet above base flood elevation on the North side of Estero Boulevard; and
- b. Deviation from LDC Section 34-693(e), (f), (g): Project buildings will not be subject to the “build to line” and “building frontage” along Estero and Donora Boulevards, providing a minimum 10 foot front setback and the rear setback will be reduced to 10 for the multi-family structure and 5 feet for accessory structures associated with the single family structures; and
- c. Deviation from LDC Section 34-693(m): The Developer is granted a deviation from the Commercial Design Standards and approval is granted for the architectural design depicted in the Conceptual Plans and Renderings attached hereto as “Exhibit B” And Pattern Book attached hereto as “Exhibit D”; and
- d. Deviation from LDC Section 34-693(c)(1) and (2): The Developer is granted a deviation from the street layout and approval is granted for the limited curb cuts and internal street layout depicted in the Master Conceptual Plans and Renderings attached hereto as “Exhibit B”; and
- e. Deviation from LDC Section 34-692(3)a.1.: The Developer is granted a deviation from the elements of Traditional Neighborhood Design that require interconnected streets, porches or balconies at the front of dwellings, primary entrance visibility from the street and car access from the rear to allow single family units, a mixed use building of multi-family and commercial restaurant and a beach club consistent with the Conceptual Plans and Renderings attached hereto as “Exhibit B”; and
- f. Deviation from LDC Section 34-693(i): Eliminate covered parking and parking decks from the calculation of Floor Area Ratio and increasing the maximum FAR to 1.5 which is equal to 616,156.2 square feet; and
- g. Deviation from LDC Section 34-693(l): Eliminate required commercial space to separate parking under a building and vehicular connection to a secondary street; and
- h. Deviation from LDC Section 34-631(b)(3): Eliminate the square

footage and screening requirements of mechanical structure appurtenances located above 11 stories.

140. Consistency with the Comprehensive Plan. The Proposed Development outlined in this Agreement is consistent with the Town of Fort Myers Beach Comprehensive Plan and Land Development Code. The deviations approved as part of this Agreement are necessary for the zoning district or land use plan designations on the P property that is the subject of this Agreement. The Town's Comprehensive Plan allows the proposed project to be more than 2 stories above flood elevation in height as a matter of right. The Town's Comprehensive Plan also allows the height to be increased as provided in Policy 4-C-4 in redevelopment zoning districts (i.e Village zoning district) and in the event the increase is approved as part of a planned development rezoning. This Agreement has been reviewed and approved by the Town in a manner consistent with the procedures required of a planned development rezoning and this approval and procedure is deemed tantamount to and commensurate to a planned development for purposes of determining consistency with the Comprehensive Plan as outlined in Resolution 24-73. Notwithstanding the foregoing, the deviations identified in paragraph 10 are approved.

121. Existing Ordinances. Any matter or thing required to be performed under existing ordinances of the Town shall not be otherwise amended, modified or waived, except as such modification, amendment or waiver is expressly provided for in herein.

123. Post Development Agreement Requirements. Prior to the issuance of any building permits being issued for the development the following must occur:

- a. All existing and proposed utilities and the manner in which existing utilities will be extended to the site and/or expanded for the use of the development including water, sewer, gas, electricity, cable television, and other utilities shall have been approved by the Town; and
- b. The proposed drainage plan for the proposed project shall have been approved by the South Florida Water Management District. If an interconnection is required to the Town's stormwater management system, approval by the Town will be necessary; and
- c. The proposed grading plan and elevation requirements of the town, including, but not limited to those related to the National Flood Insurance Program as applicable to the town shall have been approved by the town; and
- d. The traffic impact and parking plans for the proposed project shall have been approved by the town; and

- e. All other town requirements necessary for the initial building permits to build the proposed project on the Land.
- f. The Town shall not have any liability whatsoever for any expenses or other damages that may be incurred as a result of denial of the Development Agreement or for denial of building permits due to the failure to meet the Town's requirements as to any Post-Development Agreement requirements..

143. Amendment and Termination.

- A. This Agreement may be amended or terminated with the Parties' mutual consent, in writing signed by both Parties.
- B. This Agreement may be amended administratively by Town staff and the Developer without the need for approval by Town Council to provide for changes to the site plan and/or the Conceptual Plans provided such changes do not include increased building intensity, density, increased height, reduction in open space, reduction in public benefits. ~~Density from other properties may be transferred for 8 additional single family units (to be located north of proposed Seahorse Street) and up to a maximum of 149 units.~~
- C. At Developer's option, Developer may terminate this Agreement at any time prior to the issuance by the Town of a building permit for any portion of the Proposed Development of the Property. Notwithstanding the foregoing, in the event of termination, Developer shall not leave any improvements in an unsafe condition.

145. Notices. All notices required or permitted under this Agreement shall be in writing and shall be mailed by certified mail, return receipt requested to the following addresses, or to such other person or address as any Party may designate from time to time in writing:

If to the Developer: Matt Price
Seagate Fort Myers Beach, LLC
9221 Interstate Commerce Drive
Fort Myers, FL 33913

with a copy to: Tim Byal
Seagate Fort Myers Beach, LLC
9221 Interstate Commerce Drive
Fort Myers, FL 33913

If to the Town: Town Manager

with a copy to: Town Attorney

156. Remedies. Any material breach of this Agreement may be enforced by either party as against the other by appropriate action in law or equity filed in a court of competent jurisdiction; provided, however, no such action may be brought until the defaulting party has been given notice and ninety (90) days in which to cure the default. If the default cannot reasonably be cured within the ninety (90) day period, such period shall be extended if the cure is commenced within such ninety (90) days and the defaulting party is proceeding with due diligence for such period of time reasonably required to complete such cure.

176. Governing Law. This Agreement shall be construed and interpreted according to the laws of the State of Florida, and venue with respect to any litigation between the Parties related to this Agreement shall be exclusively in Lee County, Florida.

187. Enforcement. In the event the Developer, upon approval of the Development Agreement, fails to comply with the terms of this Agreement, the Town may bring an action in a court of law with competent jurisdiction to protect its rights and interests as provided herein. All associated reasonable costs and attorney's fees shall be reimbursed to the Town if an action at law is necessary regardless of whether the Town is the prevailing party thereunder. In no event shall the Town be liable for payment of the Developer's attorney fees.

198. Post Development Agreement Liability. The parties acknowledge that the Town shall not have any liability for any expenses or other damages that may be incurred as a result of denial of building permits due to the failure of the proposed development to meet the Town's requirements as to any Post-Development Agreement requirements.

1920. Severability. If any part, term, or provision of this Agreement is held to be illegal, void, or unenforceable, the remaining portions or provisions of this Agreement shall not be affected or impaired, each remaining provision shall remain in full force and effect, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

240. Entire Agreement; Termination of Prior Agreements. This Agreement embodies the whole agreement of the Parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, regarding the Proposed Development of the Property between the Parties.

221. Covenants Running with the Land and Successors and Assigns. The obligations imposed and entitlements created pursuant to this Agreement shall run with the property and bind Seagate's successors and assigns to the covenants as set forth in

this Agreement and shall be enforceable by and against the Parties hereto, their personal representatives, heirs, successors, grantees, and assigns. The obligations of the Developer may be assigned to one or more successor developers or, property owners associations, and the Developer shall thereafter be relieved of all obligations hereunder.

232. Effective Date and Duration. This Agreement will become effective upon full execution by both Parties and recording of the Agreement in the Public Records of Lee County pursuant to paragraph 25 below. The term of this Agreement shall begin upon its effective date and run for a period of ~~for~~ ten (10) years. ~~In the event no building permits are issued to the Developer within ten (10) years of the effective date, the Agreement shall terminate.~~ The term of the Agreement may be extended at the sole discretion of the Town Council and a finding that the Developer is unable to fulfill its obligations due to circumstances beyond its control. The development of the project may proceed in phases in any sequence within the stated term of this Agreement. Notwithstanding the provisions of this paragraph, unless terminated as provided herein, or pursuant to paragraph 13 above, the obligations imposed and entitlements created pursuant to this Agreement shall run with the property and shall be enforceable by and against the Parties hereto, their personal representatives, heirs, successors, grantees, and assigns.

243. Recording of Agreement. This Agreement will be recorded by the Town in the Public Records of Lee County within fourteen (14) days of approval by the Town. The costs of recording this Agreement will be paid by the Developer.

254. Representation and Warranties. The parties make the following representations to each other as stated herein:

- A. The execution, delivery and performance of this Agreement by the Developer and a third party shall not violate any law, or the terms of any agreement by which they are bound.
- B. The Town and Seagate have the power and authority to enter into this Agreement, and to perform the development as set forth herein, and all the documents have been duly authorized, executed, and delivered and the transactions contemplated herein have been duly authorized.
- C. This Agreement constitutes a valid and legally binding obligation of the Developer and the Town after independent investigation by both of the information contained herein and is enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year written below.

WITNESSES:

SEAGATE FORT MYERS BEACH, LLC, a
Florida limited liability company

Print Name: _____

Print Name _____

By: _____

Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by _____, as _____ of Seagate Fort Myers, LLC, a Florida limited liability company, who is personally known to me or who produced _____ as identification.

Notary Public Signature

My Commission Expires:

Type/Print Notary Public Name

Commission No.: _____

**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

Exhibits:

- A. Legal Description and Sketch of the Property
- B. Conceptual Plans and Renderings dated the 4th day of September, 2024 (16 Pages)
- C. Public Easement Overlay dated the ____ day of September, 2024 (1 Page)
- D. Pattern Book dated the 4th day of September, 2024 (6 Pages)

Exhibit A

Legal Description and Sketch of the Property

DRAFT

NOTES:

- 1) BEARINGS SHOWN HEREON REFER TO STATE PLANE FLORIDA WEST 0902 WITH A BEARING OF S 0°28'13" W. ALONG THE WEST SECTION LINE OF SECTION 29, TOWNSHIP 46 SOUTH RANGE 24 EAST.
- 2) THIS PROPERTY IS SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTIONS OF RECORD.
- 3) DIMENSIONS SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF.
- 4) THIS PROPERTY IS LOCATED IN FLOOD ZONE AE & VE, HAVING A BASE FLOOD ELEVATION OF 11.0'-14.0' (NAVD 1988) PER F.I.R.M. 12071C 0508 G, MAP EFFECTIVE DATE 11/17/22.
- 5) DIMENSIONS SHOWN HEREON ARE PER DEED UNLESS OTHERWISE NOTED.
- 6) IMPROVEMENTS OTHER THAN THOSE SHOWN HAVE NOT BEEN LOCATED.
- 7) LOT 45/47 LOT LINES FOR CASE SUBDIVISION SHOWN ARE GRAPHICAL REPRESENTATION AS PER RECORDED IN P.B.1 PG.58, AS AMENDED IN D.B.131 PG.300-304.
- 8) DNR COASTAL CONSTRUCTION SETBACK LINE SHOWN AS RECORDED IN PLAT BOOK 31 PAGES 1-18, DNR COASTAL CONSTRUCTION CONTROL LINE SHOWN AS RECORDED IN PLAT BOOK 48 PAGES 15-34, M.H.W.L. & EROSION CONTROL LINE SHOWN AS RECORDED IN PLAT BOOK 70 PAGES 25-39, RIGHT-OF-WAY ESTABLISHED FROM ESTERO BOULEVARD RIGHT-OF-WAY MAPS USING LOCAL CONTROL, CASE SUBDIVISION DIMENSIONS BASED ON DEED BOOK 131 PAGE 300.
- 9) FLOOD ZONE LOCATIONS ARE SCALED FROM THE CURRENT EXISTING MAPS PROVIDED BY FEMA AND ARE APPROXIMATE ONLY.

LEGEND

- ARV AIR RELEASE VALVE
B.C.C. BACK OF CURVE
C.R. CERTIFIED CORNER RECORD
CP CONCRETE PAD
C.W. CONCRETE WALL
C.P. CONCRETE POWER POLE
C.S.W. CONCRETE SIDEWALK
CLF CHAIN LINK FENCE
CB CATCH BASIN
(C) CALCULATED DIMENSION
C CENTERLINE
CO COASTAL OUT
COMMUNICATIONS BOX
CASE SUBDIVISION DEED BOOK 131 PAGE 300
C.C.S.L. COASTAL CONSTRUCTION SETBACK LINE
C.C.C.L. COASTAL CONSTRUCTION CONTROL LINE
D.B. DEED BOOK
D.N.R. DEPARTMENT OF NATURAL RESOURCES
(D) DEED DIMENSION
ECL EROSION CONTROL LINE
ELEC. ELECTRIC BOX
F.I.R.M. FLOOD INSURANCE RATE MAP
F.A.C. FLORIDA ADMINISTRATIVE CODE
F.H. FIRE HYDRANT AND WATER VALVE
F.I.R. FOUND IRON ROD (SIZE NOTED)
F.A.L. FOUND ALUMINUM CAP (L64919)
F.C.M. FOUND CONCRETE MONUMENT 4"x4" (UNLESS OTHERWISE NOTED)
F.P.K. FOUND PARKER KALON NAIL & DISK
F.O. FIBER OPTIC BOX
FPL FLORIDA POWER & LIGHT
FO FIBER OPTIC BOX
GW GUIDE WIRE
INV. INVERT
INSTR. INSTRUMENT
LP LIGHT POLE
L.C.U.E. LEE COUNTY UTILITY EASEMENT
L.M.E. LAKE MAINTENANCE EASEMENT
(M) MEASURED DISTANCE
N.F. NOT FOUND
N.G.S. NATIONAL GEODETIC SURVEY
NAVD NORTH AMERICAN VERTICAL DATUM
O.R. OFFICIAL RECORDS BOOK
P.B. PLAT BOOK
P.G. PAGE
(P) PLAT DIMENSION
P.O.B. POINT OF BEGINNING
P.O.C. POINT OF COMMENCEMENT
P.R.M. PERMANENT REFERENCE MONUMENT
P.S.M. PROFESSIONAL SURVEYOR & MAPPER
P.S. PUMP STATION
P.U.E. PUBLIC UTILITY EASEMENT
RNG. RANGE
(R) ROTATED TO BEARING BASIS
R/W RIGHT OF WAY
S.I.R. SET 5/8" IRON ROD AND CAP LS7075
S.P.C. STATE PLAT COORDINATES
S.P.K. SET PARKER KALON NAIL/DISK LS7075
SMH STORM MANHOLE
T.S. TRAFFIC SIGNAL BOX
TEL. TELEPHONE
U.E. UTILITY EASEMENT
WPP WOODEN POWER POLE
WV WATER VALVE
WM WATER METER
- NUMBER CORRESPONDING TO TITLE COMMITMENT NOTES

ACREAGE NOTE

- PARCEL 1, 2 & 3 ACREAGE NORTH OF C.C.S.L. - 9.430 ACRES
-PARCEL 1 - 0.334 ACRES
-PARCEL 2 - 8.906 ACRES
-PARCEL 3 - 0.188 ACRES
-PARCEL 2 & 3 ACREAGE SOUTH OF C.C.S.L. - 1.296 ACRES
-PARCEL 2 - 1.249 ACRES
-PARCEL 3 - 0.047 ACRES

CERTIFICATION:

I HEREBY CERTIFY THAT THIS BOUNDARY SURVEY OF THE HEREON DESCRIBED PROPERTY WAS SURVEYED UNDER MY RESPONSIBLE CHARGE ON 08/12/23. THIS SURVEY MEETS THE STANDARDS OF PRACTICE SET FORTH BY BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 5J-17, F.A.C. PURSUANT TO SECTION 472.027 FLORIDA STATUTES.

Digitally signed by
Nicholas A. Slosser
Date: 2024.05.29
13:02:21 -0400

Unauthorized reproductions,
changes or distribution of
original digitally sealed
documents are not allowed.

NICHOLAS A. SLOSSER, STATE OF FLORIDA, (P.S.M. #7075)

BOUNDARY SURVEY

A PORTION OF
SECTION 29 & 30, TOWNSHIP 46 SOUTH RANGE 24 EAST
LEE COUNTY, FLORIDA

SLOSSER LAND SURVEYING LLC

LB#8522
PROFESSIONAL LAND SURVEYOR
13322 HAMPTON PARK CT
FORT MYERS FLORIDA, 33913 (239) 940-8815

PAGE 1 OF 3

HORIZONTAL CONTROL TABLE

MONUMENT DESCRIPTION	NORTHING	EASTING
BOOB-2-1955	N:753698.744	E:690191.218
E-10	N:707270.049	E:677221.287
E-19	N:765734.562	E:679749.899
FCM R-187A REST 1982	N:768271.456	E:675301.240
FCM R-187A REST 1982	N:767237.679	E:677395.488
FCM A-25A NOT FOUND	N:770294.773	E:670825.912
FCM A-26 NOT FOUND	N:769159.728	E:673959.529

PROPERTY DESCRIPTION

Parcel 1-
Parcel in Lot 45 CASE'S SUBDIVISION, Section 29, Township 46 South, Range 24 East, Estero Island, Lee County, Florida. A lot or parcel of land lying in Lot 45, CASE'S SUBDIVISION, according to a map or plat thereof recorded in Deed Book 131, at Pages 300-304 of the Public Records of Lee County, Florida, which lot or parcel is described as follows:

From the Southwest corner of said Lot 45, which corner is located at the intersection of the West line of Section 29, Township 46 South, Range 24 East, and the Northeast line of Estero Boulevard (State Road No. S-805) run Southeast along said Northeast line for 39.94 feet to the Point of Beginning. From said Point of Beginning deflect 90°07'30" to the left and run Northeast for 73.0 feet; thence deflect 90°07'30" to the right and run Southeast parallel with said Northeast line for 188.54 feet; thence deflect 73°27'30" to the right and run Southeast for 76.15 feet to said Northeast line; thence run Northwest along said Northeast line for 210.08 feet to the Point of Beginning. Being a part of those lands conveyed by deed recorded in Deed Book 181 at Page 202 of said Public Records.

Parcel 2-
The Northwest 34.13 feet of Lot 26, subject to a walkway easement over the Southeast 6 feet thereof; ALSO all of Lots 27 through 30 and all of Lot 31, except the west 10 feet thereof, together with a walkway easement over and across the Northwest 6 feet of the Southeast 40.87 feet of said Lot 26 (said lots extending from the right-of-way line of State Road 805 to the shoreline of the Gulf of Mexico) of CASE'S SUBDIVISION, according to the plat thereof recorded in Plat Book 1, at Page 58, as amended by plat and affidavit attached to Deed recorded in Deed Book 131, at Page 300, Public Records of Lee County, Florida.

ALSO, a parcel of land in Lots 45 and 47 of said CASE'S SUBDIVISION, described as follows: From the Northwest corner of Section 29, Township 46 South, Range 24 East, (also being the Northwest corner of said Lot 45) run East along the North line of said Section 29 and said Lot 45 for 350 feet to concrete monument and the Point of Beginning of the lands hereby described; from said Point of Beginning continue East along said North line for 344.22 feet to a concrete monument at a point 76.65 feet West of the Northwest corner of Lot 1, Block A, ZIMMER'S ADDITION TO SHELL MOUND PARK, as shown on a map or plat thereof recorded in Plat Book 11, at Page 54 of said Public Records; thence run Southeast on a straight line to the intersection of the West line and the North line of Donora Boulevard, as described in Deed recorded in Deed Book 290, at Page 53 of the Public Records, and as shown on said Plat of ZIMMER'S ADDITION, which point is also the Southwest corner of said Lot 1, Block A, of said ZIMMER'S ADDITION; thence run Southwest along said West line of Donora Boulevard for 677.54 feet; thence continue Southwest along said West line of said Donora Boulevard and on a line perpendicular to the Northeast line of Estero Boulevard, to the Northeast right-of-way line of Estero Boulevard; thence run Northwest along said Northeast line of Estero Boulevard for 435 feet to a concrete monument, which monument is 250 feet, as measured along said Estero Boulevard, Southeast from the West line of said Section 29, thence run Northeast, along the Easterly boundary of the lands conveyed by Deed recorded in Deed Book 181, at Page 202, of said Public Records, for 824.57 feet to Point of Beginning.

ALSO, Lots 1 and 2, Block A, of that certain subdivision known as ZIMMER'S ADDITION TO SHELL MOUND PARK, according to the map or plat thereof on file and recorded in the office of the Clerk of the Circuit court of Lee County, Florida, in Plat Book 11, at Page 54, together with a tract or parcel of land described as follows:

Beginning at the Southwest corner of Lot 1, adjacent to Donora Boulevard, thence North 1°15' East along the westerly edge of Lot 1, Block A, ZIMMER'S ADDITION TO SHELL MOUND PARK, according to the map or plat thereof on file and recorded in Plat Book 11, at Page 54, Public Records of Lee County, Florida, a distance of 110 feet; thence West along the section line 76.65 feet to a concrete monument; thence Southeast to the Point of Beginning.

Parcel 3-
Commencing at the Section corner common to Sections 19, 20, 29 and 30, Township 46 South, Range 24 East, Lee County, Florida; Thence South 00 degrees 28'13" West along the Section line common to Sections 29 and 30 for a distance of 742.72 feet to the Point of Beginning; Thence North 82 degrees 45'51" West for a distance of 89.16 feet to the Point of Beginning of Estero Sands a Condominium per Official Records Book 1450 Page 598; Thence North 03°31' East along the east line of said Estero Sands for a distance of 182.43 feet to a point on the Southerly right of way of Estero Blvd (SR 865); Thence South 57 degrees 28'50" East along said right of way for a distance of 25.32 feet to a point of intersection with the aforementioned section line and the Southerly right of way of Estero Blvd; Thence South 00 degrees 28'13" West along said section line for a distance of 199.81 feet to the Point of Beginning.

CERTIFIED TO:

Henderson Franklin Starnes & Holt, P.A.
Old Republic National Title Insurance Company
Seagate Fort Myers Beach, LLC
MIDFLORIDA Credit Union, Its S.A.O.A. ATIMA

BEARING DEVIATION NOTE

-PARCEL 2 BLOCK A, LOTS 1&2 DEVIATION FROM DEED TO STATE PLANE - 00°29'01"

SURVEY DATUM

1. HORIZONTAL DATUM BASED FLORIDA STATE PLANE COORDINATE SYSTEM, WEST ZONE, NAD83/2011, AS REFERENCED ON SAID SURVEY.

TITLE COMMITMENT NOTES:

Lands shown hereon are based on File Number 30291.112 EPC, REV. 3, prepared on the 12th day of July, 2023 @11:00am, by Old Republic National Title Insurance Company reflecting the following:

Items 1 through 21 as shown on title opinion:

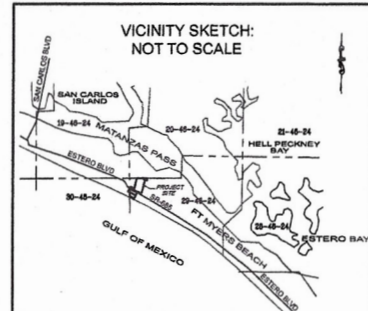
1. Non survey related item.
2. a-bke. Non survey related item.
3. Survey data has been shown to side in the verification of any encroachments encumbrances, violations, variations or adverse circumstances
4. All supplied easements have been shown on survey.
5. Intentionally Omitted.
6. Non survey related item.
7. Subject to lot lines, boundaries and road right of ways contained on the Plat of Case Subdivision, as recorded in Deed Book 131, Page 300, affected by the Final Judgment in Case No. 71-1392 recorded in O.R. Book 808, Page 373, later affirmed by the Second District Court of Appeal, said Final Judgment being re-recorded in O.R. Book 1131, Page 315, Public Records of Lee County, Florida.
8. Subject to dedications, restrictions, reservations, easements, and road right of ways contained on the Plat of Zimmer's Addition to Shell Mound Park, as recorded in Plat Book 11, Page 54, Public Records of Lee County, Florida. (as to Parcel 2) Easements have been plotted on said survey.
9. Subject to Walkway Easement over the Southeast 6 feet of the Northwest 34.13 feet of Lot 26 as described in that certain deed recorded in Deed Book 308, Page 607, Public Records of Lee County, Florida. (as to Parcel 2-Lot 26) Easement have been plotted on said survey.
10. Subject to terms and conditions of that Walkway Easement over the Northwest 6 feet of the Southeast 40.87 feet of Lot 26, contained in that certain deed recorded in Deed Book 308, Page 607, Public Records of Lee County, Florida. (as to Parcel 2-Lot 26) Easement have been plotted on said survey. Does not lie in subject Parcel 2.
11. Subject to Utility Easement given to Lee County, Political subdivision recorded in O.R. Book 1158, Page 1265-1268, Public Records of Lee County, Florida. (as to Parcel 2-Lot 2 Block A) Easements have been plotted on said survey.
12. Subject to Easement in favor of Florida Power and Light Company over the Northeast 10 feet of Lots 30 and 31 of Case's Subdivision, contained in instrument recorded in O.R. Book 2099, Page 1769, Public Records of Lee County, Florida. (as to Parcel 2), Easements have been plotted on said survey.
13. Subject Grant of Easement by and between Comcast of the South, Inc., and RED Coconut RV Park, recorded in Instrument Number 2011000260909, Public Records of Lee County, Florida. (as to Parcel 2), Easements have been plotted on said survey.
14. Non survey related item.
15. Riparian and littoral rights not determined with this survey.
16. Any artificially filled lands have not been determined for this survey.
17. Any portion of the Land created by accretion, avulsion, reliction or artificial means have not been determined for this survey.
18. Any public use lands have not been determined for this survey.
19. Any lands waterward of the mean high water line have not been determined for this survey.
20. Erosion Control Line identified in Plat Book 70, Page 25 Public Records of Lee County, Florida, has been plotted on said survey.
21. Subject Lee County Coastal Construction Control Line recorded in Plat Book 31-A Page 1; O.R. Book 2224, Page 1010 and Plat Book 48, Page 15, Public Records of Lee County, Florida. Has been plotted on said survey.
22. Non survey related item.

LINE TABLE

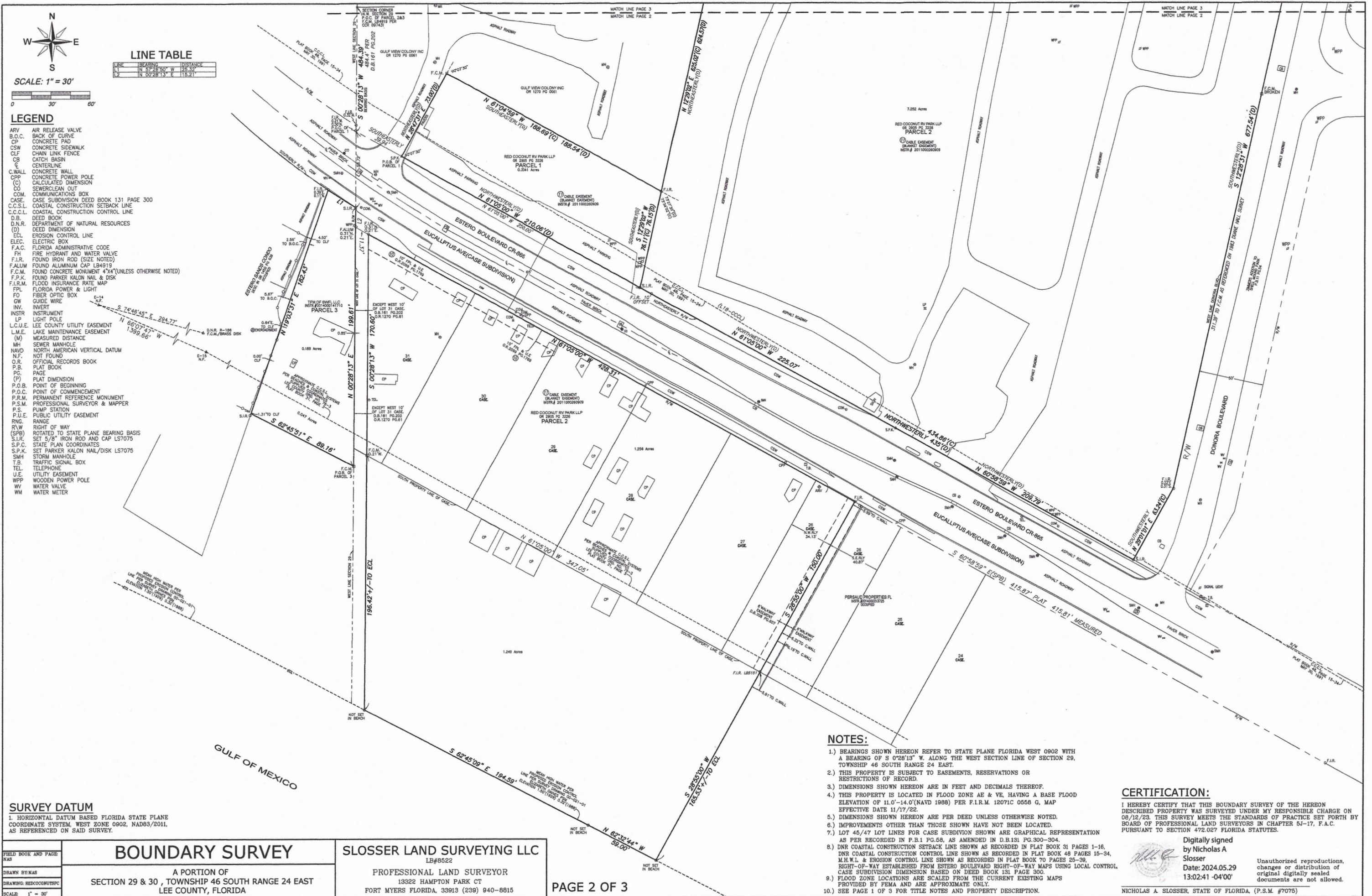
LINE	BEARING	DISTANCE
1(P)	N 02°45'51" W	89.16
1(R)	N 01°18' W	110.00
2(R)	N 00°48'59" W	110.00
3(R)	N 89°11'01" E	120.00
3(P)	N 89°11'01" E	120.00
4(R)	N 00°48'59" W	110.00
4(C)	N 01°18' W	110.00
4(P)	N 01°18' W	110.00
5(P)	N 19°03'31" E	182.43
6	S 00°28'13" W	199.81
7	N 28°55'00" E	150.00
8	S 29°01'01" W	83.24
9	S 55°12'35" E	609.40
10	S 77°05'14" W	853.58
11	S 61°43'49" E	937.38
12	S 67°18'08" E	418.71
13	S 74°40'01" E	1061.70
14	S 67°48'12" E	863.58
15	N 47°59'46" W	27.80
16	S 57°28'50" E	25.32
17	S 81°53'45" E	1023.60
18	N 59°19'36" W	981.41
19	S 00°28'13" W	15.21
20	S 57°28'50" E	25.32
21(D)	SOUTHEASTERLY	76.15
22	S 12°29'02" W	76.11(C)

VICINITY SKETCH:

NOT TO SCALE



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SURVEY DATUM

1. HORIZONTAL DATUM BASED FLORIDA STATE PLANE COORDINATE SYSTEM, WEST ZONE 0902, NAD83/2011, AS REFERENCED ON SAID SURVEY.

FIELD BOOK AND PAGE: N/A	BOUNDARY SURVEY
DRAWN BY: N/A	
DRAWING: REDCOCONUTSFC	
SCALE: 1" = 30'	
A PORTION OF SECTION 29 & 30, TOWNSHIP 46 SOUTH RANGE 24 EAST LEE COUNTY, FLORIDA	

SLOSSER LAND SURVEYING LLC LB#8522
PROFESSIONAL LAND SURVEYOR 13322 HAMPTON PARK CT FORT MYERS FLORIDA, 33913 (239) 940-8815

PAGE 2 OF 3

NOTES:

1. BEARINGS SHOWN HEREON REFER TO STATE PLANE FLORIDA WEST 0902 WITH A BEARING OF S 0°28'13" W. ALONG THE WEST SECTION LINE OF SECTION 29, TOWNSHIP 46 SOUTH RANGE 24 EAST.
2. THIS PROPERTY IS SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTIONS OF RECORD.
3. DIMENSIONS SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF.
4. THIS PROPERTY IS LOCATED IN FLOOD ZONE AE & VE, HAVING A BASE FLOOD ELEVATION OF 11.0'-14.0'(NAVD 1988) PER F.I.R.M. 12071C 0558 G, MAP EFFECTIVE DATE 11/17/22.
5. DIMENSIONS SHOWN HEREON ARE PER DEED UNLESS OTHERWISE NOTED.
6. IMPROVEMENTS OTHER THAN THOSE SHOWN HAVE NOT BEEN LOCATED.
7. LOT 45/47 LOT LINES FOR CASE SUBDIVISION SHOWN ARE GRAPHICAL REPRESENTATION AS PER RECORDED IN P.B.1 PG.56, AS AMENDED IN D.B.131 PG.300-304.
8. DNR COASTAL CONSTRUCTION SETBACK LINE SHOWN AS RECORDED IN PLAT BOOK 31 PAGES 1-18, DNR COASTAL CONSTRUCTION CONTROL LINE SHOWN AS RECORDED IN PLAT BOOK 48 PAGES 15-34, M.H.W.L. & EROSION CONTROL LINE SHOWN AS RECORDED IN PLAT BOOK 70 PAGES 25-39, RIGHT-OF-WAY ESTABLISHED FROM ESTERO BOULEVARD RIGHT-OF-WAY MAPS USING LOCAL CONTROL CASE SUBDIVISION DIMENSION BASED ON DEED BOOK 131 PAGE 300.
9. FLOOD ZONE LOCATIONS ARE SCALED FROM THE CURRENT EXISTING MAPS PROVIDED BY FEMA AND ARE APPROXIMATE ONLY.
10. SEE PAGE 1 OF 3 FOR TITLE NOTES AND PROPERTY DESCRIPTION.

CERTIFICATION:

I HEREBY CERTIFY THAT THIS BOUNDARY SURVEY OF THE HEREON DESCRIBED PROPERTY WAS SURVEYED UNDER MY RESPONSIBLE CHARGE ON 06/12/23. THIS SURVEY MEETS THE STANDARDS OF PRACTICE SET FORTH BY BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 6J-17, F.A.C. PURSUANT TO SECTION 472.027 FLORIDA STATUTES.

Digitally signed by Nicholas A Slosser Date: 2024.05.29 13:02:41 -04'00'	Unauthorized reproductions, changes or distribution of original digitally sealed documents are not allowed.
NICHOLAS A. SLOSSER, STATE OF FLORIDA. (P.S.M. #7076)	

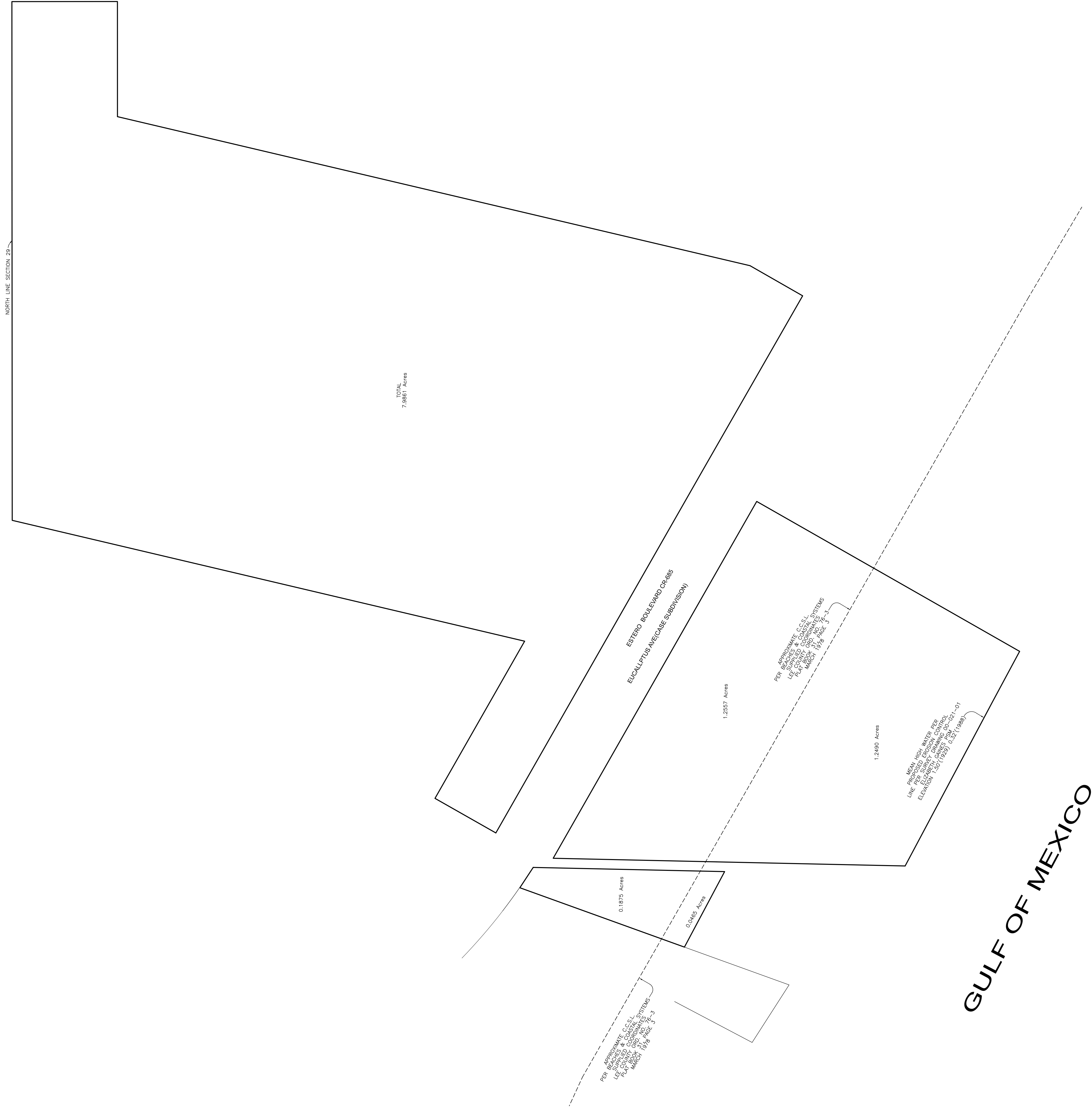


Exhibit B

**Conceptual Plans and Renderings
September 4, 2024**

DRAFT



SOLOMON CORDWELL BUENZ

3001 Estero Blvd, Fort Myers Beach, FL

STEARNS WEAVER MILLER





USE LEGEND & SUMMARY

- 1 North Building A**
 - 15 Story Residential Bldg
 - On 2 Story Parking Podium and Mech. Penthouse
 - 69 Units
- 2 South Building B**
 - 15 Story Residential Bldg
 - On 2 Story Parking Podium and Mech. Penthouse
 - 68 Units

Amenities included in both building

 - Lobby, Fitness & Spa Facilities, Conference Room, Social Lounges, Outdoor Pools, Spas and Cabanas, Pet Facilities, Resident Storage.
 - No consumption on premises
- 3 Bay Homes**
 - 4 Units
 - Single Family Homes
- 4 Beach Club**
 - 29,000 SF
 - Access from Estero Blvd & Private Overpass
 - Consumption on premises
 - 2 Stories over Parking Spaces and Valet Operation
 - Additional Parking Provided in Bldg A Parking Podium
- 5 Sunset Restaurant & Terrace (Public)**
 - 7,500 SF Restaurant / 2,500 SF Dining Terrace
 - Consumption on Premises
 - 1 Story over 1st Parking Podium Level
 - Required Parking within Bldg A Parking Podium
- 6 Pedestrian Overpass (Private)**
 - Estero Blvd. Feature Portal
 - Allows safe private access over Estero Blvd.
- 7 Linear Park & Feature Fountain**
 - Terraced landscaping to buffer podium height
 - Improves public experience and safety
- 8 Public Beach Access**
 - 90' to 120' View Corridors
 - Built & maintained by developer
- 9 Public Parks**
 - Matanzas Pass Preserve Access
 - Linear Park
 - 2943 Estero Boulevard Public Recreation Park



ACCESS LEGEND

- Pedestrian Access Point
- Public Pedestrian Circulation

USE LEGEND

- 1 Public Beach Access**
 - 90' to 120' View Corridors
 - Built & maintained by developer
 - Public beach access
- 2 Public Parks and Trails**
 - South outparcel location
- 3 Linear Park and Feature Fountain**
 - Terraced landscaping to buffer podium height
 - Improves public experience and safety
- 4 Public Restaurant and Sunset Terrace**
 - 7,500 SF Restaurant / 2,500 SF Dining Terrace
 - Consumption on Premises
 - 1 Story over 1st Parking Podium Level
 - Required Parking within Bldg A Parking Podium
- 5 New Sidewalk and Landscaping**
 - Improved Landscaping along Donora Blvd
 - Linkage to Public Parks/Trails
- 6 School Bus Stop**
 - New School Bus Stop on Estero



3001 ESTERO BOULEVARD
15 Stories Over Parking

OCEAN HARBOR
15 Stories Over Parking

CAPER BEACH CLUB
11 Stories Over Parking

ESTERO SANDS
4 Levels Over Parking

3001 ESTERO BLVD
2 Levels Over Parking





NEW BEACH CLUB AND PUBLIC BEACH PARK FRAME THE OPEN VIEW TOWARD THE GULF

VIEW 1



WALKING ALONG ESTERO BLVD IS FRAMED BY THE TRADITIONAL ARCHITECTURE AND LANDSCAPING OF THE BEACH CLUB TO THE WEST AND THE NEW PUBLIC PARK AND FEATURE FOUNTAINS TO THE EAST

VIEW 2



THE NEW PUBLIC PARK EAST OF ESTERO PROVIDE PEDESTRIAN AND BICYCLE ACCESS TO THE MANTANZAS PARK PRESERVE

VIEW 3



AERIAL VIEW LOOKING NORTHWEST ALONG ESTERO BLVD

VIEW 4



THE ENTRY TO THE SUNSET RESTAURANT ALONG WITH THE TERRACED PARK AND WATER FEATURES CREATE AN ACTIVE URBAN STREETScape ALONG ESTERO BLVD

VIEW 5



**SUNSET VIEW FROM THE RESTAURANT LOOKING ACROSS THE LANDSCAPED TERRACES
STEPPING DOWN TO ESTERO BLVD**

VIEW 7



THE SCULPTURAL PEDESTRIAN BRIDGE ALLOWS SAFE ACCESS OVER ESTERO BLVD FOR RESIDENTS TO THE BEACH CLUB

VIEW 8



THE SCULPTED BEACH CLUB POOL WITH A VISTA OVERLOOKING THE GULF

VIEW 9



THE SUNSET TERRACE AT THE BEACH CLUB WITH ACCESS DOWN TO THE BEACH AND VIEWS OF THE GULF.

VIEW 10



THE WALK ALONG DONORA BLVD IS FRAMED BY THE TRADITIONAL ARCHITECTURE AND LANDSCAPING TO THE WEST, CONTINUING NORTH TOWARDS THE MATANZAS PARK PRESERVE

VIEW 11



THE NEW PUBLIC PARK EAST OF ESTERO PROVIDE PEDESTRIAN AND BICYCLE ACCESS TO ESTERO BLVD

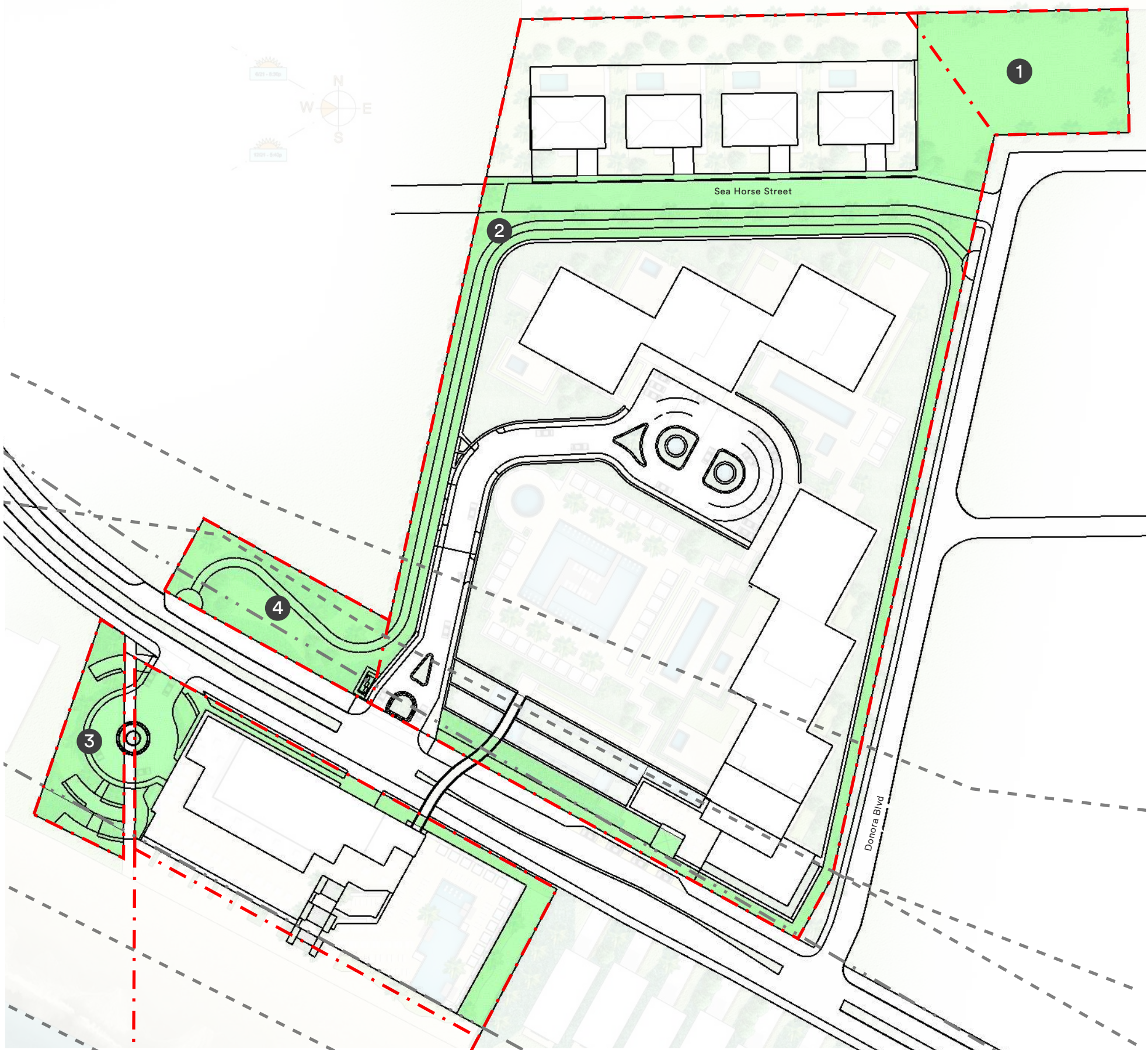
VIEW 12

Exhibit C

**Public Easement Overlay
September 4, 2024**

DRAFT

Exhibit C



Public Easement Area

Green shaded area represents the approximate area that will be included in the dedicated easement to the Town of Fort Myers Beach for public access and the following parks:

- 1 211 Donora Blvd. to provide public recreation and access to Matanzas Pass Preserve to be coordinated with Lee County
- 2 A linear park providing pedestrian and cyclist access from Donora Blvd. to Estero Blvd. through the property a minimum of 20ft wide at all points with a minimum of 8ft wide multi-use path.
- 3 A Beach Access to include a 10ft wide pedestrian-only beach access between Estero Blvd and the beach.
- 4 2943 Estero Blvd. to provide a public recreation park.

Exhibit D

**Pattern Book
September 4, 2024**

DRAFT



SOLOMON CORDWELL BUENZ

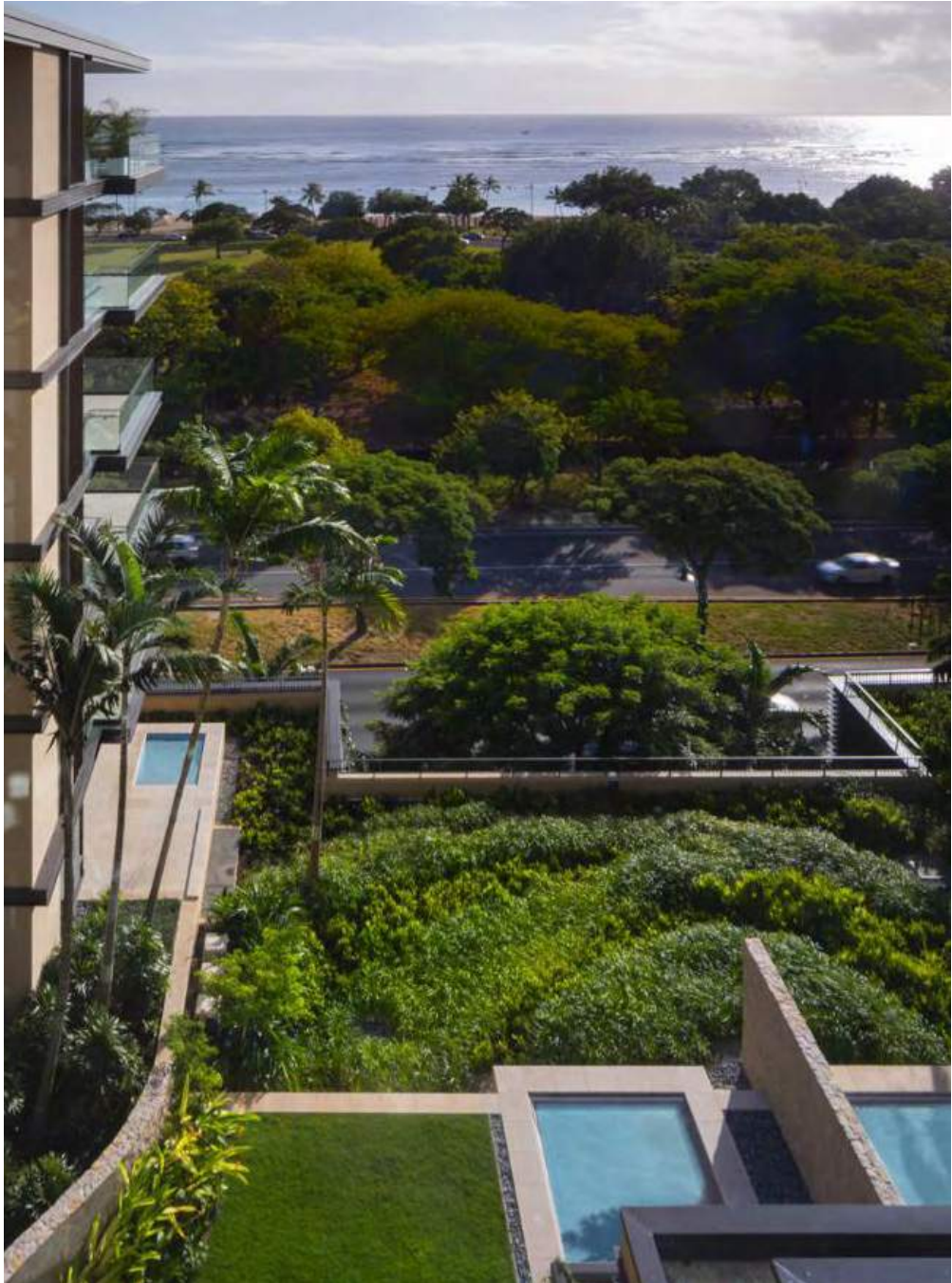
3001 Estero Blvd, Fort Myers Beach, FL

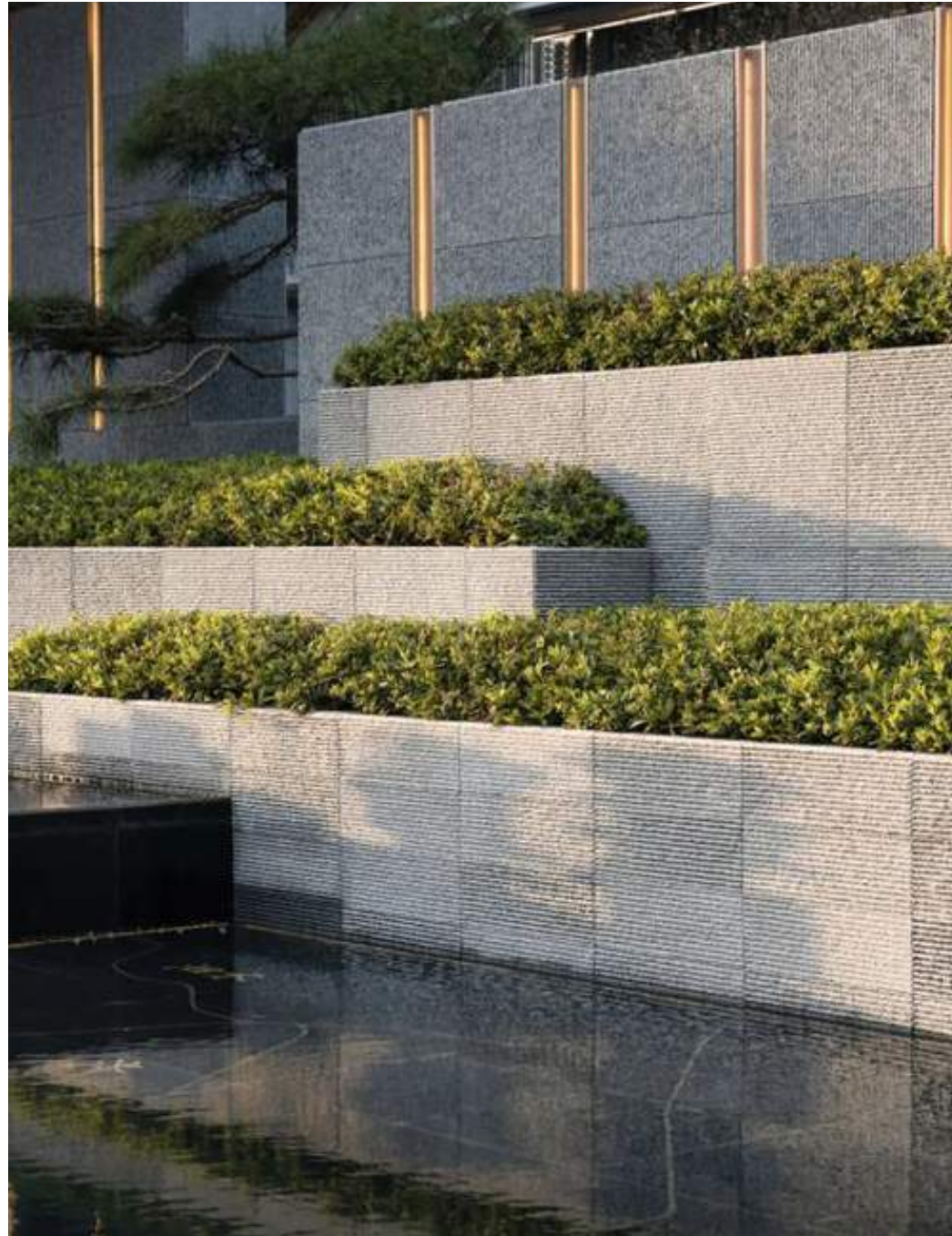
STEARNS WEAVER MILLER















Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT STAFF
REPORT

TYPE OF CASE: Development Agreement

CASE NUMBER: DA 20240170

CASE NAME: 3001, 2943 and 2932 Estero Blvd and 211 Donora Blvd; Development Order to allow a 141 dwelling unit mixed-use development

LPA

HEARING DATE: October 22, 2024, at 9 AM

1ST TOWN COUNCIL

HEARING DATE: October 28, 2024, at 9 AM

2ND TOWN COUNCIL

HEARING DATE: November 4, 2024, at 9 AM

**PREPARED/
SUBMITTED BY:** Sarah Propst, AICP, PMP

I. APPLICATION SUMMARY

Applicant/Owner: Tina Ekblad, AICP, MPA, Sage Entitlements, LLC/ Seagate Fort Myers Beach, LLC

Request: Development Agreement for a mixed-use development with 141 living units, approximately 10,000 square feet of commercial space and approximately a 29,000 square foot beach club.

Subject property: See attached Master Concept Plan

Physical Address: 3001, 2943 and 2932 Estero Blvd and 211 Donora Blvd

STRAP #: 29-46-24-W1-00145.1000, 29-46-24-W1-00145.5000, 30-46-24-W2-00001.0000, and 29-46-24-W1-0120A.0010,

FLU: Mixed Residential, Boulevard, and Low Density

Zoning: Village

Adjacent zoning and land uses:

North:	County Facility, Matanzas Pass Preserve
South:	EC, Beach
East:	Low Density, Single-family homes/ Institutional, FMB Art Association/ Residential Multifamily, Apartment Complex/ Commercial Boulevard, Fire Station, Portion of Junkanoo Building
West:	Village, Vacant/ Commercial Resort, Estero Sands Condominium Building/ EC, Beach

II. BACKGROUND AND ANALYSIS

Background:

Seagate Fort Myers Beach, LLC, is proposing a development agreement (DA) for the property previously known as the Red Coconut RV Park. This property contains 9.43 acres of land zoned Village. The property also contains 1.3 acres of land zoned as EC, however this portion of the property is not subject to the DA. The Red Coconut RV Park was developed with a density of 27 RVs or mobile homes per acre and included residential units, transient guest spaces, recreational amenities, and commercial uses, including restaurants and a nail salon, most recently.

Analysis:

The Comprehensive Plan and the Land Development Code anticipated the redevelopment of the Village Zoning District and provided a pre-approved redevelopment plan for the area. Based on the language in the code it seems clear that the development does not have to match, precisely, the pre-approved plans, however, the policies and land development code sections (attached as Exhibit A) all repeat similar but slightly different recommended criteria for redevelopment of the property. The criteria included in these sections and policies include: walkable streets, highly connected streets and alleys, streets connecting Donora and Shell Mound through to Lovers Lane, shade trees, traditional neighborhood design emphasizing streets that are interconnected and dwellings with porches or balconies on the front, primary entrances visible from the street, and cars to the rear, variety of housing types, detached homes and cottages abutting existing single family homes, low rise apartments interior to the property, reduced density to 15 units per acre, substantial open space and view corridors, public access points to Matanzas Pass Preserve, mixed commercial and residential uses.

The Land Development Code provides several benefits for development that is compliant with the pre-approved development option which are expected to meet the criteria listed in the code. These benefits include: 1) Uses in the "Open" subgroup of table 34-1 which includes restaurants, retail stores, personal services, and bar or cocktail lounge; and 2) Residential density of up to 15 dwelling units per acre. The

proposed development is reliant on both of these benefits.

Policy 3-A-6 directs the Town to “evaluate any alternative redevelopment concepts for any portion of the Gulfview Colony/ Red Coconut properties as to the following design principles:

- i. retains and/or creates water views through street layout, site design, and architectural design;
- ii. provides a variety of housing types rather than uniformity;
- iii. locates the more durable housing types and mix of uses along the Bay side of Estero Boulevard;
- iv. new streets create a highly connected network which includes mid-block paths or alleys;
- v. streets have sidewalks and street trees;
- vi. local streets are interconnected from Donora and Shell Mound through to the north.

The proposed DA meets many of the items referenced in Policy 3-A-6 and LDC Section 34-692(3). The applicant has requested several deviations, from the LDC, which are allowed through this process. The DA includes a complete list of proposed uses, eight (8) requests to deviate from the code requirements, and a list of public benefits.

List of Uses

1. Residential Density. A maximum of 141 residential units to be developed as 4 single and 137 multi-family units on the North side of Estero Blvd.
2. Vehicular Access. The residential multi-family units shall be accessible through a maximum of 2 ingress/egress points from Donora Blvd, 1 ingress/egress from Estero Boulevard. Additional delivery and service points may be provided from Donora Boulevard for solid waste pickup and delivery for the building and for the restaurant to occur within the building footprint. 4 single family residential units shall be accessed through a new east/west local street extending from Donora Boulevard.
3. Rental Restrictions. Rental of any permitted dwelling unit will be limited to a single renting entity during any one-month period, with a minimum stay of one week.
4. Parking. Parking for the residential uses and commercial restaurant shall be provided consistent with the regulations at the time of building permit. An additional 75 membership spaces will be provided to support the beach club.
5. Commercial Area. Up to 10,000 square feet of commercial uses as identified in the Village Zoning Category. The commercial uses shall be open to the public, including but not limited to commercial personal services, such as hair and nail salons, a laundry service, daycares, a small-scale convenience retail, restaurants, and coffee shops.
6. Beach Club. A beach club not to exceed 29,000 square feet of enclosed air-

conditioned space with private recreational amenities and a private membership organization. At least 25% of the memberships in the beach club will be available to non-residents of the Property. The beach club shall provide the following uses and amenities: pool and pool deck, event space for members and their guests only (including conference center, wedding venue, and meeting space and similar uses), umbrellas, chairs, cabanas, and a restaurant with consumption on premises (indoor and outdoor) and terrace.

7. Parks and Access Areas. All parks and access areas will be maintained by the Developer or an association of property owners. A minimum of three (3) parks and access areas upon which the Town will be provided an easement for public use and located as follows (and substantially as shown in Exhibit C):

- (1) Matanzas Pass Preserve Park. To provide public recreation and access to Matanzas Pass Preserve to be coordinated with Lee County and the Town; and

- (2) a linear park providing pedestrian and cyclist access from Donora Blvd. to Estero Blvd. through the property a minimum of 20ft wide at all points with a minimum of 8ft wide multi-use path. The Developer will coordinate with the Town regarding directional and safety signage; and

- (3) an enhanced beach access to include a 10ft wide pedestrian-only beach access between Estero Blvd. and the beach (while also maintaining a beach access on the southern portion of the Property); and

- (4) 2943 Estero Blvd. to provide a public recreation park.

Deviations from the Code

The attached document entitled *Schedule of Deviations* includes the applicant's complete justification for the deviations.

1. Deviation from LDC Section 34-692(3)a.1.: The Developer is granted a deviation from the elements of Traditional Neighborhood Design that require interconnected streets, porches or balconies at the front of dwellings, primary entrance visibility from the street and car access from the rear to allow single family units, a mixed use building of multi-family and commercial restaurant and a beach club consistent with the Conceptual Plans and Renderings attached hereto as "Exhibit B"; and
2. Deviation from LDC Section 34-693(c)(1) and (2): The Developer is granted a deviation from the street layout and approval is granted for the limited curb cuts and internal street layout depicted in the Master Conceptual Plans and Renderings attached hereto as "Exhibit B"; and

3. Deviation from LDC Section 34-693(e), (f), (g): Project buildings will not be subject to the “build to line” and “building frontage” along Estero and Donora Boulevards, providing a minimum 10 foot front setback and the rear setback will be reduced to 10 for the multi-family structure and 5 feet for accessory structures associated with the single family structures; and
4. Deviation from LDC Section 34-693(h): Allowable height for the multi-family residential towers of the mixed-use structure is increased to 15 stories over 2 stories of structured parking and 235 feet above base flood elevation on the North side of Estero Boulevard; and
5. Deviation from LDC Section 34-693(i): Eliminate covered parking and parking decks from the calculation of Floor Area Ratio and increasing the maximum FAR to 1.5 which is equal to 616,156.2 square feet; and
6. Deviation from LDC Section 34-693(l): Eliminate required commercial space to separate parking under a building and vehicular connection to a secondary street; and
7. Deviation from LDC Section 34-693(m): The Developer is granted a deviation from the Commercial Design Standards and approval is granted for the architectural design depicted in the Conceptual Plans and Renderings attached hereto as “Exhibit B” And Pattern Book attached hereto as “Exhibit D”; and
8. Deviation from LDC Section 34-631(b)(3): Eliminate the square footage and screening requirements of mechanical structure appurtenances located above 11 stories.

Applicant Proposed Public Benefits

A full description of the applicant proposed public benefits can be found in the Applicant’s Report, pages 23-26.

1. Public Park with enhanced Beach Access & View Corridors to the Gulf of Mexico
2. Linear Park
3. Two Bay Side Public Parks
4. Density Transfer to Bay Side Parcels
5. Pedestrian Overpass, Limited Vehicular Driveways & Bus Pull-Off
6. Public Memberships Available to Beach Club

Public Benefit items not listed in the Applicant’s Report but found in the DA include:

1. Provision of new sidewalk along Donora Blvd with enhanced landscaping and shade trees;

2. One public art installation viewable from Donora Blvd;
3. Maintenance of sidewalk along the north side of Estero Blvd;
4. Informational education panels at the park adjoining Matanzas Pass Preserve and wayfinding and safety signs along the linear park;
5. Coordination with Lee County to design the pull-off points on Estero Blvd to allow school buses to utilize the pull off;
6. Florida friendly plantings that do not require irrigation; and
7. Limiting the access along Donora for two entrances plus service entrances.

General Description of Development

The DA proposes a development consisting of 141 dwelling units. Four (4) dwelling units are proposed as single family detached residences and the remainder will be multifamily dwelling units. The applicant has request the ability to administratively transfer density from other properties for up to eight (8) additional single family units at the rear of the property, for a total of 149 units.

The development would consist of a two (2) story pedestal for parking, with nine (9) up to 15-story towers over the parking pedestal. The maximum requested height for the development is 235 feet over base flood elevation. The portion of the development abutting the north side of Estero Blvd would be a two (2) story restaurant. The portion of the development abutting the south side of Estero Blvd would be a three (3) story beach club building with pool and pool amenities also along Estero Blvd.

The development would provide 10-foot setbacks from Donora Blvd and Estero Blvd. The main building on the north side of Estero Blvd would provide a 10-foot setback from the linear park. The beach club building would be permitted to develop up to the 1978 Coastal Construction Control Line (CCCL). The single-family residences would provide a 10-foot street setback, 20-foot rear setback, and 5-foot side setbacks. Accessory structures would provide a 5-foot setback.

Neighborhood Compatibility:

These parcels are separated from adjacent single family and multi-family residential units by Donora Boulevard. The development proposes single-family dwellings along the north side of the property, closest to the existing single-family dwellings. The proposed multi-family development will be a good deal taller than all surrounding uses in this neighborhood. However, the proposed use is residential in nature, and the applicant has agreed to limit rental of residential units to a maximum of one rental per month. The proposed uses do not appear to create conflict with the adjacent uses, although the structures may be imposing in comparison to the existing neighborhood.

Findings and Conclusions:

The applicant has provided a DA meeting the minimum statutory requirements of the Code of Ordinances. The DA has been processed in accordance with the procedures in the Administrative Code (attached as Exhibit B).

III. RECOMMENDATION

The development agreement in your agenda packet is the product of preliminary negotiations between the applicant and Town staff, in compliance with the processes and procedures of the administrative code section (Resolution 24-73 is attached as Exhibit B).

Due to Hurricane Milton, the LPA hearing was held on October 22nd. The LPA recommended denial of the Development Agreement, stating that the proposed public benefits were inadequate for requested height. The LPA did recommend several changes, which the applicant updated in their newly amended Development Agreement, attached to this agenda item.

The Town held a first Town Council hearing on this case and recommended scheduling a second hearing on a 4-1 vote, with the changes that were discussed during the hearing.

IV. CONDITIONS OF APPROVAL

Conditions of approval are contained within the DA.

Staff Report Exhibits:

A – Comprehensive Plan and LDC discussion of Red Coconut

B – Resolution 24-73 Procedures for development agreements with deviations

Comprehensive Plan Objectives and Policies pertaining to Red Coconut

POLICY 3-A-5 Provide in the new Land Development Code a pre-approved option for the future redevelopment of the Red Coconut/Gulfview Colony properties consistent with the town's vision of traditional neighborhoods — neighborhoods that recreate a small-town feel; which are pedestrian and bicycle friendly with an internal circulation system that makes it possible to walk or bicycle to schools and services without always using Estero Boulevard; which retain the psychological connection and views to both the Bay and the beach; and which offer a variety of housing types and opportunity for mixed uses.

POLICY 3-A-6 In accordance with Policies 4-E-1 and 4-F-2 of the Future Land Use Element, evaluate any alternative redevelopment concepts for any portion of the Gulfview Colony/ Red Coconut properties as to the following design principles:

- i. retains and/or creates water views through street layout, site design, and architectural design;
- ii. provides a variety of housing types rather than uniformity;
- iii. locates the more durable housing types and mix of uses along the Bay side of Estero Boulevard;
- iv. new streets create a highly connected network which includes mid-block paths or alleys;
- v. streets have sidewalks and street trees;
- vi. local streets are interconnected from Donora and Shell Mound through to the north.

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 buildback situations (see Policies 4-D-1 and 4-E-1), and different heights may be applied to officially designated redevelopment areas such as Times Square, Red Coconut/Gulf View Colony, and Villa Santini Plaza). In those few cases where individual parcels of land are so surrounded by tall buildings on lots that are contiguous (or directly across a street) that this two-story height limit would be unreasonable, landowners may seek relief through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The town will approve, modify, or deny such requests after evaluating the level of unfairness that would result from the specific circumstances and the degree the specific proposal conforms with all aspects of this comprehensive plan, including its land-use and design policies, pedestrian orientation, and natural resource criteria. Particular attention would be paid to any permanent view corridors to Gulf or Bay waters that could be provided in exchange for allowing a building to be taller than two stories. In each case, the town shall balance the public benefits of the height limit against other public benefits that would result from the specific proposal.

OBJECTIVE 4-F REDEVELOPMENT — Take positive steps to redevelop areas that are reaching obsolescence or beginning to show blight by designing and implementing public improvements near Times Square to spur private redevelopment there, by supporting the conversion of the Villa Santini Plaza into a pedestrian precinct, by providing an opportunity for landowners to

Exhibit A – Comp Plan and LDC discussion of Red Coconut

replace vulnerable mobile homes and recreational vehicles with permanent structures in the Gulfview Colony/Red Coconut area, and by providing building code relief for historic buildings.

POLICY 4-F-2 SPECIFIC REDEVELOPMENT PLANS: This comprehensive plan anticipates substantial redevelopment over the coming years. Specific concepts have been developed for three specific areas:

iii. Gulfview Colony/Red Coconut – This area is shown as “Mixed Residential” and “Boulevard” on the Future Land Use Map. If landowners wish to redevelop part or all of this property, the following concepts are encouraged, and shall form the basis for a preapproved redevelopment option in the Land Development Code:

- a. traditional neighborhood design emphasizing porches on the front; primary entrances visible from the street; and cars to the rear (except for on-street parking);
- b. detached houses or cottages (with optional accessory apartments) abutting existing single-family homes;
- c. low-rise townhouses or apartments allowed toward the center;
- d. walkable narrow streets with shade trees that double as view corridor to the Preserve and Gulf;
- e. substantial open space with views to be maintained from Estero Boulevard to the Gulf;
- f. mixed commercial and residential uses along the Bay side of Estero Boulevard;
- g. quiet internal street connections to the north and south;
- h. significantly reduced density from the existing level of 27 RV/mobile homes per acre at the Red Coconut to a maximum level of 15 dwelling units per acre;
- i. provision for a publicly acquired access point to the Matanzas Pass Preserve. This redevelopment plan is described in Community Design Policies 3-A-5 and 3-A-6.

Different redevelopment concepts that are consistent with this comprehensive plan may also be proposed for any of these areas through the planned development rezoning process.

Land Development Code Sections referring to Red Coconut redevelopment

Sec. 34-691. - Purpose.

The purpose of the Village district is to provide alternative futures for the Red Coconut and/or Gulf View Colony, either a continuation of the current land uses or their transformation into a traditional neighborhood pattern.

...(2) As an alternative, the Village district provides a second set of regulations that would allow the transformation of either of the existing mobile home and recreational vehicle parks into more permanent and durable housing types in a traditional neighborhood pattern, in accordance with the design concepts in the Fort Myers Beach Comprehensive Plan.

Sec. 34-692. - District map and applicability.

The area indicated on Figure 34-18 is the outer boundary of the Village district.

Exhibit A – Comp Plan and LDC discussion of Red Coconut

...(3) Transformation of existing mobile home and recreational vehicle parks. Policies 3-A-5, 3-A-6, and 4-F-2-iii of the Fort Myers Beach Comprehensive Plan have authorized a pre-approved redevelopment option for land in the Village district.

a. The following concepts are expected in this redevelopment process:

1. Traditional neighborhood design emphasizing streets that are interconnected and dwellings with porches or balconies on the front, primary entrances visible from the street, and cars to the rear (except for on-street parking);
2. Detached houses or cottages (with optional accessory apartments) abutting existing single-family homes;
3. Low-rise townhouses or apartments allowed elsewhere on the site;
4. Walkable narrow streets with shade trees that double as view corridors to the Preserve and Gulf;
5. Open space that allows views to be maintained from Estero Boulevard to the Gulf;
6. Mixed commercial and residential uses along the bay side of Estero Boulevard;
7. Quiet internal street connections to the north and south;
8. Significantly reduced density from the existing level of 27 RV/mobile homes per acre at the Red Coconut to a maximum level of 15 dwelling units per acre; and
9. A site design that accommodates a publicly acquired access point to the Matanzas Pass Preserve.

b. At the option of landowners in the Village district, a development order may be obtained to redevelop all or part of this property in accordance with the option described in more detail in § 34-693 below, and generally in accordance with either of the conceptual site plans found in the community design element of the Fort Myers Beach Comprehensive Plan. Until such time as this development order is obtained, the regulations in § 34-693 below shall have no effect.

RESOLUTION NUMBER 24-73

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA; MAKING FINDINGS; APPROVING AN ADMINISTRATIVE CODE SETTING FORTH PROCEDURES FOR THE APPLICATION AND APPROVAL OF DEVELOPMENT AGREEMENTS WITH DEVIATIONS; 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, Sec. 2-96, “Applications for Development Agreements”, of the Town’s Land Development Code provides in pertinent part that:

No person shall have the right to apply for or receive development agreement approval, unless such right is so provided in an appropriate administrative code which establishes procedures for such applications. Should such an administrative code be adopted, then the town shall establish a schedule of fees and charges which shall be imposed for the filing and processing of each such application.

WHEREAS, after discussion during public meetings before the members of the Fort Myers Beach Land Planning Agency and the Fort Myers Beach Town Counsel, and after allowing input from the public, an administrative code providing for the procedures to be followed for the application for, and the approval of, development agreements with deviations has been decided upon; and

WHEREAS, the Town Council has determined it is in the best interest of the Town of Fort Myers Beach and its residents and business owners to adopt this Resolution.

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 adopts the attached Exhibit “A” as the Town of Fort Myers Beach Administrative Code Providing Procedures for Development Agreements with Deviations.

Section 3. This Resolution shall be effective immediately after the adoption by Resolution of the schedule of fees and charges which shall be imposed for the filing and processing of each application for a Development Agreement with Deviations.

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

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

ADOPTED this 1st day of April 2024, by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers
Dan Allers (Apr 12, 2024 14:28 EDT)
Dan Allers, Mayor

ATTEST:

Amy Baker
Amy Baker (Apr 23, 2024 13:30 EDT)
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 Stuparich
Nancy Stuparich (Apr 25, 2024 21:28 EDT)
Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 12th day of April 2024.

**TOWN OF FORT MYERS BEACH
ADMINISTRATIVE CODE PROVIDING
PROCEDURES FOR DEVELOPMENT AGREEMENTS WITH DEVIATIONS**

Pursuant to Section 2-100 and 2-96 of the Town's Land Development Code, the Town may enter into a Development Agreement with Deviations with a property owner. A Development Agreement with Deviations is a non-statutory development agreement that may allow for approval of amendments, modifications, variances or exceptions ("deviations") from the Town's Land Development Code, and, if appropriate under the provisions of the Town's Comprehensive Plan, relief from the building height limitations in the Comprehensive Plan. Approval of a Development Agreement and the deviations provided for in such Development Agreement shall be considered tantamount to and commensurate to a planned development for purposes of determining consistency with the Comprehensive Plan. Approval of a Development Agreement with Deviations shall be subject to the procedures set forth herein.

1. Development Agreement with Deviations Application Procedures.

The following information/exhibits shall be required with the application for a Development Agreement with Deviations (hereinafter "Development Agreement"):

1.1. Legal description and address of the parcel of land which will be the subject of the Development Agreement (hereinafter "Land").

1.2. The name, address and telephone number of the applicant and any attorney or agent who is or will be representing the applicant.

1.3. A title opinion from a Florida attorney (which opinion is in a form acceptable to and in favor of the town), which shall identify and provide the names, addresses and telephone numbers of all legal and equitable owners having interest in the Land, as well as all mortgage or lien holders, holders of easement interests, and other encumbrances, upon the Land. As of the date of recordation of any Development Agreement, the applicant shall be required by the town to update the foregoing information in this subparagraph to the date of recording of the Development Agreement.

1.4. An application signed by, or on behalf of, the owner and any lien holder(s) as to the Land subject to the Development Agreement, and if not signed by the owner a notarized consent signed by the owner authorizing the person to sign the application.

1.5. Payment of any required application fee as set by resolution of the town council.

1.6. A survey of the Land showing the approximate location of all environmentally sensitive lands, or lands subject to the jurisdiction of the U.S. Army Corps of Engineers, Florida Department of Environmental Regulation, the Southwest Florida Water Management District or Lee County, Florida.

1.7. A statement and finding demonstrating that the proposed Development Agreement will be consistent with the comprehensive plan of the town.

1.8. The desired duration of the Development Agreement shall not be less than the expected completion of the development on the Land.

1.9. Development uses and regulations currently legally permitted on the Land, including densities, intensities, heights of structures, and setbacks; and, if different, any of the same that are currently on the Land, or that were on the Land at any time in the last 24 months.

1.10. Development uses and regulations, including densities, intensities, heights of structures, and setbacks being requested on the Land.

1.11. A description of the public facilities which will provide services to support the development, the approximate date that new public facilities, if needed, will be constructed, and a schedule to assure that the public facilities and services will be available concurrent with the impacts of development.

1.12. A description of any current or proposed reservation or dedication of land for public purposes.

1.13. Any deed restrictions existing or being imposed upon the Land, and a description of any current or proposed reservation or dedication of land for public purposes.

1.14. The application must explicitly identify each instance of conflict with existing ordinances and expressly provide for the Development Agreement to control, or else all of the provisions of such conflicting ordinances shall control to the extent that the Development Agreement fails to expressly provide otherwise. Any ambiguity with respect to whether a Development Agreement or an ordinance is to control shall be interpreted to favor the ordinance. A statement listing all contemplated zoning districts or land use modifications or requests for more flexibility that will be required if the proposed Development Agreement were to be approved.

1.15. A sketch of site plan showing where buildings (with heights), structures, parking, and other features/amenities of the proposed development shall be located. If the Land is located on the water, any view corridors or public access location(s), if any, will be located.

1.16. A statement that a copy of the Development Agreement with Deviations Application has been furnished by First Class U.S. Mail to all property owners within 100 feet of the boundaries of the Land at the addresses of such property owners found on the Lee County Property Appraiser website, and a list of such property owners and addresses.

1.17. A concise and complete recital of the proposed contents of the Development Agreement using the Form of Development Agreement with Deviations attached as Ex. "A".

2. Development Agreement Minimum Content Requirements.

The following information shall be required within a Development Agreement.

2.1. A legal description of the land subject to the agreement and the identification of all persons having legal or equitable ownership therein.

2.2. The duration of the development agreement, which duration shall not be less than the anticipated time period needed to fully build out the development.

2.3. The development rights to be permitted on the land, and setting forth densities, intensities, building height(s), and setbacks. Uses of the land shall be those allowed in the underlying zoning district unless otherwise specifically provided, such as when a special exception is a part of the development agreement.

2.4. A description of the public facilities and services, including on-site improvements that will serve the proposed project, including designation of the entity or agency that shall be providing such facilities. Additionally, if new facilities are needed to serve the project, the date by which such facilities will be constructed and a schedule to assure that public facilities and services shall be available concurrent with the impact of the development project.

2.5. A description of any reservation or dedication of land for public purposes. The Development Agreement shall provide specifically how the land dedication obligation for the project, if any, is to be met. In the event that land or any interest herein is to be conveyed to the town or other entity in discharge of the foregoing, the Development Agreement shall provide that such conveyance or dedication will be by warranty deed or easement, or other instrument in form and substance acceptable to the town attorney, together with evidence of title in form acceptable to the town attorney prepared by an attorney who is a member of the Florida Bar, or a title company licensed in Florida, all depicting who is the owner in fee simple of the land subject to the conveyance or dedication, and the holders of any other interest or liens affecting said land.

2.6. A description of all local permits approved or needed to be approved for the development of the Land, specifically to include at least the following:

Any required submission to the Southwest Florida Regional Planning Council and any required permission of the State of Florida, Department of Environmental Regulation, the U.S. Corps of Army Engineers, the Southwest Florida Water Management District, the U.S. Environmental Protection Agency or any other required governmental permission. The Development Agreement shall specifically provide that said development permission will be obtained at the sole cost of the owner of the Land, and that any approvals previously given, including the Development Agreement, shall not in any manner obligate the town or any other governmental agency to grant other permit approvals. Under these conditions, action in reliance on the Development Agreement or expenditures in pursuance of its terms or any rights accruing to the project owner thereunder shall not vest any development rights in the owner of the Land or the project to a continuation of the Development Agreement.

2.7. A specific finding in the Development Agreement that the proposed project permitted or proposed is consistent with the town's Comprehensive Plan and Land Development Code, or that, if deviations are necessary for the zoning district or land use plan designations on the subject Land, such Development Agreement specifically lists such deviations in detail.

2.8. Statement in the Development Agreement showing how sidewalk and pedestrian travel is being addressed in a conceptual plan showing the proposed layout of streets, lots, green areas, conservation areas, bike ways, parks, public facilities and such other amenities.

2.9. A statement in the Development Agreement describing how environmentally sensitive land, if any, will be preserved and managed.

2.10. A statement in the Development Agreement describing how threatened or endangered species are being protected.

2.11. A statement in the Development Agreement explicitly identifying each instance of conflict with existing ordinances and expressly providing for the Development Agreement to control, or else all of the provisions of such conflicting ordinances shall control to the extent that the Development Agreement fails to expressly provide otherwise. Any ambiguity with respect to whether a Development Agreement or an ordinance is to control shall be interpreted to favor the ordinance. A statement indicating that failure of the Development Agreement to address a particular permit condition, term or restriction shall not relieve the owner or developer of the necessity of complying with the laws governing said permitting requirements, conditions, terms or restriction.

2.12. A provision that any matter or action required under existing ordinances of the town shall not be otherwise amended, modified or waived, unless such modification, amendment or waiver is expressly provided for in the Development Agreement with specific reference to the Code provision so waived, modified or amended (“deviations”).

2.13. A statement whereby if the applicant, upon approval of the Development Agreement, fails to comply with the terms of the agreement, the town may bring an action in a court of law with competent jurisdiction to protect its rights and interests. All associated reasonable costs and attorney's fees shall be reimbursed to the town if an action at law is necessary regardless of whether the Town is the prevailing party

2.14 Post-Development Agreement requirements. An acknowledgement that prior to the issuance of any building permits being issued for the development that:

2.14.1 All existing and proposed utilities and the manner in which existing utilities will be extended to the site and/or expanded for the use of the development including water, sewer, gas, electricity, cable television, and other utilities shall have been approved by the Town;

2.14.2 The proposed drainage plan for the proposed project shall have been approved by the Town;

2.14.3 The proposed grading plan and elevation requirements of the town, including, but not limited to those related to the National Flood Insurance Program as applicable to the town shall have been approved by the town;

2.14.3. The traffic impact and parking plans as applicable to the town shall have been approved by the town; and

2.14.4 All other town requirements are met that are necessary for the initial building permits to build the project on the Land.

2.15. An acknowledgement that the town shall not have any liability whatsoever for any expenses or other damages that may be incurred as a result of denial of the Development Agreement or for denial of building permits due to the failure to meet the town's requirements as to any Post-Development Agreement requirements.

2.16. A description of any special benefit to the Town as a result of the development such as, the promotion of economic development, affordable housing, hurricane recovery, provision of needed public facilities, provision of public land or recreation, and/or elimination of blight.

2.17. A finding that the proposed Development Agreement is reasonable and not arbitrary and in the best interest of the town.

3. *Development Agreement with Deviations Review Procedures.*

The following regulations shall be followed during the review of a Development Agreement with Deviations.

3.1. Staff negotiation. The town manager or the town manager's designee (typically the town planner) shall review the proposed project and shall meet and hold preliminary nonbinding negotiations with the applicant regarding the appropriate terms and conditions on which said Land should be developed. At such time as a tentative agreement is reached as to the recommended terms and conditions of the development agreement, or the town manager or town manager's designee deems that no further negotiations would be useful because of the unlikely possibility of reaching a concurrence on the terms and conditions of a Development Agreement, the proposal shall be reduced to a nonbinding and unexecuted writing. Such tentative agreement, whether oral or written, shall not give rise to any development rights or equitably or legally vest any development rights in the owner of the Land or other substantially affected person.

3.2. Reduction of proposal to writing

3.2.1. In the event that the town manager or the town manager's designee and the applicant have negotiated the terms of a mutually acceptable, nonbinding and tentative Development Agreement, the terms of that Development Agreement shall be reduced to writing in a contractual form for review and for further discussion, consideration and approval or disapproval as provided herein. The Development Agreement may include a provision that authorizes administrative amendments to the site plan provided that height, density and intensity are not increased, and the plan remains consistent with the Town's Comprehensive Plan.

3.2.2. In the event that the town manager or town manager's designee and the applicant have been unable to negotiate a mutually satisfactory Development Agreement, within thirty (30) days of said determination by the town manager or the town manager's designee, the applicant may prepare a proposed Development Agreement consistent with all requirements hereof for review by the town's Local Planning Agency ("LPA").

3.2.3 It shall not be required for the town manager, or designee to make a recommendation as to whether the town council should approve or not approve a Development Agreement.

3.3. Public hearings

3.3.1. At such time as the Development Agreement has been reduced to written nonbinding contractual form, or the applicant has prepared a Development Agreement as set forth above in subsection 3.2, the town manager or town manager's designee shall transmit such Development Agreement to the LPA.

3.3.2. A public hearing shall be held by the LPA concerning said application, and the LPA shall issue a recommendation for approval or denial of the Development Agreement to the town council. Thereafter a public hearing shall be held by the town council as to the Development Agreement.

3.3.3. Notice of each of the public hearings shall be noticed on the town's website, and said notice shall be mailed to all property owners within a five hundred (500) foot radius of the boundaries of the Land at the addresses of such property owners found on the Lee County Property Appraiser website prior to the first public hearing. Said advertisement and notice of each of the two public hearings may be combined in one notice, but must include:

3.3.3.1. Location of the Land subject to the Development Agreement.

3.3.3.2. Proposed development's project land use, building intensities, estimated population and building heights.

3.3.3.3. Location where a copy of the proposed Development Agreement may be reviewed.

3.3.3.4. Date, time and place of the public hearing(s).,

3.3.3.5. At the public hearings and in compliance with any and all procedures established by law for the conduct of said hearings, the LPA and the Town Council shall accept any public comment on the terms of the Development Agreement. Following the town council public hearing, the town clerk shall immediately dispatch, postage prepaid by regular, first class, U.S. mail and in writing, a copy of the determination of the town council to the applicant, or anyone who has requested a copy advising them of the town council's decision. The determination shall state that the decision of the town council is final agency action.

4. Development Agreement Execution Procedures and Recording.

Development Agreements shall be executed as established below:

4.1. All Development Agreements shall be executed on behalf of the applicant by all persons having legal or equitable title in the Land subject to the Development Agreement, including the fee simple owner and any mortgagees or other lien holders or owners of other equitable interests in the Land, unless the town attorney approves the execution of the development agreement without the necessity of such joinder or subordination in that the substantial interests of the town will not be adversely affected thereby.

4.2 Development Agreements shall not be executed on behalf of the town and shall not be recorded unless and until all Post-Development Agreement requirements have been met as set forth in Sec. 2-14 above. The applicant shall bear the expense of recording the Development Agreement, which shall be recorded by the town clerk.

5. Amendment to Development Agreement.

5.1 Except for Administrative Amendments, if allowed in the Development Agreement, an amendment to a Development Agreement shall not occur unless and until there have been hearings thereon before the LPA and before the town council. Noticing of the LPA and town council hearings shall be in the same manner as for the original hearings for Development Agreements.



3001 Estero Boulevard
Applicant's Report
September 20, 2024

I. APPLICATION SUMMARY

Applicant/Owner: Seagate Fort Myers Beach, LLC

Request: Adoption of a Home Rule Development Agreement for a Site Plan with Deviations to redevelop 9.43 acres of a 10.72 acre Property spanning from Matanzas Pass Preserve to the Gulf of Mexico.

Subject Property: See attached Legal Description and Sketch (Exhibit A to Development Agreement)

Physical Address: 3001 Estero Boulevard

STRAP #s: 29-46-24-W1-00145.10000, 30-46-24-W2-00001.0000, 29-46-24-W1-00145.5000, 29-46-24-W1-0120A.0010

FLU: Boulevard & Mixed Residential

Zoning: Village

Adjacent zoning and land uses

North: Matanzas Pass Preserve

South: Environmentally Critical/Recreation Beach

East: Boulevard & Mixed Residential
Single and Multi-family Residential, Former Arts Complex, Former FMB Fire Department Station

West: Boulevard & Mixed Residential/Village
Vacant, Former Gulfview Mobile Home Park

II. BACKGROUND & ANALYSIS

a. Framework

On April 1, 2024 the Town Council approved Ordinance 24-72, outlining procedures for Development Agreements (“DA”) with Deviations. These procedures establish:

“A Development Agreement with Deviations is a non-statutory development agreement that may allow for approval of amendments, modifications, variances or exceptions (“deviations”) from the Town’s Land Development Code, and, if appropriate under the provisions of the Town’s Comprehensive Plan, relief from the building height limitations in the Comprehensive Plan. Approval of a Development Agreement and the deviations provide for in such a Development Agreement shall be considered tantamount to and commensurate to a planned development for purposes of determining consistency with the Comprehensive Plan.”

As part of the DA process, a specific finding is required to be provided that the “proposed project permitted or proposed is consistent with the Town’s comprehensive plan and land development code or that if deviations are necessary for the zoning district or land use plan designations on the subject land, such Development Agreement specifically lists such deviations in detail.” Additionally, a statement is to be provided in the DA “explicitly identifying each instance of conflict with existing ordinances and expressly providing for the Development Agreement to control...”

Seagate Fort Myers Beach has submitted a DA to establish a conceptual site plan for the redevelopment of the Property and request deviations to promote the clustering of density, provision of public parks, recreation and beach access, and view corridors to the Gulf of Mexico. The DA identifies the anticipated uses, density, intensity, duration of the agreement, proposed public benefits, and the requested deviations. As exhibits to the DA, the applicant has provided:

- Exhibit A - Legal Description and Sketch for the portion of the Property landward of the 1978 CCCL line;
- Exhibit B - Conceptual Plans and Renderings;
- Exhibit C – Public Easement Areas;
- Exhibit D – Pattern Book.

With the exhibits, the DA establishes the conceptual parameters which will guide the review of the detailed plans and calculations to be submitted for the required Town of Fort Myers Beach Development Order (“DO”), South Florida Water Management District Environmental Resource Permit (“ERP”), and other permits. Construction is not permitted to begin until all permits are secured. Due to the number of subsequent permits necessary and coordination with outside agencies, the Applicant has proposed a 10-year timeline for the DA. This duration will provide enough time to obtain all necessary permit approvals, continue coordination with Lee County and

the Town to address dedication of required easements, park programming and public access, and unforeseen circumstances.

b. Property

Prior to Hurricane Ian, the Property was developed as an RV and mobile home park with supporting recreational amenities, owned/operated by the Myers Family since 1984 and accepted its first visitors in 1925.¹ The park's opening was approximately 12 years after construction of the first beach hotel and a year before the swing bridge connected Fort Myers Beach to mainland Lee County.² Due to the development pre-dating the incorporation of the Town of Fort Myers Beach ("Town") by over 73 years and a density of 27 RV/mobile homes per acre, the Property is located within a redevelopment area identified by the Comprehensive Plan³ and Land Development Code ("LDC").⁴ The intent of the redevelopment area is for the Town to "take positive steps to redevelop areas that are reaching obsolescence or beginning to show blight ... by providing an opportunity for landowners to replace vulnerable mobile homes and recreational vehicles with permanent structures in the ...Red Coconut area."⁷ Implementing this intent, Policies 3-A-5, 3-A-6 and 4-F-2 identify that redevelopment within the designated area is *encouraged* to incorporate specific design concepts into a pre-approved redevelopment option. (emphasis added) The Village district implements these policies by "...provid[ing] alternative futures for the Red Coconut...either a continuation of the current land uses or their transformation into a traditional neighborhood pattern."⁵ A DO can be obtained to redevelop property within the Village district consistent with the design criteria outlined in LDC Section 34-693 establishing allowable uses, street layout, view corridors, setbacks, etc. The DA process permits deviations to be requested from these design criteria.

c. Comprehensive Plan

The Town's comprehensive plan was adopted in 1999 and since that time, has not been fully evaluated for consistency with State building codes, coastal building regulations and the Federal floodplain requirements. Per the Future Land Use map, the Property is within three future land use ("FLU") designations, Boulevard, Mixed Residential and Recreation.

Boulevard – described by Policy 4-B-5 as a "...mixed use district along portions of Estero Boulevard, including less intense commercial areas, historic cottages and mixed housing types." This designation occurs along the approximately 90-foot-deep portion of the Property fronting on the north side of Estero Boulevard and all of the parcels along the south side of Estero Boulevard. Consistent with this location, the proposed site plan locates the private recreational amenity, 2 publicly accessible

¹ Red Coconut | RV Park. <https://www.redcoconut.com>. Accessed April 28, 2024

² FMB Comprehensive Plan, Commercial Design Element, Page 3-3

³ FMB Comprehensive Plan, Policy 4-F-2

⁴ FMB LDC Section 34-691 et.al.

⁵ FMB LDC Sec 34-691

parks, terraced planters and water feature, and the 10,000 square foot restaurant within this FLU category.

Mixed Residential – described by Policy 4-B-4 as “...old subdivisions with mixed housing types on smaller lots, newer high-rise buildings, and mobile home and RV parks.” The portion of the Property between Matanzas Pass and the Boulevard FLU is considered Mixed Residential. Consistent with this location, the proposed site plan locates the multi-family and single-family residential units within this FLU category.

Recreation – the portion of the Property seaward of the 1978 Coastal Construction Control Line is within the Recreational FLU. Consistent with Policy 4-B-8, this portion of the Property is not proposed for development, is not included in the calculations related to density or intensity and is not included in the Legal Description attached to the Development Agreement.

The proposed uses and location are consistent with the underlying FLU categories for the Property.

Beyond the FLU categories, the comprehensive plan considers the “appropriate future uses in the event of a change in ownership or pans or a natural disaster” for the Property.⁶ Specifically, Policies 3-A-6, and 4-F-2 outline the *anticipated* redevelopment for the Gulfview Colony/Red Coconut. (emphasis added) Future Land Use Policy 4-F-2.iii identifies the design “concepts [that] are encouraged” to be included in the pre-approved redevelopment options Many of these design concepts are reiterated in LDC Section 34-692(3) as design “concepts [that] are *expected* in the redevelopment process.” The DA process permits deviations to be requested from the design criteria outlined in Section 34-692(3). In addition, Policy 3-A-5 describes a desire for neighborhoods “which are pedestrian and bicycle friendly with an internal circulation system that makes it possible to walk or bicycle to schools and services without always using Estero Boulevard; which retain the psychological connection and views to both the Bay and the Beach; and which offer a variety of housing types and opportunity for mixed uses.”

The 9.43 acres subject to the DA is only a portion of the redevelopment area described by the comprehensive plan, additional vacant acreage occurs immediately to the west and north of Estero Boulevard. As only a portion of the redevelopment area, the proposed plan provides 7 of the 9 design characteristics outlined in Policy 4-F-2. The remaining design characteristics have not been provided due to changes to the State building code, coastal construction regulations or Federal floodplain requirements, the transfer of density from the parcels south of Estero Boulevard to the parcels to the north, and the reduction of intensity on the parcels south of Estero Boulevard. The proposed design does provide opportunities for circulation without a vehicle and enhances the pedestrian realm while increasing public views of the Gulf and Matanzas Pass, meeting the intent

⁶ FMB Comprehensive Plan, Community Design Element, Page 3-8

of the redevelopment vision while adapting to the required State Building Code and Coastal Construction regulations as well as Federal Floodplain regulations.

The comprehensive plan also considers requests for additional height in Policy 4-C-4; which specifically indicates “different heights may be applied to officially designated redevelopment areas such as ... Red Coconut/Gulf View Colony.” As described above, Policy 4-F-2 identifies a redevelopment area for the Red Coconut/Gulf View Colony. Requests for additional height need to demonstrate consistency with the comprehensive plan and public benefits promoted by the site design due to the request, such as view corridors to the Gulf or Bay. Consistent with these policies, the proposed conceptual plan includes an increase in the permitted height for the mixed-use structure. The additional height enables the Gulf side parcel density to be transferred to the bay side portion of the Property and cluster most of the available density in a mixed-use structure on the bay side of Estero Boulevard. This density transfer also limits the intensity of the redevelopment of the gulf side parcels. As a result, the conceptual plans incorporate multiple public parks, 2 new view corridors to the Gulf, a new pedestrian beach access, and access and views to Mantanzas Pass Preserve are maintained to promote appropriate public benefits to support the requested height increase.

The proposed project is consistent with the Town's comprehensive plan, provides many of the design concepts encouraged and anticipated by Policies 3-A-5, 3-A-6, and 4-F-2, and establishes appropriate public benefits for the requested height increase consistent with Policy 4-C-4.

d. Village Zoning District

The Property is within a redevelopment zoning district known as the Village which implements Policies 3-A-5, 3-A-6, and 4-F-2 of the Town's Comprehensive Plan. The purpose of the Village district is “to implement specific redevelopment concepts established in the Fort Myers Beach Comprehensive Plan and for other situations where conventional or planned development zoning districts are inappropriate.” The Village district “provide[s] alternative futures for the Red Coconut...allowing a transformation... into a more permanent and durable housing types in a traditional neighborhood pattern.”⁷ “A vision for this area...is a complete neighborhood with an internal circulation system making it possible to walk or ride bikes to school, recreation areas, and shopping without using Estero Boulevard.”⁸ The LDC outlines concepts expected to be provided across all properties in the Village district. The Property is only a portion of the Village district and provides 7 of the 9 criteria envisioned when the Village zoning district was established in 2003 by Ordinance 03-03.

- Detached houses or cottages (with optional accessory apartments) abutting existing single-family homes;

⁷ FMB LDC Section 34-691

⁸ FMB Comprehensive Plan, Community Design Element, Page 3-8

- Walkable narrow streets with shade trees that double as view corridors to the Preserve and Gulf;
- Open space that allows views to be maintained from Estero Boulevard to the Gulf;
- Mixed commercial and residential uses along the bay side of Estero Boulevard;
- Quiet internal street connections to the north and south;
- Significantly reduced density...to a maximum level of 15 dwelling units to the acre; and
- A site design that accommodates a publicly acquired access point to Matanzas Pass Preserve.

The remaining 2 criteria, a traditional neighborhood development with ground floor gathering spaces and low-rise townhomes or apartments, cannot be provided with the changes made to the floodplain mapping and regulations from 2008 onward. Portions of the Property are included in the Velocity Zone and Coastal A Zone and Limit of Wave Action which require significant elevation of enclosed space and severely limit enclosures and improvements that can occur at ground level. Rather than structural gathering spaces, the proposed site design incorporates public parks and enhanced design features to activate the street front and promote pedestrian interconnectivity. The Village district requires compliance with the Commercial Design Standards which also support enclosed space and commercial display at the ground level. The Development Agreement includes conceptual renderings of the enhanced design concepts for the structures and a pattern book to guide the future detailed architectural elevations and floor plans to address needed flexibility from the Commercial Design Standards to accompany future permit applications.

As demonstrated by Exhibit B Conceptual Plans, Exhibit C Public Easement Areas, and Renderings, and Exhibit D Pattern Book the enhanced design features and public parks/gathering spaces incorporated into the overall concept is consistent with the “pre-approved redevelopment option” and with the approval of the DA can submit a DO application to implement the proposed redevelopment consistent with LDC Section 34-693.

e. Requested Development

The proposed development seeks to maintain the previous residential and commercial uses to promote a mixed-use development with single family and multi-family residential, restaurant, and private beach club. Before submitting the application and during the review process, stakeholder input was gathered by the Applicant. Several one-on-one meetings were conducted in the initial stages of the conceptual site design and led to the establishment of the linear park through the Property. The Applicant held an interview with Beach Talk Radio to solicit broad based input from the Town residents prior to submittal. A second interview with Beach Talk Radio was held after the initial review of the application and coincided with an invitation only in person meeting for property owners within 500 feet of the Property. Copies of the conceptual renderings were provided to Beach Talk Radio and posted to their social media pages and website. Additionally, the applicant established a website specific to the project to distribute updated conceptual plans before and after the in-person meeting with surrounding residents. As a result

of these open forum meetings and submitted comments, the number of access points along Donora Boulevard was reduced, opportunities for the Lee County School District to utilize the valet pull off locations were created, the landscaping and hardscaping elements adjacent to the new sidewalk along Donora Boulevard were enhanced, public parking was eliminated from the park adjacent to Matanzas Pass, and private membership opportunities were added to the Beach Club.

The maximum development parameters of the property will be 141 residential units and 616,156.2 square feet of commercial uses to promote a beach club, single and multi-family residential, and a commercial restaurant.

i. Beach Club

The gulf side parcels are proposed to be redeveloped with an approximately 29,000 square foot private beach club providing private recreational amenities to the residents and guests of the residential units and a membership organization for members of the public meeting the specific requirements of the club. Within the beach club, there is a private restaurant providing services to the residents, guests and members only along with outdoor terraces and a pool. A minimum of 25% of the membership will be reserved for public access, providing an opportunity for residents of the Town to utilize the facilities. The structure is 3 stories (including ground level parking) and will not exceed the 40-foot height maximum above base flood as permitted by the Village District. Height exceptions as permitted by LDC Section 34-631 may be requested at the time of final design. To ensure pedestrian activity to and from the beach club does not impede traffic flow along Estero Boulevard, a private pedestrian walk over is proposed to connect the Beach Club with the multi-family residential units. Vehicular access to the beach club is provided via a single access point from Estero Boulevard to the ground level parking under the structure. An additional 75 parking spaces will be provided across Estero Boulevard within the mixed-use building to further support the memberships proposed for the beach club.

ii. Public Beach Access & View Corridors to the Gulf of Mexico

On either side of the beach club structure are 120-foot view corridors maintaining a permanent view of the Gulf of Mexico from Estero Boulevard. On the west side of the beach club structure, the view corridor coincides with a new public park that includes a 10-foot-wide access to the sandy beach. There is a sidewalk along Estero Boulevard that will be repaired and maintained. The Applicant has requested a deviation to increase the setback for the beach club to promote the planting of enhanced landscaping with shade trees to improve the pedestrian environment down Estero Boulevard. The programmatic development of the park has not been finalized. The applicant has included language in the Development Agreement to require on-going coordination with the Town of Fort Myers Beach to ensure the final design is consistent with the Town's vision. The Development Agreement also commits that the Applicant will maintain ownership and maintenance of the park and a perpetual easement will be recorded for public access and use. As a result, the Town will have a new public park with beach access without requiring an investment in tax funds for the purchase, development, or maintenance of the park.

iii. Mixed Use Structure

The portion of the bay side parcels between Estero Boulevard and the east/west Donora Boulevard extension is proposed to be redeveloped with a mixed-use structure with 137

residential units, a 10,000 square foot commercial restaurant, 2 stories of structured parking, and a tiered landscaping and water feature incorporated into the building podium.

The Village district permits any dwelling unit to be rented for periods of one day or longer. While rentals are anticipated to occur within this development, the Applicant has agreed to limit rentals to a week or longer through restrictive covenants.

The primary access to the structure is an internal street from Estero Boulevard leading to a turn around and a valet drop off area; which routes into the Property screening the proposed street and vehicle drop off by the proposed structure eliminating visibility from adjacent roadways. Additionally, the turnaround and stacking area at the end of the internal street exceeds Town standards to ensure no impacts to adjacent public roadways. The portion of the structure fronting Estero Boulevard is proposed for terraced landscaping and water feature and a commercial restaurant which are designed to be 3 stories (including structured parking) consistent with the Village district for mixed used structures. Additional height in feet and stories as permitted by LDC Section 34-631 will be requested at the time of final design to address the height of the commercial space and required base flood elevation. Providing these features within the height limitations of the Village district shields the structured parking provided to support the development. The architectural elements of the commercial restaurant wrap the corner of Estero and Donora Boulevards to ensure appropriate screening along Donora Boulevard. The Applicant has requested a deviation to increase the setback for the mixed-use structure to promote the planting of enhanced landscaping with shade trees to improve the pedestrian environment down Estero and Donora Boulevards. The Applicant has also agreed to provide public art along the Donora Boulevard building facade.

As the setback from Estero increases the structure height also increases. Behind the 3-story façade for the commercial restaurant and terraced landscaping with water feature are the proposed multi-family residential towers which vary in height from a maximum of 17 stories (including 2 stories of structured parking) and 235 feet. To support the residential towers, lobbies, fitness facilities, social spaces, and meeting rooms with outdoor amenities are proposed. The architectural treatments and elevations for the residential towers will be provided consistent with the proposed pattern book at the time of Development Order application.

To maintain traffic flow down Estero Boulevard, vehicular pull off points are integrated into the design for the proposed restaurant. This feature will permit patrons to valet their vehicles when dining at the commercial restaurant. Due to the hours of operation of the restaurant and the volume of patrons anticipated at night, the Applicant has agreed to work with Lee County to design the pull off points to permit school buses to utilize this area for morning pick up and afternoon drop off. This joint use of the pull off design will support the nearby existing residential neighborhoods and improve the safety of school age children riding the bus.

iv. Linear Park & New Sidewalk along Donora Boulevard

Adjacent to the western property boundary and new east/west extension of Donora Boulevard is a public 20 foot wide Linear Park to include an 8-foot-wide multi-use path. Originating at Estero Boulevard, the linear park begins internal to a proposed public park along Estero Boulevard and the western bay side property boundary. Paralleling the western property boundary before turning east to parallel the new proposed east/west local street and connecting with the existing north/south Donora Boulevard the linear park provides a landscaped multi-use path. This design enhances interconnectivity through the Property for existing and future residents to promote movement without a vehicle. The park's location also provides an opportunity for expansion to the west when the rest of the properties within the Village zoning district are redeveloped, further enhancing mobility without a vehicle.

Currently there is no public sidewalk along the western side of Donora Boulevard. The proposed conceptual plan increases the setback of the mixed-use structure which will enable enhanced landscaping with shade trees and a sidewalk along Donora Boulevard. These improvements are specifically outlined in the Development Agreement and shade trees are required to improve the pedestrian environment for existing and future residents along Donora Boulevard. Beyond the multi-use path, other programmatic elements of the linear park have not been finalized. The Development Agreement incorporates several commitments from the Applicant related to the public parks:

- On-going coordination with the Town of Fort Myers Beach to ensure final park design is consistent with the Town's vision;
- Recording a perpetual access easement for public access and use of all parks;
- Developer maintenance of all public parks;
- Developer design and provision of site-specific wayfinding signage to all parks and public access points;
- Informational signs related to Matanzas Pass will be developed with Town Staff and constructed.

v. Single family Residential Units

Between the north property boundary and the proposed east/west extension of Donora Boulevard, 4 single family residential units are proposed. These units will front the proposed east/west extension of Donora Boulevard and are set back from the property boundaries by at least 15 feet. Side setbacks are established at 5 feet. Accessory setbacks to the rear property boundary are requested to be 5 feet to permit pools, patios, and screened enclosures.

vi. Bay side Public Parks

The conceptual site plan includes two public parks on the bay side portion of the Property. Along the western property boundary and fronting Estero Boulevard, a public park is proposed. Within this park is the origination point for the proposed linear park. The location of this park aligns with the public park and beach access on the Gulf side park promoting a single pedestrian

crossing point that can be monitored and improved to address demand. Additionally, this location is central to the entire Village District and the future facilities and multi-use path can be utilized by the residents/patrons of the future redevelopment anticipated to the west within the Village District.

A second public park is proposed at the north/south terminus of Donora Boulevard adjacent to Matanzas Pass Preserve. This park's location maintains the previous view corridor available down Donora Boulevard. Additionally, the existing residential lots to the east can utilize this area as a neighborhood park.

Programmatic elements of the parks have not been finalized; however, it is anticipated that future improvements would promote public gathering, interaction, and the activation of the Estero Boulevard street frontage consistent with the Village district. The Development Agreement incorporates several commitments from the Applicant related to the public parks:

- On-going coordination with the Town of Fort Myers Beach to ensure final park design is consistent with the Town's vision;
- On-going coordination with Lee County to promote a pedestrian interconnection to Matanzas Pass Preserve;
- Recording a perpetual access easement for public access and use of all parks;
- Developer maintenance of all public parks;
- Developer design and provision of site-specific wayfinding signage to all parks and public access points;
- Informational signs related to Matanzas Pass will be developed with Town Staff and constructed.

f. Requested Deviations

i. *Traditional Neighborhood Design*

- 1) **Request to deviate from 34-692(3)a.1 that expects traditional neighborhood design with interconnected streets, porches, or balconies at the front of dwellings, primary entrances visible from the street and cars directed toward the rear to allow:**

A single primary entry and internal street from Estero Boulevard for the bay side parcels (see also Deviation #2)

An internal east/west street extension from Donora Boulevard (see also Deviation #2)

Porches or balconies on all facades of the multi-family portion of the mixed-use structure & terraced landscaping with water feature for the façade fronting Estero Boulevard for the mixed-use structure

Outdoor seating and terraces for the beach club and public restaurant portion of the mixed-use structure

Private pedestrian entry above ground level along Estero Boulevard for the beach club & mixed-use structure

A single primary entry along the side façade and drop off only along the front façade for the beach club

Vehicular access from controlled access points to ground level parking for the mixed-use structure and private recreation facility

Justification for Deviation #1: Traditional Neighborhood is not a defined term in the Town's LDC or Comprehensive Plan. The Community Design Element does offer some context with the following language, visual renderings, and multiple site plans for the Red Coconut and Gulfview Colony area:

"A vision for this area...is as a complete neighborhood with an internal circulation system making it possible to walk or ride bikes to school, recreation areas and shopping without using Estero Boulevard. ...Neighborhood design is not dominated by garages and features porches on the front, walkable narrow streets with shade trees that double as view corridors to the preserve and beach and quiet internal street connections to the north and south"

The design elements described are not expressly required but were anticipated as part of the vision described in the Community Design Element. Unfortunately, these design elements have not been updated throughout the years to adapt to the changing circumstances related to the floodplain and federal construction regulations. Since the adoption of the comprehensive plan in 1999, the Town's floodplain maps have been amended three times.⁹ The current maps were adopted November 17, 2022, and establish the Property is subject to a VE-14 flood zone for the entire gulf side and a portion of the bay side. The Coastal A zone and LiMWA (Limit of Wave Action) occurs on the bay side portion of the Property. Additionally, the 1991 Coastal Construction Control Line occurs on the bay side portion of the Property. These conditions require **all** structures to be elevated above the base flood zone of approximately 14 feet, significantly limiting the opportunity for ground level enclosed space, and require construction to utilize breakaway walls. Due to these design requirements, structures within these floodplain zones cannot provide the desired porches and primary entries on the ground floor.

The proposed site plan does activate the street front without ground level commercial space or porches and balconies and primary entries visible from the street. The proposed public parks fronting the gulf and bay side of Estero Boulevard and adjacent to the western property boundaries will provide public recreational opportunities as well as gathering space for existing and future residents. Within these parks are the origination points for the linear park with an 8-foot-wide multi-use path on the bay side parcels and the 10-foot-wide public beach access within the proposed park on the Gulf side. The parks and pedestrian connections are centrally located to the Village district establishing a single point to cross Estero Boulevard consistent with Policy 7-E-4. On the eastern side of the boulevard entry along Estero Boulevard is the proposed terraced

⁹ 2008, 2019, 2022

landscaping with integrated water feature and enhanced architecture for the area below the proposed restaurant, which shields the building podium.¹⁰ The enhanced architecture associated with the restaurant wraps the corner of Estero and Donora Boulevards. With the requested deviation to increase the building setback to promote enhanced streetscaping, these features will shield the structured parking and supporting building infrastructure. Together, the parks fronting the Gulf and bay side of Estero Boulevard with the increased setbacks, enhanced architectural features and streetscaping, pedestrian interconnectivity will be improved along Estero Boulevard with the gathering spaces of the public parks to establish ground level interaction and activate the street front for a lively pedestrian environment.

The terraced landscaping with integrated water feature and enhanced architecture of the proposed restaurant will be a maximum of 3 stories and comply with the height limitations and exceptions¹¹ for the bay side parcels of the Village district. The remainder of the Estero Boulevard frontage is proposed to be a public park. On the Gulf side of Estero Boulevard, architectural treatments consistent with the proposed pattern book and enhanced landscaping are also proposed with two view corridors to the Gulf.

Above the building podium and setback from the commercial restaurant are the multi-family residential towers which tier in height and are further setback from the building podium. The units are oriented within the towers to promote balconies on all the building facades. The design proposed for the mixed use structure, beach club, and public parks implement the intent of the Village district and Policies 1-A-1, 1-A-2, 1-B-2, 1-B-3, 2-B-1, 4-A-1, 4-A-2 and 4-F-2 by providing ground level gathering space through the proposed parks, an enhanced pedestrian environment with the landscaped terraces with water feature, streetscaping, architectural treatments at the ground level and interaction with the street front from the proposed terraces above the required base flood elevation.

The primary vehicular entry to the mixed-use structure is proposed via Estero Boulevard with a single access point to an internal street with stacking distances that exceed the LDC requirements. The street begins in a north/south orientation and turns east/west to provide a circular turnaround and drop off between the two proposed towers. This design orientation for the internal street ensures that vehicles are directed toward the rear and are shielded from the adjacent public roadways. An east/west through street from Donora Boulevard is proposed to provide access to the proposed single family residential units consistent with the intent of the Village district¹² with the opportunity for a future expansion to Lovers Lane. The property owner does not own the land between the western property boundary and Lovers Lane to provide the street extension discussed in the Village district.

¹⁰ The elements that form the base of the structure and serve to raise the habitable space above the base flood elevation.

¹¹ FMB LDC Section 34-631

¹² FM BLDC Section 34-693(c)(2)

The primary vehicular entry to the beach club is also proposed via Estero Boulevard with a single access point to the side of the beach club. Limiting the primary access and secondary streets within the proposed development eliminates curb cuts on Estero and Donora Boulevards and maintains traffic flow consistent with Policy 7-H-10 and guidance received from Lee County Department of Transportation.

While the secondary streets for vehicular access to the mixed-use structure and beach club do not interconnect to adjacent streets, the proposed design does promote pedestrian and/or bicycle activity throughout the Property to adjacent streets via a linear park and new sidewalks. The proposed layout of the linear park originates at Estero Boulevard, within the proposed public park to provide a specific point on Estero Boulevard for pedestrians to cross and access the beach consistent with Policy 7-E-4. From the proposed public park on the bay side of Estero Boulevard, the linear park travels north along the western property boundary, turning east to parallel the proposed new local street, and ultimately connecting to Donora Boulevard. A new sidewalk with shade trees is proposed along Donora Blvd. This linear park with the new and repaired sidewalks on Estero and Donora Boulevards will be open to the public and contributes to the Hidden Paths desired by Objective 2-A and its supporting policies without requiring public expenditure for implementation. The linear park is also located in a manner that can provide a future interconnection to Lovers Lane. The proposed design for the linear park promotes interconnectivity with existing public infrastructure for existing and future residents consistent with Policies 1-A-2, 4-A-1, 7-B-3, and 7-E-4 and further activates the Estero Boulevard street frontage as desired by the Village district.

The proposed development promotes design features that adapt to the federal design requirements of the VE and Coastal A zone while maintaining the intent of the Village district and comprehensive plan to the maximum extent possible. The public health, safety and welfare will be improved through the elevation of the structure, incorporation of architectural techniques, and public recreation that activates Estero Boulevard for all pass by traffic, a safe linear park that connects to other residential neighborhoods and the maintenance of traffic flow along Estero Boulevard. Other infrastructure improvements are also proposed to enhance pedestrian and bicycle connectivity and view corridors to the Gulf and Matanzas Pass Preserve, consistent with the vision of the Village district.

ii. Street Layout

- 2) Request to deviate from 34-693(c)(1) and (2) that provides options for secondary streets in the Village zoning district and requires an extension of a through street from Donora Boulevard to Lovers Lane that will be permanently accessible by the public to allow:**

A single primary entry and internal street from Estero Boulevard to the mixed-use structure with turn around.

An internal east/west local street extension from Donora Boulevard to the western property boundary.

Justification for Deviation #2: The Village district includes a desired street layout in LDC Figure 34-18 demonstrating the anticipated secondary street layout with the potential for 2 additional access points to Estero Boulevard within the Property and the required east/west extension of Donora Boulevard to Lovers Lane. In addition to the existing north/south portion of Donora Boulevard, Figure 34-18 establishes a minimum of 3 secondary streets within the Property. However, LDC Section 34-693(c) establishes that secondary streets are to be “*generally* in accordance with Figure 34-18.” (emphasis added) The existing north/south portion of Donora Boulevard is one of the secondary streets identified in Figure 34-18, the proposed site plan incorporates a sidewalk along the street to provide improved pedestrian circulation from the adjacent residential neighborhoods.

Due to the pedestrian/bicycle opportunities provided by the proposed site design, vehicle access is purposefully directed to the multi-family or single-family residences and not interconnected. Increasing the internal street connections consistent with Figure 34-18 would increase the number of locations a pedestrian or cyclist would have to cross a street also utilized by vehicles. To reduce the number of conflict points and improve safety, a linear park with an 8-foot-wide multi-use path is incorporated into the site plan separating pedestrian and bicycle traffic through the Property from vehicles. A single internal street is proposed for the multi-family structure from Estero Boulevard with a turn around and stacking distances that exceed the LDC requirements to address the anticipated traffic, drop off for valet, and shield this activity from Estero Boulevard. Policy 7-H-10 specifically identifies that there are “an excessive number of streets and driveways having direct access to Estero Boulevard, reducing its ability to handle peak season traffic. The town shall take advantage of any suitable opportunities to consolidate street connections into fewer access points on Estero Boulevard.” The Property’s approximately 600+ foot frontage on Estero Boulevard is a unique opportunity to implement this policy with the proposed redevelopment. The intent of this policy is reflected in the conceptual site plan by limiting the number of vehicular access points from Estero Boulevard to one for the Gulf and one for the bay side parcels consistent with Policies 1-A-1, 7-H-10 and guidance received from Lee County Department of Transportation.

Two additional access points to the mixed-use structure are provided on the north/south portion of Donora Boulevard, an existing local street, to provide secondary ingress/egress to the structured parking for residents. A new local east/west street is proposed to extend Donora Boulevard through the Property and provide access to the proposed single family residential consistent with Policy 3-A-5 and LDC Section 34-693(c)(2). Consistent with the intent of the Village district and Policy 3-A-6 this design maintains a future opportunity for the through street to extend to Lovers Lane¹³ and promote an interconnected network for existing and future residents

¹³ FMB LDC Section 34-693(c)(2)

to travel to the redeveloped Elementary School and Bay Oaks without utilizing Estero Boulevard. The Property owner does not own the land between the western property boundary and Lovers Lane to provide the full street extension discussed in the Village district. It is anticipated that future redevelopment in the Village district will promote the full extension of the desired local street.

Pedestrian and/or bicycle activity throughout the property and to adjacent streets is promoted through linear park and a new sidewalk with shade trees along Donora Boulevard. The linear park interconnects the public park fronting on Estero Boulevard, travels north along the western property boundary, turns east adjacent to the new internal road, and ultimately connects to Donora Boulevard consistent with Policies 3-A-5, 3-A-6, 4-A-1, and 7-D-5. This linear park will be open to the public and contribute to the Hidden Paths desired by Objective 2-A and its supporting policies without requiring public expenditure for implementation. The location of the linear park adjacent to the proposed new local street also provides the opportunity for a future connection to Lovers Lane, further promoting interconnectivity throughout the Town.

The public health, safety and welfare will be improved through the proposed design by eliminating curb cuts and maintaining the traffic flow on Estero Boulevard. The provided enhancements for pedestrian and bicycle connectivity appropriately address the opportunity for future development on properties not controlled by the applicant. The design of these enhancements reduces the potential conflict points with vehicular traffic and provides a separate safe linear park of pedestrian and bicycle traffic through the site with the opportunity for future expansion to the west. Together the internal streets and linear park improve circulation for vehicles and pedestrians as desired by the Village district.¹⁴

iii. Building Placement

- 3) Request to deviate from 34-693(e), (f), (g) that establishes build-to-lines from all streets at 0, rear setbacks at 20 feet, and a building frontage percent to 50% along Estero Boulevard to allow:**

Elimination of the build-to-lines and building frontage % for all structures;

Establish a 10-foot front setback for structures adjacent to a roadway;

Decrease the rear setback to 10 feet for the mixed-use structure;

Decrease the rear setback to 5 feet for accessory structures associated with the single-family residential units;

Increase the street corner setback beyond 20 feet for the mixed-use structures.

Justification for Deviation #3: The Property fronts Estero and Donora Boulevards and as described in Deviation #1, the Property is within a VE-14 and Coastal A zone requiring the

¹⁴ LDC Section 34-693(c)

elevation of structures within this area to approximately 14 feet above base flood elevation. The bay side parcels are also subject to the 1991 Coastal Construction Control Line which significantly limits the square footage that can be enclosed below base flood elevation and requires breakaway construction practices. With a required elevation of 14 feet, the requested increased setback will enable the area between the property boundary and proposed structure to be utilized for streetscaping and improvement or installation¹⁵ of a public sidewalk. The streetscaping with enhanced architectural elements will screen the building podium providing parking, plumbing, electrical and foundational elements for the mixed-use building and private beach club.

Building frontage is measured as the length of a building façade that faces a street¹⁶, and in the Village district this length is measured at the build to line. The requested front setback is greater than the build-to-line; therefore, by the definition included in the LDC, the building frontage would be 0. Additionally, the proposed mixed use building design includes a public park along Estero Boulevard, which significantly reduces the length of the building façade along Estero Boulevard and provides a significant public benefit. Similarly, the beach club provides two 120-foot view corridors along Estero Boulevard; significantly reducing the length of building façade provided to increase the public benefits offered.

To ensure the structural elements of the building podium are appropriately screened from the adjacent streets, the proposed design includes a setback greater than 10 feet from a right-of-way and 20 feet from corner of street intersections. The increased setback provides additional land area for plantings between the structure and the repaired or new sidewalk to shade the adjacent pedestrian environment and improve the view of pass by traffic as compared to the required construction practices for the 14-foot base flood elevation. In addition to the increased setback, the mixed-use structure utilizes landscaped terraces with a water feature and a public restaurant with terrace to address the pedestrian environment along Estero Boulevard. Additional streetscaping, a new sidewalk and public art are provided along Donora Boulevard. When combined with the public park on the remainder of the Estero Boulevard frontage, these features provide an enhanced pedestrian environment and gathering space as well as an activated street front, implementing the intent of the Village district and Policies 1-A-1, 1-A-2, 1-B-3, and 4-A-1.

The rear setback for the mixed-use structure is proposed to be reduced due to the location of the linear park and new local street providing access to the proposed single family. The building podium will be closer to the linear park than the residential towers which are internally setback from the edge of the building podium increasing the setback from Donora Boulevard and the new local street to ensure the right-of-way and linear park maintain open air and light. The proposed design is consistent with the Village district's intent and Policies 4-A-1 and 4-A-2.

The public health, safety and welfare will be improved through the proposed design by incorporating required construction techniques to address the floodplain elevation while enhancing

¹⁵ The existing sidewalk along Estero Boulevard will be repaired and a new sidewalk will be installed along Donora Boulevard.

¹⁶ FMB LDC Section 34-693(c)

the ground level environment for pass by pedestrian and vehicular traffic consistent with Policies 1-A-1, 1-A-2, 1-A-3, 1-B-3, 2-B-1, 3-A-5, and 4-A-1. The request appropriately adapts the design to implement the intent of the Village district. Additionally, the provided enhancements will interconnect with the proposed linear park and public beach access to further improve circulation for pedestrians as desired by the Village district¹⁷ and Policies 2-A-1, 3-A-5, and 3-A-6.

iv. Building Height

4) Request to deviate from Section 34-693(h) that limits building height to 30 feet above base flood elevation and no taller than three stories for mixed use buildings without enclosed space on the first story on the bay side of Estero Boulevard to allow:

A maximum building height of 17 stories¹⁸ and 235 feet for the tallest portion of the mixed-use building on the bay side of Estero Boulevard consistent with Policy 4-C-4.

Justification for Deviation #4: The Village district was established to reduce density from the previous 27 RV/mobile homes per acre to 15 dwelling units per acre. The average residential density in other locations within the Town is 6 dwelling units per acre. To address the permitted density, desire for open views, public gathering spaces and pedestrian/bicycle interconnectivity, an integral component of the proposed design is the transfer of the permitted density from the Gulf side properties to the bay side properties. This density transfer will keep the height of the development on the Gulf side consistent with the permitted 3 stories in height¹⁹ of the Village district while improving connectivity and visibility to the Gulf compared to the conditions of the previous development. The proposed development plan also limits the intensity of the Gulf side properties to a private recreational amenity and membership organization.

Due to the Property's location within a VE-14 flood zone and Coastal A zone with LiMWA (Limit of Wave Action) the usable square footage and residential units of the mixed-use building need to be elevated above approximately 14 feet. Enclosed space on the first story is significantly limited and construction is required to utilize breakaway walls. Additionally, the 1991 Coastal Construction Control Line occurs on the bay side of Estero Boulevard, also limiting enclosed space on the first story and requiring breakaway wall construction practices. These State and Federal regulations' design requirements promote unenclosed space for the area below base flood, in conflict with the Village district's screening requirements. To address the current design requirements for below base flood and maintain openness of the site design for view corridors and public gathering space, the proposed design reduces the development footprint and requests additional height to cluster the multi-family units into 2 residential towers with multiple tiers at

¹⁷ LDC Section 34-693(c)

¹⁸ To be 15 stories of multi-family units and 2 stories of structured parking.

¹⁹ LDC Section 34-693(h)(2) establishes a height of 40 feet above base flood elevation and LDC 34-631 establishes an additional 5 feet in height for certain architectural enhancements. The future design of the beach club will comply with these exceptions for 45 feet in height.

varying heights from 17 to 13 stories (including the structured parking) or a maximum height of 235 feet above base flood elevation (including the structured parking).

The comprehensive plan also considers requests for additional height in Policy 4-C-4, which specifically indicates “different heights may be applied to officially designated redevelopment areas such as ... Red Coconut/Gulf View Colony.” The Village zoning district implements the redevelopment described as “Red Coconut/Gulf View Colony” in the Comprehensive Plan. Requests for additional height need to demonstrate consistency with the comprehensive plan and public benefits promoted by the site design due to the request, such as view corridors to the Gulf or Bay.

Consistent with architectural practices for increased height, as the residential towers increase in height above the podium, the setback from Estero Boulevard increases. Additionally, the towers are setback from the building podium increasing the separation from the property boundary and Donora Boulevard. The placement of the north/south tower closest to Donora Boulevard aligns with the existing multi-family and the former art campus and Fort Myers Beach Fire District Station that previously existed on the eastern side of Donora Boulevard. The adjacent development is within the VE-14 flood zone and Coastal A zone with a LiMWA and an AE zone with a base flood elevation of 11 to 12 feet. As a result, redevelopment of the fire station and art campus must be elevated 11 to 14 feet. The orientation of the towers with the architectural elements and streetscaping ensures the future building will be compatible with the adjacent single, multi-family and community facilities along Donora Boulevard.

At the ground level, the proposed structure will be elevated and future development on adjacent properties will also be required to elevate consistent with base flood elevation. The building podium of the proposed structure is proposed to be shielded through architectural elements and enhanced landscaping consistent with Policies 1-B-2, 2-B-1, 3-A-5, 4-A-1, 4-A-2. At the intersection of Estero and Donora Boulevard, the commercial restaurant provides a dining terrace and coastal architecture that wraps from Estero to Donora Boulevard consistent with Policy 4-A-3. This design ensures that the Donora Boulevard frontage adjacent to Estero Boulevard is activated and provides a step back from the requested increased height. Traveling further north on Donora Boulevard the north/south residential towers increase in height and the street level is proposed to be enhanced through architectural treatments, an increased planting area for streetscaping and a public art installation. Finally, a new sidewalk will be constructed to provide pedestrian interconnections from the existing residential neighborhoods, the proposed linear park, and Estero Boulevard. The remaining building façade along Estero Boulevard is proposed to be terraced landscaping with water feature to shield the structure and supporting infrastructure while enhancing the pedestrian environment and promoting a special landscape feature along Estero Boulevard consistent with Policies 1-A-1, 1-B-3, 4-A-1. The landscaped terraces, water feature, and restaurant are consistent with the bay side height limitation of 3 stories and 30 feet in height²⁰

²⁰ FMB LDC Section 34-693(h)

and architectural exceptions.²¹ Designing the uses and structure in this manner ensures the requested height does not crowd the Town's roadway network promoting openness and light and the ground level environment contributes to the pedestrian realm.

Promoting a mixed-use structure in the central portion of the Property for 137 of the permitted 141 residential units with increased height enables a reduced building footprint to utilize other portions of the property for improvements that benefit existing and future Town residents. The public parks, linear park, and view corridors are provided to promote public gathering, recreation, views and access to the Gulf and the bay. On the Gulf side, two 120-foot view corridors will maintain a permanent view of the Gulf of Mexico. The western view corridor is a new public park with 10-foot pedestrian access to the sandy beach. On the north side of Estero Boulevard from the Gulf front park, a public park is proposed with the origination point for a proposed linear park. Aligning the Gulf front and bay side parks in this manner promotes a centrally located park to the entire Village district and a single pedestrian crossing of Estero Boulevard. A linear park parallels the western property boundary and the new east/west extension of Donora Boulevard to enhance interconnectivity through the Property for existing and future residents without a vehicle. An opportunity to expand the linear park to the west is available when the remainder of the property within the Village zoning district is redeveloped, furthering enhancing mobility without a vehicle.

The linear park terminates at the intersection of the north/south and east/west portions of Donora Boulevard. In this general location, adjacent to Matanzas Pass Preserve is the final public park. This park's location maintains the previous view corridor available down Donora Boulevard. Additionally, the existing residential lots to the east can utilize this area as a neighborhood park.

The programmatic development of the parks has not been finalized. The applicant has included language in the Development Agreement to require on-going coordination with the Town of Fort Myers Beach to ensure the final design is consistent with the Town's vision. The Development Agreement also commits that the Applicant will maintain ownership and maintenance of the park and an easement will be recorded for public access and use. As a result of this structure, the Town will have a new public park with beach access without requiring an investment in tax funds for purchase, development, or maintenance of the park.

The public health, safety and welfare will be improved through the proposed design through the shielding, ground level interactions and activated street frontage that will be provided by the public parks, terraced landscaping with water feature and enhanced architectural elements consistent with Policies 1-B-2, 2-B-1, 4-A-1, and 4-A-2.

v. Increased FAR & Ground Level Parking Requirements

5) Request to deviate from Section 34-693(i) that restricts Floor Area Ratio ("FAR") to 1.2 and 34-633 includes all stories of covered parking in the measurement of FAR to allow:

²¹ FMB LDC Section 34-631(b)

Elimination of covered parking and parking decks from the calculation of FAR and permit a FAR of 1.5 (616,156.2 square feet) consistent with Policy 4-C-2.

- 6) Request to deviate from Section 34-693(l) that requires off-street parking under a commercial or mixed-use building to be separated from primary streets by usable commercial space at least 200 feet deep, meet all commercial design standards, and have a driveway that connects to a secondary street to allow:**

Parking under the beach club and mixed-use building with no commercial space on the ground level and access from Estero Boulevard or an internal street.

Justification for Deviations # 5 and 6: The Village district establishes a maximum FAR of 1.2 for commercial uses and the Town's comprehensive plan establishes a maximum FAR of 1.5 in Policy 4-C-2. This same policy establishes "the land development code shall specify maximum commercial intensities using floor-area ratios (the total area of the building divided by the area of the site in the category allowing the commercial uses)." LDC Section 34-633(1) specifies "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..."

When considered together, the Comprehensive Plan and LDC establish FAR as a measure of commercial intensity that includes parking structures and unenclosed space on the ground floor. At the time LDC Section 34-633 was adopted in 2003, commercial retail space could be provided in certain locations within the Town on the ground floor level to shield parking and provide an active street front. The vision statements for the Civic Center, which includes the Property, acknowledge that even in 1999 "the current floodplain and coastal setback regulations severely restrict what can be done here."²² Since 1999, there have been multiple changes to the floodplain mapping and building code requirements which continue to increase development restrictions. The proposed development along the Gulf side of Estero Boulevard is within a VE-14 floodzone which is an area subject to high velocity wave action. The remaining portion of the property, on the bay side is within a Coastal A Zone, which is an area subject to breaking waves ranging from 1.5 to 3 feet²³. The building requirements for the flood zones and CCCL significantly limit the permitted enclosed space to a dimension that is not feasible for commercial uses below base flood elevation. Additionally, a portion of the property on the bay side is also within the 1991 CCCL; which the Town's comprehensive plan acknowledges includes structural regulations administered by the Department of Environmental Protection²⁴ limiting enclosed space and requiring breakaway walls which are not feasible for commercial uses below base flood elevation²⁵. Without the ability to utilize the area below base flood elevation for residential or commercial space, a deviation is requested to eliminate the area of the parking structure from the calculation of FAR and a second

²² FMB Comprehensive Plan, Community Design Element, Page 3-6

²³ *Ibid.*

²⁴ FMB Comprehensive Plan, Future Land Use Element, Page 4-9

²⁵ FMB Comprehensive Plan, Future Land Use Element, Page 4-10

deviation is requested to eliminate the requirement for commercial usable space between the ground level parking and Estero or Donora Boulevards.

Another deviation is requested to increase the allowable FAR on the property to 1.5 (616,156.2 square feet) and accommodate the proposed uses. Policy 4-C-2 permits FAR requests up to 1.5 within the Boulevard and Mixed Residential FLU categories. The public restaurant at approximately 10,000 square feet and 137 multi-family units will be constructed within an integrated structure that is classified as a mixed-use building per Policy 4-B-12. The beach club will provide private recreational amenities and a membership organization; which is also a mixed-use building per Policy 4-B-12 as the Town's LDC establishes membership organizations as a commercial use. Mixed use structures must comply with the FAR calculations consistent with past interpretations of Town policy. The combined total area of the proposed structures exceeds the permitted 1.2 FAR even when the parking structure is eliminated from the FAR calculation. It should be noted that the single-family units are a residential product therefore per Policy 4-B-12 do not need to be included in the calculation of FAR for commercial intensity. The requested deviations are consistent with the maximum FAR outlined in Policy 4-C-2 and the current coastal regulations. The additional FAR is being utilized to support multi-family units and a membership organization and does not represent an increase in commercial intensity or intrusion into a residential neighborhood. Consistent with Policy 4-C-3, the Property previously had approximately 10,000 square feet of commercial uses with setback variances and no formal parking.

The public health, safety and welfare will be improved through the mix of uses proposed with the building orientation and layout. The uses provided in the proposed structures are classified as mixed use through the provision of residential and commercial uses. The request does not promote an increase in commercial intensity or intrusion into a residential neighborhood and reflects appropriate limited commercial uses consistent with the anticipated redevelopment in the surrounding area.

7) Request to deviate from Section 34-693(m) that requires commercial and mixed-use buildings visible from Estero Boulevard to abide by the commercial design standards outlined in 34-991-34-1010 to allow:

Conceptual approval of the architectural renderings and the proposed pattern book to permit review of designed elevations as part of the Development Order process.

Justification for Deviation #7: As part of the Development Agreement, Exhibit B is Conceptual Plans and Renderings and Exhibit D is a pattern book to demonstrate the anticipated features of the proposed development. These exhibits provide a conceptual site plan, renderings of the proposed multi-family and beach club structures, perspective viewsheds and expected architectural elements demonstrating the anticipated architectural form and features of the proposed structures. However, detailed architectural elevations and floor plans have not been prepared to evaluate against the commercial design standards outlined in the LDC.

LDC Section 34-992(d)2 permits compliance with architectural standards to be established with the submittal of a development order application. The Conceptual Plans and Renderings with the Pattern Book are provided as exhibits to the DA to demonstrate the anticipated elements of the future building architecture and floor plans. Providing a framework for review and approval of the detailed architectural plans with the development order applications.

The public health, safety and welfare will be maintained through the deviation request. The provided renderings and pattern book establish an architectural theme that reflects a coastal contemporary style. Through the conditions provided in the Development Agreement, this same architectural theme will need to be provided with the Development Order application. At that time Town Staff can review the detailed architectural elevations and floor plans to ensure consistency with Exhibit B Conceptual Plans and Renderings and Exhibit D Pattern Book.

8) Request to deviate from Section 34-631(b)(3) that permits mechanical structural appurtenances to extend above the height limit provided they do not exceed 250 square feet and screening is provided to allow:

No square footage limitation or screening for the portions of the residential tower above 11 stories.

Justification for Deviation #8: The mechanical equipment to support the 137 multi-family residential units will be integrated into the mixed-use structure and located on the roof. Due to the ranging height of the residential towers, the Applicant requests elimination of the limitations regarding square footage and screening for the portions above 11 stories. From the ground level, the mechanical equipment will not be visible and therefore these additional limitations are not necessary to protect the public health, safety and welfare.

g. Public Benefits

The proposed development incorporates several public benefits to provide public recreational opportunities and promote interconnectivity without a vehicle.

i. Public Park with Beach Access & View Corridors to the Gulf of Mexico

Two approximately 120-foot view corridors (50% of the parcel's frontage) are proposed south of Estero Boulevard adjacent to the west and east property boundaries maintaining permanent views of the Gulf of Mexico. The west view corridor is provided with a new public park that incorporates a 10-foot public access to the sandy beach. The programmatic development of the park has not been finalized. The applicant has included language in the Development Agreement to require on-going coordination with the Town of Fort Myers Beach to ensure the final design is consistent with the Town's vision. The Development Agreement also commits that the Applicant will maintain ownership and maintenance of the park and an easement will be recorded for public access and use. As a result of this structure, the Town will have a new public park with beach access without requiring an investment in tax funds for purchase, development or maintenance of the park.

ii. Linear Park

North of Estero Boulevard, adjacent to the western property boundary and paralleling the southern extent of the new east/west extension of Donora Boulevard, a public 20 foot wide Linear Park is proposed consistent with Policies 3-A-5, 3-A-6, 4-A-1, 7-D-5. Originating at Estero Boulevard, the linear park begins internal to a proposed public park along Estero Boulevard and the western bay side property boundary. The linear park provides a landscaped 8-foot-wide multi-use path through the Property to enhance interconnectivity for existing and future residents from the existing nearby residential neighborhoods to Estero Boulevard without a vehicle. The location of the park has been oriented to ensure a future expansion to the west can be provided when the remainder of the property within the Village zoning district is redeveloped, further enhancing mobility without a vehicle consistent with Policy 4-A-2. Additional connectivity will be provided through the repair, maintenance, and installation of sidewalks on either side of Estero Boulevard consistent with Policies 1-A-2, 4-A-1, 7-B-3, and 7-E-4.

Beyond the multi-use path, other programmatic elements of the linear park have not been finalized. The Development Agreement incorporates several commitments from the Applicant related to the public parks:

- On-going coordination with the Town of Fort Myers Beach to ensure final park design is consistent with the Town's vision;
- Recording a perpetual access easement for public access and use of all parks;
- Developer maintenance of all public parks;
- Developer design and provision of site-specific wayfinding signage to all parks and public access points;
- Informational signs related to Matanzas Pass will be developed with Town Staff and constructed.

iii. Two Bay Side Public Parks

Two public parks on the bay side properties are proposed. The first is along the western property boundary and fronting Estero Boulevard, providing the origination point for the proposed linear park. The location of this park aligns with the public park and beach access on the Gulf side park promoting a single pedestrian crossing across Estero Boulevard consistent with Policy 7-E-4. Additionally, this location is central to the entire Village District, ensuring the park facilities and multi-use path can be utilized by the residents/patrons of the future redevelopment anticipated to occur west within the Village District and the existing surrounding neighborhoods.

A second public park is proposed at the north/south terminus of Donora Boulevard adjacent to Matanzas Pass Preserve. This park's location maintains the previous view corridor available down Donora Boulevard. Additionally, the existing residential lots to the east can utilize this area as a neighborhood park.

Programmatic elements of the parks have not been finalized; however, it is anticipated that future improvements would promote public gathering, interaction, and the activation of the Estero Boulevard street frontage consistent with the Village district.

The Development Agreement incorporates several commitments from the Applicant related to the public parks:

- On-going coordination with the Town of Fort Myers Beach to ensure final park design is consistent with the Town's vision;
- Recording a perpetual access easement for public access and use of all parks;
- Developer maintenance of all public parks;
- Developer design and provision of site-specific wayfinding signage to all parks and public access points;
- Informational signs related to Matanzas Pass will be developed with Town Staff and constructed.

iv. *Density Transfer to Bay Side Parcels*

The proposed site plan transfers the residential density of the Gulf side parcels to the bay side parcels to reduce the development footprint and promote increased public recreation opportunities, views of the Gulf from Estero Boulevard, and maintains the view of Matanzas Pass down Donora Boulevard.

Without the transfer of the permitted residential units from the Gulf side to bay side parcels, the Village district only requires a 50-foot view corridor to the beach. The remainder of the approximately 425 feet of beach frontage could be developed with a 4-story structure. The proposed redevelopment increases the available view corridors to approximately 240 feet (50%) of the parcel's frontage on Estero Boulevard. Additionally, the proposed development incorporates a beach club into the uses for the Gulf side parcels for residents and members only. This development is much less intensive than a commercial resort or restaurant which are permitted uses consistent with the Village district. Therefore, the carrying capacity of the Gulf side parcels and adjacent public beach will not be exceeded or strained by the proposed development due to the limited uses proposed as a beach club and the transfer of the residential density.

v. *Pedestrian Overpass, Limited Vehicular Driveways & Bus Pull-Off*

To maintain efficient traffic flow along Estero Boulevard, the proposed development includes only one vehicular access point to the Gulf and bay side parcels, a private pedestrian overpass for residents and guests, and a joint pull-off point for buses and restaurant patrons. The proposed vehicular access points will limit the necessary curb cuts for the proposed development to one for each side of Estero Boulevard consistent with Policies 1-A-1, 1-A-2, and 7-H-10. The pedestrian overpass will interconnect the multi-family residential portion of the structure and beach club appropriately lifting the pedestrian activity associated with the development off Estero Boulevard improving traffic flow and safety for pedestrians consistent with Policies 4-A-1, 4-A-

2, 7-E-4. Sidewalks currently exist along the bay side frontage of Estero Boulevard which will be repaired if needed and maintained through the proposed site plan. A new sidewalk is included in the site plan for Estero Boulevard frontage along the beach side properties and along Donora Boulevard consistent with Policies 4-A-1, 7-B-3, 7-E-4. Vehicular pull-off points are integrated into the design along Estero Boulevard for the proposed restaurant to ensure vehicular stacking does not occur within the public right-of-way consistent with Policies 1-A-2 and 7-E-2. The Applicant also agreed to coordinate with the Lee County School District to ensure the pull-off points' design is adequate to accommodate a school bus and provide a safe location for pick-up and drop-off of school children.

vi. *Public Memberships Available to Beach Club*

At the public's request during the informational meetings and one-on-one interviews, the Applicant has agreed to offer long-term memberships to members of the public. Unlike other resort properties these memberships will not be day passes but rather seasonal and/or annual memberships to the Beach Club to utilize the offered amenities. The Development Agreement commits a minimum of 25% of all memberships offered will be available to the public. To accommodate these public memberships an additional 75 parking spaces will be provided between the ground level car park of the beach club and the mixed-use structure on the bayside Property.

III. CONCLUSIONS

The proposed redevelopment of the Property considers the floodplain and coastal setback regulations while adapting and implementing the vision statements of the Town's Comprehensive Plan. Utilizing the redevelopment option of the Village district significantly reduces the density available from a build back of the former 27 RV units per acre to 15 dwelling units per acre. The permitted density and most of the commercial intensity is transferred from the Gulf side properties to the bayside properties with a request to increase the building height that enables a reduction of the proposed building footprint to accommodate public parks, a linear park, a view corridor and future access to Matanzas Pass Preserve, and additional view corridors to the Gulf. Together, the proposed public benefits promote large open spaces for public gathering, pedestrian and bicycle interconnections and retain psychological connections and views to the Bay and Gulf consistent with the comprehensive plan.

The architectural enhancements and tiered height of the proposed structures ensure the development appropriately frames the adjacent streets, is oriented toward pedestrians, and shields the structured parking provided consistent with the vision outlined in the comprehensive plan for the Town as well as the redevelopment district. Increased setbacks are requested to permit the maintenance of existing sidewalks, the installation of new sidewalks and appropriate area for streetscaping to provide shade for pedestrians and enhance the landscaping associated with the proposed development. A commitment to public art display on Donora Boulevard and shared use of vehicular pull off for the Lee County School District further enhances the pedestrian environment and opportunities for movement without a vehicle on the existing streets.

The requested uses are located in a manner that is consistent with the underlying, split FLU for the Property. The design of the proposed structures and the placement on the property is compatible with the adjacent existing and future development. The requested design flexibility through the site plan with deviations provides ample public benefits to the existing and future residents of the Town as anticipated by the comprehensive plan, LDC, and DA process.



3001 Estero Boulevard
Development Agreement Application
Project Narrative
Revised September 20, 2024

The Town of Fort Myers Beach (“Town”) is a unique coastal community located in Lee County, Florida. As a barrier island, there have been many changes over the years including the establishment of the Matanzas Pass Bridge, development and redevelopment of small businesses, residential construction from small beach cottages to high rise multi-family and revisions to the Florida Building Code and Federal Flood Zone Maps. The Town formally incorporated on December 31, 1995.¹¹ On September 28, 2022, Hurricane Ian, one of the most powerful storms in US history, made landfall near Cayo Casta bringing severe flooding and damage to the Town of Fort Myers Beach. Over a year and 9 months later, much of the Town continues to recover and rebuild.

The recovery and rebuilding of multi-family and commercial properties within the Town includes design features that reflect past development while incorporating new structures consistent with current building code, floodplain, and coastal setback regulations. The proposed redevelopment of the former Red Coconut RV Park is no exception. Purchased by Seagate Fort Myers Beach, LLC in September of 2023, Parcels 29-46-24-W1-00145.1000, 30-46-24-W2- 00001.0000, 29-46-24-W1-00145.5000, and 29-46-24-W1-0120A.0010 continue to be under unified ownership and are proposed for redevelopment as a multi-family community.



Figure 1. Aerial of Subject Property

¹ Fort Myers Beac (“FMB”) Comprehensive Plan, Community Design Element, Page 3-1

At 10.72 acres from the Matanzas Pass Preserve to the Gulf of Mexico, the Property is within the Civic Center planning area, Boulevard and Mixed Residential future land use (“FLU”) categories, the Village zoning district (“Village district”), and has a pre-approved redevelopment option.²² The proposed redevelopment of the Property seeks to collate all these visions into a cohesive development plan that also adapts to changing floodplain regulations and provides the following public benefits to the existing and future residents of the Town.

1. Transfers the residential density and majority of commercial intensity to bay side parcels;
2. 2 view corridors to the Gulf of Mexico from Estero Boulevard;
3. 1 view corridor to Matanzas Pass Preserve;
4. Enhancements to existing private beach access;
5. Incorporating new public beach access with a gulf side public park;
6. A new public park adjacent to Matanzas Pass Preserve;
7. A new public park adjacent to the bay side of Estero Boulevard;
8. A new public linear park interconnecting Estero and Donora Boulevards through the Property;
9. Establishing the first portion of an east/west local street from Donora Boulevard to Lovers Lane;
10. Enhancing the street frontage of Estero Boulevard;
11. Co-locate mass transit improvements with vehicular pull offs on Estero Boulevard;
12. Incorporate a public art installation along Donora Boulevard;

The primary element of the proposed redevelopment is the transfer of density and a majority of the commercial intensity from the beach side parcels and clustering this density and intensity into a mixed-use structure centrally located on the bay side parcels. The redevelopment maintains the previous residential and commercial uses of the Property to promote a mixed-use development with single-family and multi-family residential, a commercial restaurant and private beach club. Utilizing a request for additional height to reduce the development footprint, the design also establishes 3 public parks, and a linear park, through the Property. Two of the three public parks and the linear park are located on the bay side parcels providing interconnectivity with existing adjacent neighborhoods. On the beach side, adjacent to the private beach club facility, a new public beach access is provided with a beach front park promoting an enhanced view corridor to the Gulf. The proposed design also includes single family residences adjacent to the Matanzas Pass Preserve enabling the transition of density and height from the adjacent existing preserve and maintaining the housing type of the adjacent residential area to the east.

The redevelopment of the Property will be accomplished through the requested Development Agreement and Site Plan with Deviations (“DA”) process. A conceptual package is provided including a site plan, public benefits, renderings, and a pattern book to demonstrate the requested development and guide the review of future detailed permit applications. Deviations are requested to provide flexibility related to the site design to promote the clustering of density and intensity, provision of public parks, recreation and beach access, and view corridors to the Gulf of Mexico

² FMB Land Development Code (LDC) Section 64-693

while ensuring compliance, to the maximum extent possible, with the Town’s Land Development Code (“LDC”). *The current application does not request any flexibility from the existing permitted residential density or permitted uses.* A formal Development Order (“DO”) application will be submitted consistent with the LDC after the DA process is complete. Additional permits are required for stormwater management, utilities, and vehicular access.

I. Property Background

Prior to Hurricane Ian, the Property was developed as an RV and mobile home park with supporting recreational amenities and owned/operated by the Myers Family since 1984. The Red Coconut RV Park accepted its first visitors in 1925.³ Approximately 12 years after the first beach hotel was constructed and a year before the swing bridge connected Fort Myers Beach to mainland Lee County.⁴ Due to the development pre-dating the incorporation of the Town by over 73 years, the Property is located within a redevelopment area identified by the Comprehensive Plan⁵ and LDC.⁶ The intent of the redevelopment area is for the Town to “take positive steps to redevelop areas that are reaching obsolescence or beginning to show blight ... by providing an opportunity for landowners to replace vulnerable mobile homes and recreational vehicles with permanent structures in the ...Red Coconut area.”⁷ Implementing this intent, Policies 3-A-5, 3-A-6 and 4-F- 2 identify that *the redevelopment of the Red Coconut is encouraged to incorporate specific design concepts into a pre-approved redevelopment option.* (emphasis added) The Village district implements these policies by “...provid[ing] alternative futures for the Red Coconut...either a continuation of the current land uses or their transformation into a traditional neighborhood pattern.”⁸ A DO can be obtained to redevelop property within the Village district consistent with the design criteria outlined in LDC Section 34-693 establishing allowable uses, street layout, view corridors, setbacks, etc. The Development Agreement process permits deviations to be requested from the design criteria as outlined in the LDC.

The proposed redevelopment maintains the previous primary residential use of the property that occurred with the former RV park and incorporates the previous standalone commercial square footage into the proposed mixed-use structure fronting the bay side of Estero Boulevard. The private beach club provides private recreational amenities to the residents and guests of the residential units and will be a membership organization for those choosing to purchase seasonal or annual access. A commitment has been made to retain 25% of the memberships for the public to utilize. These uses are consistent with land use types outlined in Policy 4-B-12 and commercial intensity described in Policy 4-C-2.

³ Red Coconut | RV Park. <https://www.redcoconut.com>. Accessed April 28, 2024

⁴ FMB Comprehensive Plan, Commercial Design Element, Page 3-3

⁵ FMB Comprehensive Plan, Policy 4-F-2

⁶ FMB LDC Section 34-691 et.al.

⁷ FMB Comprehensive Plan, Objective 4-F

⁸ FMB LDC Sec 34-691

This DA application request seeks to maintain the permitted density and uses outlined by the comprehensive plan and Village district while seeking relief from various design standards to comply with current building codes and floodplain and coastal building setback regulations prior to the submittal of the DO application for the redevelopment of the Property.

II. Future Land Use

The community vision conducted in 1997 and included in the comprehensive plan in 1999 establishes 7 planning areas within the Town in addition to the FLU categories. These planning areas still exist 27 years later to guide the character of development; however, they have not been updated for consistency with changes in State building codes, coastal building regulations and Federal floodplain requirements. The property is within the Civic Center planning area, which extends approximately from Pearl Street to Donora Boulevard on both sides of Estero Boulevard.⁹ Prior to Hurricane Ian this area included a mix of commercial, residential and public services; however the floodplain and coastal setback regulations significantly restricts development and redevelopment.¹¹⁰⁰ The vision statements for the Civic Center establish this area as the “Heart of the Island,” with a system of interconnected pedestrian and bicycle paths, and acknowledge redevelopment of the Property is anticipated.¹¹¹¹

The 10.72-acre Property is within 3 FLU designations, Boulevard and Mixed Residential with a small area of Recreation. Consistent with Policy 4-B-8, the portion of the property within the Recreation FLU is not proposed for development and is not included in the calculation of density or intensity. Leaving this 1.296-acre portion of the Property in its natural state is consistent with the vision of the beach as described in the Comprehensive Plan.¹² A legal description and survey is incorporated into the Development Agreement as Exhibit A identifying the 9.43 acres to be redeveloped and within the Boulevard and Mixed Residential FLU designations.

Policy 4-B-5 outlines the Boulevard FLU category as a, “... mixed-use district along portions of Estero Boulevard, including less intense commercial areas, historic cottages, and mixed housing types.” The proposed site plan locates the public restaurant and private beach club within this FLU consistent with Policy 4-B-5. The Policy also requires commercial activities to contribute to the public realm and design concepts of the Plan and Land Development Code. Policy 4-B-4 outlines the Mixed Residential FLU category as “old subdivisions with mixed housing types on smaller lots, *newer high-rise buildings*, and mobile home and RV parks.” (emphasis added) Commercial activities are limited to lower impact uses but still must contribute to the public realm and design concepts of the Plan and Land Development Code.” The multi-family and single-family units are located within the central and rear portion of the Property consistent with the Mixed Residential FLU described in Policy 4-B-4. The proposed uses and location are consistent with the underlying FLU categories for the Property.

⁹ FMB Comprehensive Plan, Community Design Element, Page 3-6

¹⁰ *Ibid.*

¹¹ FMB Comprehensive Plan, Community Design Element, Page 3-7 & 3-8

¹² FMB Comprehensive Plan, Envisioning Tomorrow’s Fort Myers Beach, Page 2-1

a. Redevelopment Policies

The comprehensive plan considers the “appropriate future uses in the event of a change in ownership or plans or a natural disaster” for the Property.¹³ Specifically, Policies 3-A- 5, 3-A-6, and 4-F-2 outline the anticipated redevelopment for the Gulfview Colony/Red Coconut. Future Land Use Policy 4-F-2 identifies the design characteristics *anticipated* to be included in the “pre-approved redevelopment option” for the Gulfview Colony/Red Coconut. (emphasis added) FLU Policy 4-F-2.iii identifies the design “concepts [that] are encouraged to be included in the pre-approved redevelopment options. Many of these design concepts are reiterated in LDC Section 34-692(3) as design “concepts [that] are *expected* in the redevelopment process.” (emphasis added) The DA process permits deviations to be requested from the design criteria outlined in Section 34-692(3). In addition, Policy 3-A-5 describes a desire for neighborhoods “which are pedestrian and bicycle friendly with an internal circulation system that makes it possible to walk or bicycle to schools and services without always using Estero Boulevard; which retains the psychological connection an views to both the Bay and the Beach; and which offer a variety of housing types and opportunity for mixed uses.” The proposed redevelopment provides these design characteristics except where changes to the State building code, coastal construction regulations or Federal floodplain requirements prohibit compliance as outlined in the remainder of this narrative.

The 9.43 acres subject to the DA is only a portion of the redevelopment area described by the comprehensive plan, additional vacant acreage occurs immediately to the west and north of Estero Boulevard. As only a portion of the redevelopment area, the proposed plan provides 7 of the 9 design characteristics outlined in Policy 4-F-2. The remaining design characteristics have not been provided due to changes to the State building code, coastal construction regulations or Federal floodplain requirements, the transfer of density from the parcels south of Estero Boulevard to the parcels to the north, and the reduction of intensity on the parcels south of Estero Boulevard. The proposed design does provide opportunities for circulation without a vehicle and enhances the pedestrian realm while increasing public views of the Gulf and Matanzas Pass, meeting the intent of the redevelopment vision while adapting to the required State Building Code and Coastal Construction regulations as well as Federal Floodplain regulations.

The comprehensive plan also gives consideration to requests for additional height in Policy 4-C-4; which specifically indicates “different heights may be applied to officially designated redevelopment areas such as ... Red Coconut/Gulf View Colony.” As described above, Policy 4-F-2 identifies a redevelopment area for the Red Coconut/Gulf View Colony. Requests for additional height need to demonstrate consistency with the comprehensive plan and public benefits promoted by the site design due to the request, such as view corridors to the Gulf of Bay. Consistent with these policies, the proposed conceptual plan includes an increase in the permitted height for the mixed-use structure on the bay side of Estero Boulevard. The additional height enables the density of the Gulf side parcel to be shifted to the bay side portion of the Property and cluster a majority of the available density in a mixed-use structure. This density transfer also limits the intensity of the redevelopment on

¹³ FMB Comprehensive Plan, Community Design Element, Page 3-8

the gulf side parcels. As a result, the conceptual plan seeks multiple public parks, two new view corridors to the Gulf, a new pedestrian beach access, and access and views to Matanzas Pass Preserve to promote appropriate public benefits to support the requested increase in height.

b. Commercial Expansion

The Boulevard and Mixed Residential FLU categories both reference that commercial activities need to contribute to the public realm. The Town's comprehensive plan seeks to ensure that commercial activities do not intrude into residential communities¹⁴ to reduce community spaces available to residents.¹⁵ The most difficult conflicts associated with potential commercial development are identified in the comprehensive plan as occurring along Estero Boulevard from the Key Estero Shops to Donora Boulevard.¹⁶ As a result, several design-oriented policies are established supporting Objective 4-A. All of which seek to promote the enjoyment of Fort Myers Beach from outside a car through the creation of a pedestrian-oriented public realm, easy walking access to the Beach, and limit intrusive commercial activities through new development.

The proposed redevelopment is consistent with the visioning policies incorporated into the Comprehensive Plan. As generally described above and in detail within the remainder of this narrative, the public benefits and necessary design elements have been provided to the extent possible within the Property. The request is only a portion of the identified redevelopment area, approximately 4.5 acres west of the Property are also within the Village district and included in the vision outlined by the comprehensive plan. The commercial restaurant is a use that previously existed on the Property and the private memberships will be sold for a longer time period than the previous nightly turnover of the RV park. Therefore, the request does not represent a commercial intensification of the Property. Furthermore, the proposed design shifts the permitted density and intensity off the Gulf side parcels, provides an opportunity for circulation without a vehicle, and enhances the pedestrian realm while increasing public views of the Gulf and Matanzas Pass, meeting the intent of the redevelopment vision while adapting to the required State Building Code and Coastal Construction regulations as well as Federal Floodplain regulations.

III. Village Zoning District

The Property's Village zoning designation implements Policies 3-A-5 and 3-A-6 of the Town's Comprehensive Plan "to implement specific redevelopment concepts established in the Fort Myers Beach Comprehensive Plan and for other situations where conventional or planned development zoning districts are inappropriate".¹⁷ Specifically the Village district "provide[s] alternative futures for the Red Coconut...allowing a transformation... into a more permanent and durable housing types in a traditional neighborhood pattern".¹⁸

¹⁴ FMB Comprehensive Plan, Future Land Use Element 4-28

¹⁵ FMB Comprehensive Plan, Future Land Use Element 4-26

¹⁶ *Ibid*

¹⁷ FMB LDC Section 34-661

¹⁸ FMB LDC Section 34-691

The overall vision for the area “is a complete neighborhood with an internal circulation system making it possible to walk or ride bikes to school, recreation areas, and shopping without using Estero Boulevard.”¹⁹ The LDC outlines the following concepts that are expected to be provided across all the properties within the Village district. (emphasis added) The proposed development incorporates 7 of the 9 design criteria and remaining two which cannot be provided due to changes made to the floodplain mapping and regulations from 2008 onward which require significant elevation of enclosed space and severely limit enclosures and improvements that can occur at ground level. As a result, the proposed site design incorporates public parks and enhanced design features to activate the street front and promote pedestrian interconnectivity. The Village district requires compliance with the Commercial Design Standards which also support enclosed space and commercial display at the ground level. The Development Agreement includes conceptual renderings of the enhanced design concepts for the structures and a pattern book to guide the future detailed architectural elevations and floor plans to address needed flexibility from the Commercial Design Standards to accompany future permit applications.

The intent of the design features has been incorporated into the overall concept as demonstrated by the conceptual site plan, renderings and pattern book ensuring the proposed development is consistent with the “pre-approved redevelopment option” and can submit a DO application to implement the proposed redevelopment. The requested DA seeks needed flexibility to address design and construction requirements associated with the Property’s floodplain elevation and provide enhanced public benefits to existing and future residents.

IV. Requested Development

The proposed development seeks to maintain the previous residential and commercial uses to promote a mixed-use development with single family and multi-family residential, restaurant, and private beach club. Before submitting the application and during the review process, the Applicant gathered stakeholder input. Several one-on-one meetings were conducted in the initial stages of the conceptual site design and led to the establishment of the linear park through the Property. The Applicant held an interview with Beach Talk Radio to solicit broad based input from the Town residents prior to submittal. A second interview with Beach Talk Radio was held after the initial review of the application and coincided with an invitation only in person meeting for property owners within 500 feet of the Property. Copies of the conceptual renderings were provided to Beach Talk Radio and posted to their social media pages and website. Additionally, the applicant established a website specific to the project to distribute updated conceptual plans before and after the in-person meeting with surrounding residents. As a result of these open forum meetings and submitted comments, the number of access points along Donora Boulevard was reduced, opportunities for the Lee County School District to utilize the valet pull off locations were created, the landscaping and hardscaping elements adjacent to the new sidewalk along Donora Boulevard were enhanced, public parking was eliminated from the park adjacent to Matanzas Pass, and private membership opportunities were added to the beach club.

¹⁹ FMB Comprehensive Plan, Community Design Element, Page 3-8

The maximum development parameters of the property will be 141 residential units and 616,156.2 square feet of commercial uses to promote a beach club, single and multi-family residential, and a commercial restaurant.

a. Beach Club

The gulf side parcels are proposed to be redeveloped with an approximately 29,000 square foot private beach club providing private recreational amenities to the residents and guests of the residential units and a membership organization for members of the public meeting the specific requirements of the club. A commitment has been made to reserve 25% of the memberships for the public, providing the opportunity for the residents of Fort Myers Beach to have access to these facilities. Within the beach club, is a private restaurant providing services to the residents, guests and members only along with outdoor terraces and a pool. The structure is 3 stories (including ground level parking) and will not exceed the 40-foot height maximum above base flood as permitted by the Village District. Height exceptions as permitted by LDC Section 34-631 may be requested at the time of final design. To ensure pedestrian activity to and from the private beach club does not impede traffic flow along Estero Boulevard, a private pedestrian walk over is proposed to connect the beach club with the multi-family residential units. Vehicular access to the private beach club is provided via a single access point from Estero Boulevard to the ground level parking under the structure. An additional 75 parking spaces will be provided across Estero Boulevard within the mixed-use building to further support the memberships proposed for the private beach club.

b. Public Beach Access & View Corridors to the Gulf of Mexico

On either side of the beach club structure are 120-foot view corridors maintaining a permanent view of the Gulf of Mexico from Estero Boulevard. On the west side of the beach club structure, the view corridor coincides with a new public park that includes a 10-foot-wide pedestrian access to the sandy beach. There is a sidewalk along Estero Boulevard that will be repaired and maintained. The Applicant has requested a deviation to increase the setback for the beach club to promote the planting of enhanced landscaping with shade trees to improve the pedestrian environment down Estero Boulevard. The programmatic development of the park has not been finalized. The applicant has included language in the DA to require on-going coordination with the Town to ensure the final design is consistent with the Town's vision. The DA also commits that the Applicant will maintain ownership and maintenance of the park and a perpetual easement will be recorded for public access and use. As a result, the Town will have a new public park with beach access without requiring an investment in tax funds for the purchase, development or maintenance of the park.

c. Mixed Use Structure

The portion of the bay side parcels between Estero Boulevard and the east/west Donora Boulevard extension is proposed to be redeveloped with a mixed-use structure with 137 residential units, a 10,000 square foot commercial restaurant, 2 stories of structured parking, and a tiered landscaping and water feature incorporated into the building podium.

The Village district permits any dwelling unit to be rented for periods of one day or longer. While rentals are anticipated to occur within this development, the Applicant has agreed to limit rentals to a week or longer through restrictive covenants.

The primary access to the structure is an internal street from Estero Boulevard leading to a turn around and valet drop off, which routes into the Property enabling the structure to screen the proposed street and vehicle drop off from adjacent public roadways. Additionally, the turnaround and stacking area at the end of the internal street exceeds Town standards to ensure no impacts to adjacent public roadways. The portion of the structure fronting Estero Boulevard is proposed for terraced landscaping and water feature and a commercial restaurant which are designed to be 3 stories (including structured parking) consistent with the Village district for mixed used structures. Additional height in feet and stories as permitted by LDC Section 34-631 will be requested at the time of final design to address the height of the commercial space and required base flood elevation. Providing these features within the height limitations of the Village district shields the structured parking provided to support the development from the public rights-of-way. The architectural elements of the commercial restaurant wrap the corner of Estero and Donora Boulevards to ensure appropriate screening along Donora Boulevard. The Applicant has requested a deviation to increase the setback for the mixed-use structure to promote the planting of enhanced landscaping with shade trees to improve the pedestrian environment down Estero and Donora Boulevards. The Applicant has also agreed to provide public art along the Donora Boulevard building façade to further enhance the pedestrian environment.

As the setback from Estero Boulevard increases the structure height also increases. Behind the 3-story façade for the commercial restaurant and terraced landscaping with water feature are the proposed multi-family residential towers which incorporate a height variation with the maximum tower being 17 stories (including 2 stories of structured parking) and 235 feet. To support the residential towers, lobbies, fitness facilities, social spaces, and meeting rooms with outdoor amenities are proposed. The architectural treatments and elevations for the residential towers will be provided consistent with the proposed pattern book at the time of DO application.

To maintain traffic flow down Estero Boulevard, vehicular pull off points are integrated into the design for the proposed restaurant. This feature will permit patrons to valet their vehicles when dining at the commercial restaurant. Due to the hours of operation of the restaurant and the volume of patrons anticipated at night, the Applicant has agreed to work with Lee County to design the pull off points to permit school buses to utilize this area for morning pick up and afternoon drop off. This joint use of the pull off design will support the nearby existing residential neighborhoods and improve the safety of school age children riding the bus.

d. Linear Park & New Sidewalk along Donora Boulevard

Adjacent to the western property boundary and new east/west extension of Donora Boulevard is a public 20 foot wide Linear Park which includes an 8-foot-wide multi-use path. Originating at Estero Boulevard, the linear park begins internal to a proposed public park along Estero Boulevard and the western bay side property boundary. Paralleling the western property boundary before turning east to parallel the new proposed east/west local street and connecting with the existing north/south Donora

Boulevard the linear park provides a landscaped multi-use path. This design enhances interconnectivity through the Property for existing and future residents to promote movement without a vehicle. The park's location also provides an opportunity for expansion to the west when the rest of the properties within the Village zoning district are redeveloped, further enhancing mobility without a vehicle.

Currently there is no public sidewalk along the western side of Donora Boulevard. The proposed conceptual plan increases the setback of the mixed-use structure which will enable enhanced landscaping with shade trees, a sidewalk and the installation of a public art piece along Donora Boulevard. These improvements are specifically outlined in the Development Agreement and required to improve the pedestrian environment for existing and future residents along Donora Boulevard. Beyond the multi-use path, other programmatic elements of the linear park have not been finalized. The Development Agreement incorporates several commitments from the Applicant related to the public parks:

- On-going coordination with the Town of Fort Myers Beach to ensure final park design is consistent with the Town's vision;
- Recording a perpetual access easement for public access and use of all parks;
- Developer maintenance of all public parks;
- Developer design and provision of site specific wayfinding signage to all parks and public access points;
- Informational signs related to Matanzas Pass will be developed with Town Staff and constructed.

e. Single family Residential Units

Between the north property boundary and the proposed east/west extension of Donora Boulevard, 4 single family residential units are proposed. These units will front the proposed east/west extension of Donora Boulevard and are set back from the property boundaries by at least 15 feet. Side setbacks are established at 5 feet. Accessory setbacks to the rear property boundary are requested to be 5 feet to permit pools, patios and screened enclosures.

f. Bay Side Public Parks

The conceptual site plan includes two public parks on the bay side portion of the Property. Along the western property boundary and fronting Estero Boulevard, a public park is proposed. Within this park is the origination point for the proposed linear park. The location of this park aligns with the public park and beach access on the Gulf side park promoting a single pedestrian crossing point that can be monitored and improved to address demand. Additionally, this location is central to the entire Village District and the future facilities and multi-use path can be utilized by the residents/patrons of the future redevelopment anticipated to the west within the Village District.

A second public park is proposed at the north/south terminus of Donora Boulevard adjacent to Matanzas Pass Preserve. This park's location maintains the previous view corridor available down Donora Boulevard. Additionally, the existing residential lots to the east can utilize this area as a neighborhood park.

Programmatic elements of the parks have not been finalized; however, it is anticipated that future improvements would promote public gathering, interaction and the activation of the Estero Boulevard frontage consistent with the Village district. The Development Agreement incorporates several commitments from the Applicant related to the public parks:

- On-going coordination with the Town of Fort Myers Beach to ensure final park design is consistent with the Town's vision;
- On-going coordination with Lee County to promote a pedestrian interconnection to Matanzas Pass Preserve;
- Recording a perpetual access easement for public access and use of all parks;
- Developer maintenance of all public parks;
- Developer design and provision of site-specific wayfinding signage to all parks and public access points;
- Informational signs related to Matanzas Pass will be developed with Town Staff and constructed.

V. Consistency with Village Zoning District

The Village zoning district seeks to promote "... a complete neighborhood with an internal circulation system making it possible to walk or ride bikes to school, recreation areas, and shopping without using Estero Boulevard."²⁰ The LDC outlines the following concepts that are expected to be provided across all the properties within the Village district. However, the proposed redevelopment is only a portion of the property within the district, due to changing conditions with the zoning district and required design related to floodplain management the proposed redevelopment provides 7 of the 9 criteria envisions when the Village zoning district was established in 2003 by Ordinance 03-03.

- Detached houses or cottages (with optional accessory apartments) abutting existing single family homes;
- Walkable narrow streets with shade trees that double as view corridors to the Preserve and Gulf;
- Open space that allows views to be maintained from Estero Boulevard to the Gulf;
- Mixed commercial and residential uses along the bay side of Estero Boulevard;
- Quiet internal street connections to the north and south;
- Significantly reduced density...to a maximum level of 15 dwelling units to the acre; and
- A site design that accommodates a publicly acquired access point to Matanzas Pass Preserve.

Deviations are permitted from the zoning regulations of the property through the Development Agreement and are requested for the remaining 2 design criteria. A traditional neighborhood development with ground floor gathering spaces and low-rise townhomes or apartments, cannot be provided with the changes made to the floodplain mapping and regulations from 2008 onward. Portions of the Property are included in the Velocity Zone and Coastal A Zone and Limit of Wave Action which require significant elevation of enclosed space and severely limit enclosures and

²⁰ FMB Comprehensive Plan, Community Design Element, Page 3-8

improvements that can occur at ground level. Rather than structural gathering spaces, the proposed site design incorporates public parks and enhanced design features to activate the street front and promote pedestrian interconnectivity. The Village district requires compliance with the Commercial Design Standards which also support enclosed space and commercial display at the ground level. The exhibits to the Development Agreement include conceptual renderings of the enhanced design concepts for the structures and a pattern book to guide the future detailed architectural elevations and floor plans to address needed flexibility from the commercial design standards to accompany future permit applications.

The intent of the design features has been incorporated into the overall concept as demonstrated by the conceptual site plan, renderings and pattern book ensuring the proposed development is consistent with the “pre-approved redevelopment option” and can submit a DO application to implement the proposed redevelopment. The requested DA seeks needed flexibilities to address design and construction requirements associated with the Property’s floodplain elevation and provide enhanced public benefits to existing and future residents.

a. Traditional Neighborhood Design

As established in 2003, the desired Traditional Neighborhood Design of the Village district should incorporate interconnected streets, dwellings with front porches and balconies, primary entrances on the street frontage and rear vehicular access. To the maximum extent possible, the proposed design provides these features while adapting to the existing floodplain elevation, location of the coastal construction control line, and current building code.

The Property is located within a VE and Coastal A floodzone, which requires residential structures to be elevated, significantly limits enclosed space on the first story, and requires breakaway wall construction practices. Additionally, the 1991 Coastal Construction Control Line occurs on the bay side of Estero Boulevard, also limiting enclosed space on the first story and requiring breakaway wall construction practices. Due to these required design practices, the proposed mixed-use building utilizes the ground floor and first floor for structured parking and to establish the podium for the multi-family and commercial uses. Similarly, the private beach club utilizes the ground-floor for parking and raises the usable space above the base flood elevation. Architectural enhancements consistent with building code and floodplain requirements are proposed to appropriately screen the parking from adjacent streets and properties. Fronting Estero Boulevard, the podium of the mixed-use building will be shielded by landscaped terraces with a water feature and a public restaurant with terrace. These features comply with the height limitations and exceptions²¹ for the bay side parcels.

²¹ FMB LDC Section 34-631



Figure 2. View South down Estero Boulevard

The proposed structure is also setback further from Estero Boulevard than the required 0 to 10 foot build to line to provide adequate spacing for a public sidewalk and streetscaping to include shade trees along Estero Boulevard consistent with Policies 1-A-1, 3-A-6, 4-A-1, 4-A-2 and 4-F-2. Together these features and design elements will shield the building podium and promote outdoor gathering and interaction with Estero Boulevard consistent with Policies 4-A-1, 4-A-2 and 4-F-2. When combined with the public park along the remaining frontage of Estero Boulevard, the overall site design ensures the street front is activated with pedestrian activity and interaction between the proposed uses and public right-of-way promoting an inviting and active neighborhood that supports public gathering, pedestrian interconnectivity, and synergy between the private development and public benefits as desired by Policies 3-A-5, 3-A-6, 4-A-1, 4-A-2, and 4-F-2, and the Village district.

b. Housing abutting existing single-family homes

Platted lots for single family homes from the Zimmer's Addition to Shell Mound Park as recorded in 1959 exist along the east/west portion of Donora Boulevard and Shell Mound Boulevard. Consistent with this historical plat, north of Shell Mound Boulevard, the proposed site design locates the proposed single family structures abutting Matanzas Pass Preserve with a proposed public park. These uses are consistent with the existing platted single family in the nearby area and it is anticipated that the public park will be utilized by existing and future residents of the surrounding area and the proposed development.

The remaining properties south of Shell Mound Boulevard to Estero Boulevard, along Donora Boulevard, had a mix of uses including the Fort Myers Beach Fire Station, multi-family and the Fort Myers Beach Art Association. The existing land use of these properties would permit the rebuilding of the previous public facilities and multi-family units. As a result, the proposed design

locates the proposed 10,000 square foot restaurant at the intersection of Donora and Estero Boulevards, within the Boulevard FLU and consistent with the height requirements of the Village district with permitted exceptions. The underlying FLU permits this location for commercial development and the Property had approximately 10,000 square feet of commercial uses previously fronting Estero Boulevard. The surrounding civic, public and multi-family uses that are anticipated to be redeveloped are compatible with the proposed commercial consistent with Policies 4-A-3, 4-B-12, 4-C-2 and 4-C-3.

The multi-family portion of the mixed-use structure is placed central to the bay side parcels and aligns with the existing multi-family and former art campus along Donora Boulevard. As with the Estero Boulevard frontage, the Donora Boulevard façade incorporates architectural features to appropriately screen and shield the building podium and underlying parking. Above the building podium, the structure is a series of towers with a tiered height of 11 to 17 stories (including 2 stories of parking) up to a maximum of 235 feet above base flood elevation. Moving north along Donora Boulevard the height of the towers increases as the setback from Estero increases. However, the entire tower is oriented south of Shell Mound Boulevard and near the former Fort Myers Beach Art Association and multi-family structures. The portion of the structure paralleling the proposed Donora extension has a lower height and an increased setback from Donora Boulevard due to the proximity of the single family occurring north of Shell Mound Boulevard. The design of the structure ensures the future building will be compatible with the adjacent development. See the analysis of Building Placement and Height provided on Page 19 for additional information.

The proposed development includes a new east/west local road that functions as an extension of the existing east/west portion of Donora Boulevard consistent with LDC Section 34-693(c)(2). The new street terminates at the western property boundary. As a result, to implement the mobility²² and Hidden Paths²³ concepts of the comprehensive plan, the applicant is proposing to provide a public access easement along this roadway and the adjacent linear park to promote public use and ensure a future interconnection to Lovers Lane for vehicles, pedestrians and cyclists can be obtained consistent with Policy 2-A-1. Once implemented through to Lovers Lane local traffic will be able to utilize this cross connection instead of Estero Boulevard as desired by Policies 2-A-1, 3-A-5, 3-A-6, 4-A-1, 4-A-2, and 4-F-2. The proposed site plan appropriately locates the desired uses on the bay side parcels in a manner consistent and compatible with the surrounding uses as desired by Policies 3-A-5, 3-A-6, 4-A-3, 4-B-12, 4-C-3, and the Village district.

c. Apartments allowed elsewhere on the site

The Village district permits a maximum density of 15 dwelling units per acre. Rather than promote a development pattern of low-rise buildings that utilizes the entire 9.43 acres with little public benefits, the proposed site plan transfers the permitted residential density from the Gulf side

²² FMB Comprehensive Plan, Envisioning Tomorrow's Fort Myers Beach, page 2-1

²³ FMB Comprehensive Plan, Community Design Element, page 3-14

parcels to the bay side and limits the overall footprint of the development to provide approximately 3 public parks and a linear park through the Property.

The proposed multi-family structure is placed central to the bay side parcels and aligns with the existing multi-family and art campus along Donora Boulevard south of Shell Mound Boulevard. The Donora Boulevard façade incorporates architectural features to appropriately screen and shield the building podium and underlying parking. The Applicant has also committed to one public art installation along Donora Boulevard as part of the Development Agreement. Above the building podium, the structure is a series of towers with a tiered height ranging from 17 to 11 stories (including 2 stories of structured parking). Moving north along Donora Boulevard the height increases as the setback from Estero increases. The portion of the structure paralleling the proposed local east/west road has a lower height and increased setback from Donora Boulevard due to the proximity of the single family occurring north of Shell Mound Boulevard. The design of the structure ensures that the future building will be compatible with the adjacent development. See the analysis of Building Placement and Height provided on Page 19 for additional information.

Single family units are proposed adjacent to the Matanzas Pass Preserve and north of the proposed local road extension. In the surrounding area are single family lots platted by the historical Zimmer's Addition to Shell Mound Park as recorded in 1959. The placement of the single family and treatment of the multi-family towers is compatible with the surrounding structures and consistent with Policies 3-A-5, 3-A-6, 4-F-2 and the Village district.

d. Shaded Streets with View Corridors to the Preserve and Gulf

Maintaining a psychological connection to the Matanzas Pass Preserve and the Gulf of Mexico is an element of the anticipated redevelopment of the Gulfview Colony/Red Coconut²⁴. The proposed site plan establishes a public park at the terminus of the north/south portion of Donora Boulevard to ensure views of Matanzas Pass Preserve will be available to the public passing along from Estero Boulevard in perpetuity. The park also provides the opportunity for a connection to be provided to the Preserve in the future contributing to the vision of the natural environment and public recreation as outlined in the comprehensive plan.²⁵ The proposed design incorporates a public sidewalk with enhanced landscaping and shade trees along the western side of Donora Boulevard promoting public accessibility to the proposed park.

Additionally, the Village district requires that the pre-approved redevelopment option for the Property provide a 50-foot-wide view corridor²⁶ from Estero Boulevard to the Gulf of Mexico. The proposed site design enhances this requirement by providing two approximately 120' view corridors on either side of the private beach club ensuring views of the Gulf of Mexico are available to the public passing along Estero Boulevard.

²⁴ FMB Comprehensive Plan, Community Design Element, page 3-8

²⁵ FMB Comprehensive Plan, Envisioning Tomorrow's Fort Myers Beach, page 2-1

²⁶ FMB LDC Section 34-693(d)

The proposed site plan preserves and enhances previously provided view corridors and access points as desired by Policies 3-A-5, 3-A-6, 4-F-2 and the Village district.

e. Open Space with Views to the Gulf

Maintaining and expanding views of the Gulf of Mexico are a design theme of the Town's comprehensive plan. North of the Civic Complex (which includes the Property) is the Times Square planning area which seeks to promote infill development that opens new view corridors to the Gulf of Mexico²⁷. This design concept is brought into the Civic Complex through the Village district requirement for a 50-foot view corridor to be provided between Estero Boulevard and the Gulf of Mexico.²⁸ The proposed site plan exceeds this requirement by providing two, 120 foot view corridors.

The first corridor is approximately 120 feet and includes 10-foot-wide public pedestrian access to the beach. A platted private beach access point continues to exist within the westernmost area of the Gulf side parcels and the proposed view corridor. The proposed design expands this existing private access by incorporating passive park areas along the western property boundary from Estero Boulevard to the Gulf. Incorporating a public park and beach access within the approximately 120' view corridor is consistent with Policies 4-A-4 and 4-A-6.



Figure 3. Gulf View Corridor with Beach Access

On the easternmost area of the Gulf side parcels, the proposed design includes an open pool patio with seating. This area will also provide an approximately 120' view corridor ensuring pedestrians and motorists passing the Property along Estero Boulevard have a view of the Gulf on either side of the proposed private beach club.

²⁷ FMB Comprehensive Plan, Community Design Element, page 3-4

²⁸ FMB LDC Section 34-693(d)

The combined approximately 240 feet of view corridors exceeds the requirements of the Village District by 190 feet and are consistent with Policies 3-A-5, 3-A-6 and 4-F-2.

f. Commercial and Residential uses on the Bay Side

The Property is a portion of the Village district and approximately 4.5 acres to the west of the Property are also within the Village district with the opportunity to provide additional commercial and residential uses. The proposed redevelopment transfers the permitted residential density from the Gulf side parcels to the bay side. This residential density is proposed as single-family lots adjacent to Matanzas Pass Preserve and as a multi-family in a mixed-use structure that includes an approximately 10,000 square foot restaurant with outdoor terrace. The Gulf side parcels are proposed for public beach access and private recreational amenities.

Located at the intersection of Donora and Estero Boulevards, the proposed restaurant is within the Boulevard FLU, which permits commercial development and is a relocation of the previous commercial square footage that fronted Estero Boulevard. The proposed commercial is consistent with Policies 4-A-3, 4-C-2 and 4-C-3 regarding the location of commercial as related to existing platted residential community to the north. The proposed multi-family and single-family residential units are mostly within the Mixed Residential FLU which promotes a mix of housing types as newer high-rise buildings. Due to the mix of uses, the structure is considered mixed use, and the proposed design meets the intent of Policies 3-A-5, 3-A-6, 4-B-4, 4-B-5, 4-B-12, 4-F-2, and the Village district.

g. Significantly Reduced Density

Prior to Hurricane Ian, the Property was developed with an RV park at a documented density of 27 RV/mobile homes per acre.²⁹ Through the implementation of the Village district, that density is reduced to 15 dwelling units per acre.³⁰ The property has 9.430 acres within the Village district providing for a maximum density of 141.45 dwelling units. The requested density for the multi-family and single-family units is consistent with Policies 3-A-5, 3-A-6, 4-F-2, and the Village district.

h. Accommodating a Public Access Point to Matanzas Pass Preserve

As previously described, the proposed site plan maintains the view from Estero Boulevard to Matanzas Pass Preserve by establishing a public park at the north/south terminus of Donora Boulevard. This park is not programmed for services through the requested DA to enable continued coordination with the Town regarding appropriate uses, access, and maintenance. The applicant anticipates that a future connection with the larger Matanzas Pass Preserve will be provided through the proposed park. The proposed site plan compliments the existing trails and boardwalks in the Preserve³¹ and is consistent with Policies 3-A-5 and 3-A-6 and the Village District while also providing the opportunity for future connections to Matanzas Pass Preserve.

²⁹ FMB Comprehensive Plan, Comprehensive Plan Policy 4-F-2

³⁰ *Ibid.*

³¹ FMB Comprehensive Plan, Community Design Element, page 3-7

VI. Design Flexibility

The Village district includes several other design elements for the pre-approved redevelopment option. The proposed conceptual design seeks flexibility from these elements to promote a design with increased public benefits for the current and future residents of the Town. Additional information and details for the requested design flexibility is provided in the Schedule of Deviations narrative.

a. Street layout

The Village district includes a desired street layout in LDC Figure 34-18 demonstrating the anticipated secondary street layout with the potential for 2 additional access points to Estero Boulevard within the Property and the required east/west extension of Donora Boulevard to Lovers Lane. In addition to the existing north/south portion of Donora Boulevard, Figure 34-18 establishes a minimum of 3 secondary streets within the Property. However, LDC Section 34-693(c) establishes that secondary streets are to be “**generally in accordance** with Figure 34-18.” (emphasis added) The Development Agreement procedures permit flexibility to be requested from the existing ordinances as deviations to be approved with a site plan and considered with the agreement.

A deviation is requested to permit an alternative street layout while continuing to provide appropriate circulation for resident vehicles and pedestrians of the existing residential neighborhood and proposed development. The required extension of “a through street from Donora Boulevard to Lovers Lane” is provided within the limits of the Property and provides access to the proposed single-family units consistent with Policy 3-A-5 and LDC Section 34-693(c)(2). The new proposed local street providing an extension of the east/west portion of Donora Boulevard also implements the first portion of the vision described in Policy 3-A-6 to begin the establishment of an interconnected network for existing and future residents to travel to the redeveloped Elementary School and Bay Oaks without utilizing Estero Boulevard. After the remaining properties within the Village district are redeveloped this vision will be a reality.

Instead of the block layout promoted by Figure 34-18 which would increase the access points to Estero Boulevard to 3. Policy 7-H-10 specifically identifies that there are “an excessive number of streets and driveways having direct access to Estero Boulevard, reducing its ability to handle peak season traffic. The town shall take advantage of any suitable opportunities to consolidate street connections into fewer access points on Estero Boulevard.” The Property’s approximately 600+ foot frontage on Estero is a unique opportunity to implement this policy with the proposed redevelopment. The proposed development reflects this policy by limiting the number of vehicular access points from Estero Boulevard to one for the Gulf and one for the bay side parcels consistent with Policies 1-A-1, 7-H-10 and guidance received from Lee County Department of Transportation. Pull off points are integrated into the design for the proposed restaurant to ensure stacking does not occur on Estero Boulevard consistent with Policies 1-A-2 and 7-E-2. The Applicant has agreed to coordinate with Lee Tran and the Lee County School District to co-locate facilities with these vehicular pull offs to promote safe school pick and drop off. Limiting vehicular access and providing pull off spaces in this manner will maintain an efficient flow of vehicular traffic down Estero

Boulevard. A private pedestrian overpass between the Gulf and bay side parcels is proposed for residents of the future development to further eliminate conflicts with vehicular travel on Estero Boulevard consistent with Policy 1-A-2 and 7-H-1.

To promote interconnectivity for pedestrians and cyclists of the existing residential community and the proposed development, an internal linear park is proposed consistent with Policies 3-A-5, 3-A-6, 4-A-1, 7-D-5. The linear park originates at Estero Boulevard within the proposed public park along the western bay side property boundary. The linear park extends along the western property boundary before turning east to parallel the new proposed local street and connect with the existing north/south Donora Boulevard. Paralleling the proposed internal roads ensures the final design exceeds the vision of Policy 3-A-6 for sidewalks and street trees to provide a landscaped 8-foot-wide multi-use path. The origination point, with its central location in the Village district along Estero Boulevard provides the opportunity for the adjacent 4.5-acre parcel to utilize this feature for future patrons consistent with Policy 4-A-2. This design promotes interconnectivity for existing and future residents while also directing pedestrians to a specific point along Estero Boulevard to cross and access the beach consistent with Policy 7-E-4. The proposed public beach access on the Gulf side parcels aligns with the origination point of the linear park on the bay side parcels consistent with Policy 4-A-4. Further promoting connectivity, the sidewalks on either side of Estero Boulevard will be repaired, maintained, or installed to continue to provide safe access down Estero Boulevard consistent with Policies 1-A-2, 4-A-1, 7-B-3 and 7-E-4.



Figure 4. Proposed Vehicular and Pedestrian Access Points

The proposed design does utilize the existing north/south Donora Boulevard to provide the north/south interconnection described by Policy 3-A-6 for vehicles. This is due to the design prioritizing pedestrian and bicycle transportation through the site as desired by the comprehensive plan at large.

The Town's comprehensive plan opens with a descriptive vision of the future in *Envisioning Tomorrow's Fort Myers Beach*, the identified priorities for this vision and the broader comprehensive plan are the natural environment, mobility, and redevelopment objectives for each planning area. The mobility vision includes "a carefully planned and interconnected system of pedestrian and bicycle paths...to reach all the recreational destinations on Estero Island and move easily from one to another."³² The Community Design Element and Transportation Element both describe a system of "Hidden Paths" which seeks to improve mobility throughout the island³³, particularly on the bay side of Estero Boulevard³⁴, and provide an alternative to single vehicle trips between important centers of activity.³⁵ The Future Land Use Element includes Objective 4-A and its supporting policies which identify all people within the Town should be free to "move around" without their cars³⁶, even during peak season and prioritizes development designs that promote a pedestrian oriented realm³⁷ to achieve this vision. Finally, the Transportation Element identifies the Town's "opportunity to increase pedestrian and bicycle activity" due to the physical layout of the community which "encourages walking and biking, with all homes...a short distance from the beach and active commercial areas."³⁸ Policy 7-E-4 directs the Town to "work toward a major expansion of sidewalks and bikeways" in support of this overall vision.

With this broader vision in mind, the proposed redevelopment provides a linear park paralleling the 2 proposed internal streets. This 20-foot-wide linear park provides an 8-foot-wide shared multi-use path to provide interconnected circulation for pedestrians and cyclists in a manner that supports the existing neighborhood, the proposed development, and future redevelopment that may occur consistent with the Town's Comprehensive Plan and the Village district.

b. Building Placement & Height

Most of the Town's redevelopment zoning districts utilize requirements typical of a form-based code for the desired location of buildings and are related to a height restriction of 3 to 4 stories and 20 to 30 feet. As with all the redevelopment districts, the Village district establishes taller structures on the Gulf side parcels than the bay side parcels. Presumably, this was to accommodate the vision in the comprehensive plan for views of the Gulf to occur as the public travels down Estero Boulevard. Unfortunately, with a density of 15 units per acre, these height limitations promote development

³² FMB Comprehensive Plan, Envisioning Tomorrow's Fort Myers Beach, Page 2-1

³³ FMB Comprehensive Plan, Future Land Use Objective 2-A, Transportation Objective 7-D, Policy 7-D-5

³⁴ FMB Comprehensive Plan, Transportation Policy 7-D-5

³⁵ FMB Comprehensive Plan, Transportation Element, Page 7-10

³⁶ FMB Comprehensive Plan, Future Land Use Policy 4-A-1

³⁷ FMB Comprehensive Plan, Future Land Use Policy 4-A-2

³⁸ FMB Comprehensive Plan, Transportation Element, Page 7-15

horizontally across the entire property for residential with no supporting amenities, view corridors or public recreation. As an alternative, to accommodate the permitted density, the proposed site design reduces the development footprint through increased height on the bay side while providing the public benefits of accessible recreation, view corridors and pedestrian and bicycle interconnectivity. A deviation is requested to establish a maximum height of 235 feet above base flood elevation. Policy 4-C-4 permits “...different heights may be applied to officially designated redevelopment areas such as Times Square, Red Coconut/Gulf Colony and Villa Santini Plaza).”

The height of the multi-family portion of the structure above the building podium increases via a series of towers as the structure increases in setback/separation from Estero and Donora Boulevard. The proposed design is two residential towers, each tower has height variations above the two-story podium from 17 stories to 11 stories (including structured parking) with the roof top of the lower stories serving as outdoor terraces/plazas. The tallest portion of the residential towers will not exceed 235 feet above base flood elevation. The restaurant portion of the structure is 1 and 2 stories in height above the podium with a large outdoor terrace. Finally, the private beach club is 2 and 3 stories in height above ground floor parking.



Figure 5. Proposed Multi-family Residential Height

Due to the Property's location within a VE-14 flood zone and Coastal A zone with LiMWA (Limit of Wave Action) the usable square footage and residential units need to be elevated above approximately 14 feet, enclosed space on the first story is significantly limited and construction is required to utilize breakaway walls. Additionally, the 1991 Coastal Construction Control Line occurs on the bay side of Estero Boulevard, also limiting enclosed space on the first story and requiring breakaway wall construction practices. The design requirements of these State and Federal regulations promote unenclosed space below base flood elevation, which is utilized in the proposed design for vehicular parking and establish the building podium. The structural elements of the parking and supporting building infrastructure are shielded through architectural treatments (consistent with federal requirements governing the floodplain) and enhanced landscaping. To provide shielding of the building podium, the building façade along Estero Boulevard is proposed to be terraced to incorporate enhanced landscaping and a water feature to shield the structure and supporting infrastructure while providing a special landscape feature along Estero Boulevard consistent with Policies 1-A-1, 1-B-3, 4-A-1. Also along the Estero Boulevard frontage is the public restaurant with ample dining terrace. The landscaped terraces, water feature and restaurant are consistent with the bay side height limitation of 3 stories and 30 feet in height³⁹ and architectural exceptions.⁴⁰ The remaining frontage of Estero Boulevard west of the proposed entry road, will be a public park with the origination point of the linear park promoting additional public gathering and recreation. Together these features work together to will activate the street frontage of Estero Boulevard consistent with Policies 1-A-1, 1-B-1, 1-B-2, 4-A-1, 4-A-2, and the Village district, while ensuring the open portions of the structure for parking are not visible from the public right-of-way.



Figure 6. View of Landscaped Terrace and Estero Boulevard

³⁹ LDC Section 34-693(h)

⁴⁰ LDC Section 34-631(b)

Similarly, along Donora Boulevard, the structural elements of the parking and supporting building infrastructure are shielded through architectural treatments (consistent with federal requirements governing the floodplain) and enhanced landscaping consistent with Policies 1-B-2, 2-B-1, 3-A-5, 4-A-1, 4-A-2. The side façade and terrace of the public restaurant fronts a portion of Donora Boulevard at the intersection with Estero Boulevard consistent with Policy 4-A-3. The façade, outdoor terrace and enhanced landscaping continue the activation of the street frontage from Estero and up Donora Boulevard, ultimately leading to the proposed public park and Matanzas Pass Preserve consistent with Policies 1-B-2, 2-B-1, 4-A-1, and 4-A-2.



Figure 7. View down Donora Boulevard

Above the building podium are the proposed residential towers which are internally setback from the edge of the building podium increasing the setback from Donora Boulevard. When coupled with the proposed tiered height, this design ensures the proposed building façade does not crowd the existing public street and surrounding existing and future development consistent with Policies 4-A-1 and 4-A-2.

With the additional height request, the proposed development also seeks to eliminate the requirement for building frontage and provide an increased building setback. The proposed public parks and gathering spaces provided along Estero Boulevard reduce the required frontage for the structure below the minimums of the Village district. Additionally, the proposed design seeks to increase the building setbacks to provide enhanced landscaping and contribute to the required pedestrian-oriented realm while appropriately addressing the construction requirements of the Property's flood zone, coastal construction requirements, and proposed height. The structural elements with enhanced landscaping described above work together in the increased setback along Estero and Donora Boulevards to appropriately frame the street frontage while providing shaded

pedestrian and bicycle circulation adjacent to these existing roadways consistent with Policies 1- A-1, 1-A-3, 1-B-2, 1-B-3, 2-B-1, 4-A-1 and 4-A-2.

The Town's Comprehensive Plan provides the Red Coconut/Gulf View Colony a different height per Policy 4-C-4, the Village district implements the height restrictions for the pre-development option. This DA is requested to provide flexibility related to the site design and multi-family towers, including additional height, to accommodate the permitted density and proposed public benefits. The proposed development has transferred the permitted residential density from the Gulf side parcels to the bay side. The footprint of the development on the bay side parcels has been reduced to provide for 2 public parks and a linear park. One of the public parks on the bay side includes a view corridor to Matanzas Pass Preserve. The development proposed for the Gulf side parcels incorporates two approximately 120-foot view corridors and another public park with beach access. Consistent with Policy 4-C-4 the provision of enhanced view corridors along with the public parks, interconnectivity for pedestrians and bicyclists, and initial establishment of a hidden path are public benefits that are provided to existing and future residents of the Town for the requested additional height.

c. Floor Area Ratio

The Village district establishes a maximum floor area ratio ("FAR") of 1.2 for commercial uses and the Town's comprehensive plan establishes a maximum FAR of 1.5 in Policy 4-C-2. This same policy establishes "the land development code shall specify maximum commercial intensities using floor-area ratios (the total area of the building divided by the area of the site in the category allowing the commercial uses)." LDC Section 34-633(1) specifies "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..."

When considered together, the Comprehensive Plan and LDC establish FAR as a measure of commercial intensity that includes parking structures and unenclosed space on the ground floor. At the time LDC Section 34-633 was adopted in 2003, commercial retail space could be provided in certain locations within the Town on the ground floor level to shield parking and provide an active street front. The vision statements for the Civic Center, which includes the Property, acknowledge that even in 1999 "the current floodplain and coastal setback regulations severely restrict what can be done here."⁴¹ Since 1999, there have been multiple changes to the floodplain mapping and building code requirements which continue to increase development restrictions. Currently, the ground floor can no longer be enclosed to provide viable commercial space within the V zone or Coastal A zone. With this area unable to be used for commercial or residential space, a deviation has been requested to eliminate the area of the parking structure from the calculation of FAR.

A second deviation is requested to increase the allowable FAR on the property to 1.5 (616,156.2 square feet) and accommodate the proposed uses. Policy 4-C-2 permits FAR requests up to 1.5

⁴¹ FMB Comprehensive Plan, Community Design Element, Page 3-6

within the Boulevard and Mixed Residential FLU categories. The public restaurant at approximately 10,000 square feet and the 137 multi-family units will be constructed within an integrated structure that is classified as a mixed-use building per Policy 4-B-12. The private beach club will provide private recreational amenities and a membership organization. The Town's LDC establishes membership organizations as a commercial use. Consistent with past interpretations of Town policy, mixed use structures must comply with the FAR calculations. The combined total area of the residential units exceeds the permitted 1.2 FAR even when the parking structure is eliminated from the FAR calculation. It should be noted that the single-family units are a residential product therefore per Policy 4-B-12 do not need to be included in the calculation of FAR for commercial intensity.

The requested deviations are consistent with the maximum FAR outlined in Policy 4-C-2 and the current coastal regulations. The additional FAR is being utilized to support multi-family units and a membership organization and does not represent an increase in commercial intensity or intrusion into a residential neighborhood. Consistent with Policy 4-C-3, the Property previously had approximately 10,000 square feet of commercial uses with setback variances and no formal parking. The proposed design to incorporate the commercial use into the frontage of multi-family structure locates this use within the Boulevard FLU consistent with Policy 4-B-5, enables appropriate vehicular access for structured parking and complies with the bay side height limitation of 3 stories and 30 feet in height⁴² and architectural exceptions.⁴³

VII. Conclusions

Upon adoption, the Town's Comprehensive Plan sought to promote an appropriate balance between neighborhood needs, economic vitality, tourist development and mobility⁴⁴. As well as encourage private investment in economic life, physical form and natural amenities of the town, while directing infill and redevelopment toward the Town's vision.⁴⁵ In the context of this vision, the comprehensive plan acknowledges the location of the property in the Civic Complex and the severe restrictions regarding development due to the floodplain and coastal setback regulations from 1999.⁴⁶ In the intervening 25 years these regulations have only become more restrictive.

The proposed redevelopment of the Property considers the floodplain and coastal setback regulations while adapting and implementing the vision statements from 25 years ago. Utilizing the redevelopment option of the Village district significantly reduces the density available from a build back of the former 27 RV units per acer to 15 dwelling units per acre. The permitted density is transferred from the Gulf side properties to the bayside properties with a request to increase the building height that enables a reduction of the proposed building footprint to accommodate 3 public parks, a linear park, a view corridor and future access to Matanzas Pass Preserve, and an additional view corridor to the Gulf. Together, the proposed public benefits promote large open spaces for

⁴² LDC Section 34-693(h)

⁴³ LDC Section 34-631(b)

⁴⁴ FMB Comprehensive Plan, Community Design Element, Page 3-1

⁴⁵ FMB Comprehensive Plan, Community Design Element, Page 3-2

⁴⁶ FMB Comprehensive Plan, Community Design Element, Page 3-6

public gathering, pedestrian and bicycle interconnections and retain psychological connections and views to the Bay and Gulf consistent with the comprehensive plan. The architectural enhancements and tiered height of the proposed structures ensure the development appropriately frames the adjacent streets, is oriented toward pedestrians, and shields the structured parking provided consistent with the vision outlined in the comprehensive plan for the Town as well as the redevelopment district. Increased setbacks are requested to permit the maintenance of existing sidewalks, the installation of new sidewalks and appropriate area for streetscaping to provide shade for pedestrians and enhance the landscaping associated with the proposed development.

The requested uses are located in a manner that is consistent with the underlying, split FLU for the Property. The design of the proposed structures and the placement on the property is compatible with the adjacent existing and future development. The requested design flexibility through the site plan with deviations provides ample public benefits to the existing and future residents of the Town as anticipated by the comprehensive plan, LDC, and DA process.



3001 Estero Boulevard
Development Agreement Application
Schedule of Deviations
Revised September 20, 2024

The requested Development Agreement and Site Plan with Deviations (“DA”) seeks to maintain the permitted density of 15 dwelling units per acre and uses of the Village zoning district (“Village district”) while seeking relief from various design standards to comply with current building codes and floodplain and coastal building setback regulations. Deviations are requested to provide flexibility related to the site design and multi-family structure while ensuring compliance, to the maximum extent possible, with the Town’s Land Development Code (“LDC”). A formal Development Order (“DO”) application will be submitted consistent with the LDC after the DA process is complete. ***The proposed development does not request any flexibility from the existing permitted residential density or permitted uses.*** A overall narrative and comprehensive plan consistency is provided as part of the application materials supporting the DA.

The proposed development transfers the permitted residential density from the gulf side of Estero Boulevard to the bay side while increasing public recreational opportunities throughout the Property. To accommodate the transfer of the permitted density and minimize the building footprint to increase publicly accessible spaces, a number of deviations from the Village district and other sections of the LDC are requested. Ultimately, the objective of the proposed development is to increase benefits available to the Town’s existing and future residents by clustering of the development, limiting the intensity of permitted uses on the gulf side parcels, prioritizing pedestrian and bicycle connectivity over vehicles, and increasing public recreation. The proposed design includes:

- Transfer of the residential density and majority of commercial intensity to the bay side parcels;
- 2 views corridors to the Gulf of Mexico from Estero Boulevard;
- 1 view corridor to Matanzas Pass Preserve
- Enhancements to existing private beach access;
- Incorporating a new public beach access with gulf side public park;
- A public park adjacent to Matanzas Pass Preserve;
- A public park adjacent to the bay side of Estero Boulevard;
- A linear park interconnecting Estero and Donora Boulevards through the Property;
- Establishing the first portion of an east/west local street from Donora Boulevard to Lovers Lane;
- Enhancing the street frontage of Estero Boulevard;
- Parking in excess of LDC requirements for the multi-family structure and single family units.

Many of the deviations are integrated to achieve the proposed design and cannot be considered

individually. The provided justifications are offered for context, however these requests should be considered with a review of supporting project narrative and conceptual plans.

1. **Sec 34-692(3)a.1.** expects traditional neighborhood design with interconnected streets, porches or balconies at the front of dwellings, primary entrances are visible from the street, cars are directed toward the rear to allow:
 - A single primary entry and internal street from Estero Boulevard for the bay side parcels (See also Deviation # 2).
 - An internal east/west street from Donora Boulevard (See also Deviation #2).
 - Porches or balconies on all facades of the multi-family portion of the mixed-use structure & terraced landscaping with water feature for the faced fronting Estero Boulevard for the mixed-use structure.
 - Outdoor seating and terraces for the private beach club and public restaurant portion of the mixed-use structure.
 - Private pedestrian entry above ground level along Estero Boulevard for the private beach club and mixed-use structure.
 - A single primary entry along the side façade and a drop off along the front facade for the private beach club on the Gulf side of Estero.
 - Vehicular access from controlled access points to ground level parking for the mixed-use structure and private beach club structures.

Justification for Deviation #1: Traditional Neighborhood is not a defined term in the Town’s LDC or Comprehensive Plan. The Community Design Element does offer some context with the following language, visual renderings, and multiple site plans for the Red Coconut and Gulfview Colony area:

“A vision for this area...is as a complete neighborhood with an internal circulation system making it possible to walk or ride bikes to school, recreation areas and shopping without using Estero Boulevard. ...Neighborhood design is not dominated by garages and features porches on the front, walkable narrow streets with shade trees that double as view corridors to the preserve and beach and quiet internal street connections to the north and south”

The design elements described are not expressly required but were anticipated as part of the vision described in the Community Design Element. Unfortunately, these design elements have not been updated throughout the years to adapt to the changing circumstances related to the floodplain and federal construction regulations. Since the adoption of the comprehensive plan in 1999, the Town’s floodplain maps have been amended three times.¹ The current maps were adopted November 17, 2022 and establish the Property is subject to a VE-14 flood zone for the entire gulf side and a portion of the bay side. The Coastal A zone and LiMWA (Limit of Wave Action) occurs on the bay side portion of the property. Additionally, the 1991 Coastal Construction Control Line occurs on the bay side portion of the property. These features require all structures to be elevated above the base flood zone of approximately 14 feet, significantly limiting the opportunity for ground level enclosed space, and require

¹ 2008, 2019, and 2022

construction to utilize breakaway walls. Due to these design requirements, structures within this area cannot provide the desired porches and primary entries on the ground floor.

The proposed site plan does activate the street front without ground level commercial space or porches and balconies and primary entries visible from the street. The proposed public parks fronting the gulf and bay side of Estero Boulevard and adjacent to the western property boundaries will provide public recreational opportunities as well as gathering space for existing and future residents. Within these parks are the origination points for the linear park with 8-foot-wide multi-use path on the bay side parcels and the 10-foot-wide public beach access on the Gulf side. The parks and pedestrian connections are centrally located to the Village District establishing a single point to cross Estero Boulevard consistent with Policy 7-E-4. On the eastern side of the boulevard entry along Estero Boulevard is the proposed terraced landscaping with integrated water feature and enhanced architecture for the area below the proposed restaurant, which shields the building podium.² The enhanced architecture associated with the restaurant wraps the corner of Estero and Donora Boulevards. With the requested deviation to increase the building setback to promote enhanced streetscaping, these features will shield the structured parking and supporting building infrastructure. Together, the parks fronting the gulf and bay side of Estero Boulevard with the increased setbacks, enhanced architectural features and streetscaping, pedestrian interconnectivity will be enhanced along Estero Boulevard with the gathering spaces of the public parks to establish ground level interaction with Estero Boulevard and activate the street front for a lively pedestrian environment.

The terraced landscaping with integrated water feature and enhanced architecture of the proposed restaurant will be a maximum of 3 stories and comply with the height limitations and exceptions¹¹ for the bay side parcels of the Village district. The remainder of the Estero Boulevard frontage is proposed to be a public park. On the Gulf side of Estero Boulevard, architectural treatments consistent with the proposed pattern book and enhanced landscaping are also proposed with two view corridors to the Gulf.

Above the building podium and setback from the commercial restaurant are the multi-family residential towers which tier in height and are further setback from the building podium. The units are oriented within the towers to promote balconies on all the building facades. The design proposed for the mixed use structure, beach club, and public parks implement the intent of the Village district and Policies 1-A-1, 1-A-2, 1-B-2, 1-B-3, 2-B-1, 4-A-1, 4-A-2 and 4-F-2 by providing ground level gathering space through the proposed parks, an enhanced pedestrian environment with the landscaped terraces with water feature, streetscaping, architectural treatments at the ground level and interaction with the street front from the proposed terraces above the required base flood elevation.

² The elements that form the base of the structure and serve to raise the habitable space above the base flood elevation.



Figure 1. The view south on Estero Boulevard

The primary vehicular entry to the mixed-use structure is proposed via Estero Boulevard with a single access point to an internal street with stacking distances that exceed the LDC requirements. The street begins in a north/south orientation and turns east/west to provide a circular turnaround and drop off between the two proposed towers. This design orientation for the internal street ensures that vehicles are directed toward the rear and are shielded from the adjacent public roadways. An east/west through street from Donora Boulevard is proposed to provide access to the proposed single family residential units consistent with the intent of the Village district³ with the opportunity for a future expansion to Lovers Lane. The property owner does not own the land between the western property boundary and Lovers Lane to provide the street extension discussed in the Village district.

The primary vehicular entry to the beach club is also proposed via Estero Boulevard with a single access point to the side of the beach club. Limiting the primary access and secondary streets within the proposed development eliminates curb cuts on Estero and Donora Boulevards and maintains traffic flow consistent with Policy 7-H-10 and guidance received from Lee County Department of Transportation.

While the secondary streets for vehicular access to the mixed-use structure and beach club do not interconnect to adjacent streets, the proposed design does promote pedestrian and/or bicycle activity throughout the Property to adjacent streets via a linear park and new sidewalks. The proposed layout of the linear park originates at Estero Boulevard, within the proposed public park to provide a specific point on Estero Boulevard for pedestrians to cross and access the beach consistent with Policy 7-E-4. From the proposed public park on the bay side of Estero Boulevard, the linear park travels north along the western property boundary, turning east to parallel the proposed new local street, and ultimately connecting to Donora Boulevard. A new sidewalk with shade trees is proposed along Donora Blvd. This linear park with the new and repaired sidewalks on Estero and Donora Boulevards will be open to the

³ FMB LDC Section 34-693(c)(2)

public and contributes to the Hidden Paths desired by Objective 2-A and its supporting policies without requiring public expenditure for implementation. The linear park is also located in a manner that can provide a future interconnection to Lovers Lane. The proposed design for the linear park promotes interconnectivity with existing public infrastructure for existing and future residents consistent with Policies 1-A-2, 4-A-1, 7-B-3 and 7-E-4 and further activates the Estero Boulevard street frontage as desired by the Village district.

The proposed development promotes design features that adapt to the federal design requirements of the VE and Coastal A zone while maintaining the intent of the Village district and comprehensive plan to the maximum extent possible. The public health, safety and welfare will be improved through the elevation of the structure, incorporation of architectural techniques, and public recreation that activates Ester Boulevard for all pass by traffic, a safe linear park that connects to other residential neighborhoods and maintenance of traffic flow along Estero Boulevard. Other infrastructure improvements are also proposed to enhance pedestrian and bicycle connectivity and view corridors to the Gulf and Matanzas Pass Preserve, consistent with the vision of the Village district.

2. **Sec 34-693(c)(1) and (2)** provides options for secondary streets in the Village zoning district and requires an extension of a through street from Donora Boulevard to Lovers Lane that will be permanently accessible by the public to allow:

- A single primary entry and internal street from Estero Boulevard to the mixed use structure with turn around.
- An internal east/west local street extending Donora Boulevard to the western property boundary.

Justification for Deviation #2: The Village district includes a desired street layout in LDC Figure 34-18 demonstrates the anticipated secondary street layout with the potential for 2 additional access points to Estero Boulevard within the Property and the required east/west extension of Donora Boulevard to Lovers Lane. In addition to the existing north/south portion of Donora Boulevard, Figure 34-18 establishes a minimum of 3 secondary streets within the Property. However, LDC Section 34-693(c) establishes that secondary streets are to be “*generally* in accordance with Figure 34-18.” (emphasis added) The existing north/south portion of Donora Boulevard is one of the secondary streets identified in Figure 34-18, the proposed site plan incorporates a sidewalk along the street to provide improved pedestrian circulation from the adjacent residential neighborhoods.

Due to the pedestrian/bicycle opportunities provided by the proposed site design, vehicle access is purposefully directed to the multi-family or single-family residences and not interconnected. Increasing the internal street connections consistent with Figure 34-18 would increase the number of locations a pedestrian or cyclist would have to cross a street also utilized by vehicles. To reduce the number of conflict points and improve safety, a linear park with an 8-foot-wide multi-use path is incorporated into the site plan separating pedestrian and bicycle traffic through the Property from vehicles. A single internal street is proposed for the multi-family structure from Estero Boulevard with a turn around and stacking distances that exceed the LDC requirements to address the

anticipated traffic, drop off for valet, and to shield this activity from Estero Boulevard. Policy 7-H-10 specifically identifies that there are “an excessive number of streets and driveways having direct access to Estero Boulevard, reducing its ability to handle peak season traffic. The town shall take advantage of any suitable opportunities to consolidate street connections into fewer access points on Estero Boulevard.” The Property’s approximately 600+ foot frontage on Estero Boulevard is a unique opportunity to implement this policy with the proposed redevelopment. The intent of this policy is reflected in the conceptual site plan by limiting the number of vehicular access points from Estero Boulevard to one for the Gulf and one for the bay side parcels consistent with Policies 1-A-1, 7-H-10, and guidance received from Lee County Department of Transportation.

Two additional access points to the mixed-use structure are provided on the north/south portion of Donora Boulevard, an existing local street, to address secondary ingress/egress to the structured parking for residents. A new local east/west street is proposed to extend Donora Boulevard through the Property and provide access to the proposed single family residential consistent with Policy 3-A-5 and LDC Section 34-693(c)(2). Consistent with the intent of the Village district and Policy 3-A-6 this design maintains a future opportunity for the through street to extend to Lovers Lane⁴ and promote an interconnected network for existing and future residents to travel to the redeveloped Elementary School and Bay Oaks without utilizing Estero Boulevard. The Property owner does not own the land between the western property boundary and Lovers Lane to provide the full street extension discussed in the Village district. It is anticipated that future redevelopment in the Village district will promote the full extension of the desired local street.

Pedestrian and/or bicycle activity throughout the property and to adjacent streets is promoted through a linear park and new sidewalk with shade trees along Donora Boulevard. The linear park interconnects the public park fronting on Estero Boulevard, travels north along the western property boundary, turns east adjacent to the new internal road, and ultimately connects to Donora Boulevard consistent with Policies 3-A-5, 3-A-6, 4-A-1 and 7-D-5. This linear park will be open to the public and contribute to the Hidden Paths desired by Objective 2-A and its supporting policies without requiring public expenditure for implementation. The location of the linear park adjacent to the proposed new local street also provides the opportunity for a future connection to Lovers Lane, further promoting interconnectivity throughout the Town.

The public health, safety and welfare will be improved through the proposed design by eliminating curb cuts and maintaining the traffic flow on Estero Boulevard. The provided enhancements for pedestrian and bicycle connectivity appropriately address the opportunity for future development on properties not controlled by the applicant. Together the internal streets and linear park improve circulation for vehicles and pedestrians as desired by the Village district.⁵

⁴ FMB LDC Section 34-693(c)(2)

⁵ FMB LDC Section 34-693(c)

3. **Sec 34-693(e), (f), (g)** establish build-to-lines from all streets at 0, rear setbacks at 20 feet and a building frontage percentage of 35 to 50% along Estero Boulevard to allow:

- **Elimination of the build-to-lines and building frontage % for all structures;**
- **Establish a 10 foot front setback for structures adjacent to a roadway;**
- **Decrease the rear setback to 10 feet for the mixed-use structure;**
- **Decrease the rear setback to 5 feet for accessory structures associates with the single-family residential units;**
- **Increase the street corner setback beyond 20 feet for the mixed use structures.**

Justification for Deviation #3: The Property fronts Estero and Donora Boulevards and as described in Deviation #1, the Property is within a VE-14 and Coastal A zone requiring the elevation of structures within this area to approximately 14 feet above base flood elevation. The bay side parcels are also subject to the 1991 Coastal Construction Control Line which significantly limits the square footage that can be enclosed below base flood elevation and requires breakaway construction practices. With a required elevation of 14 feet, the requested increased setback will enable the area between the Property boundary and proposed structure to be utilized for streetscaping and improvement or installation⁶ of a public sidewalk. The streetscaping with enhanced architectural elements will screen the building podium providing parking, plumbing, electrical and foundational elements for the mixed-use building and private beach club.

Building frontage is measured as the length of a building façade that faces a street⁷, and in the Village district this length is measured at the build to line. The requested front setback is greater than the build-to-line; therefore, by the definition included in the LDC, the building frontage would be 0. Additionally, the proposed design includes a public park along Estero Boulevard; which significantly reduces the length of the building façade along Estero Boulevard and provides a significant public benefit. Similarly, the beach club provides two 120-foot view corridors along Estero Boulevard; significantly reducing the length of building façade provided to increase the public benefits offered.

To ensure the structural elements of the building podium are appropriately screened from the adjacent streets, the proposed design includes a setback greater than 10 feet from a right-of-way and 20 feet from corner of street intersections. The increased setback provides additional land area for a planting area between the structure and the repaired or new sidewalk to provide shade the adjacent pedestrian environment and improve the view of passby traffic as compared to the required construction practices for the 14-foot base flood elevation. In addition to the increased setback, the mixed-use structure utilizes landscaped terraces with a water feature and a public restaurant with terrace to address the pedestrian environment along Estero Boulevard. Additional streetscaping and a new sidewalk is provided along Donora Boulevard. When combined with the public park on the remainder of the Estero Boulevard frontage, these features provide an enhanced pedestrian environment and gathering space as

⁶ The existing sidewalk along Estero Boulevard will be repaired and a new sidewalk will be installed along Donora Boulevard.

⁷ FMB LDC Section 34-693(c)

well as an activated street front, implementing the intent of the Village district and Policies 1-A-1, 1-A-2, 1-B-3 and 4-A-1.

The rear setback for the mixed-use structure is proposed to be reduced due to the location of the linear park and new local street providing access to the proposed single family. The building podium will be closer to the linear park than the residential towers which are internally setback from the edge of the building podium increasing the setback from Donora Boulevard and the new local street to ensure the right-of-way and linear park maintain open air and light. The proposed design is consistent with the intent of the Village district and Policies 4-A-1 and 4-A-2.

The public health, safety and welfare will be improved through the proposed design by incorporating required construction techniques to address the floodplain elevation while enhancing the ground level environment for pass by pedestrian and vehicular traffic consistent with Policies 1-A-1, 1-A-2, 1-A-3, 1-B-3, 2-B-1, 3-A-5, and 4-A-1. The request appropriately adapts the design to implement the intent of the Village district. Additionally, the provided enhancements will interconnect with the proposed linear park and public beach access to further improve circulation for pedestrians as desired by the Village district¹⁷ and Policies 2-A-1, 3-A-5, and 3-A-6.

4. **Sec. 34-693(h)** limits building height to 30 feet above base flood elevation and no taller than three stories for mixed use buildings without enclosed space on the first story on the bay side of Estero Boulevard to allow:

A maximum building height of 17 stories (including 2 stories of parking) and 235 feet for the mixed use building on the bay side of Estero Boulevard consistent with Policy 4-C-4.

Justification for Deviation #4: The Village district was established to reduce density from the previous 27 RV/mobile homes per acre to 15 dwelling units per acre. The average residential density in other locations within the Town is 6 dwelling units per acre. To address the permitted density, desire for open views, public gathering spaces and pedestrian/bicycle interconnectivity, an integral component of the proposed design is the transfer of the permitted density from the Gulf side properties to the bay side properties. This density transfer will keep the height of the development on the Gulf side consistent with the permitted 3 stories in height and 30 feet (without exceptions) of the Village district while improving connectivity and visibility to the Gulf compared to the conditions of the previous development. The proposed development plan also limits the intensity of the Gulf side properties to a private recreational amenity and membership organization.



Figure 2. Proposed Multi-family Residential Height

Due to the Property's location within a VE-14 flood zone and Coastal A zone with LiMWA (Limit of Wave Action) the usable square footage and residential units of the mixed-use building need to be elevated above approximately 14 feet. Enclosed space on the first story is significantly limited and construction is required to utilize breakaway walls. Additionally, the 1991 Coastal Construction Control Line occurs on the bay side of Estero Boulevard, also limiting enclosed space on the first story and requiring breakaway wall construction practices. The design requirements of these State and Federal regulations promote unenclosed space for the area below base flood, in conflict with the screening requirements of the Village district. In addressing the current design requirements for below base flood, and to maintain the openness of the site design for view corridors and public gathering space, the proposed design reduces the development footprint and requests additional height to cluster the multi-family units into 2 residential towers with multiple tiers at varying heights from 17 to 13 stories (including the structured parking) or a maximum height of 235 feet above base flood elevation (including the structure parking).

The comprehensive plan also gives consideration to requests for additional height in Policy 4-C-4, which specifically indicates "different heights may be applied to officially designated

redevelopment areas such as ... Red Coconut/Gulf View Colony.” The Village zoning district implements the redevelopment described as “Red Coconut/Gulf View Colony” in the Comprehensive Plan. Requests for additional height need to demonstrate consistency with the comprehensive plan and public benefits promoted by the site design due to the request, such as view corridors to the Gulf or Bay.



Figure 3. View South down Estero Boulevard

Consistent with architectural practices for increased height, as the residential towers increase in height above the podium, the setback from Estero Boulevard increases. Additionally, the towers are setback from the building podium increasing the separation from the property boundary and Donora Boulevard. The placement of the north/south tower closest to Donora Boulevard aligns with the existing multi-family and the former art campus and Fort Myers Beach Fire District Station that previously existed on the eastern side of Donora Boulevard. The adjacent development is within the VE-14 flood zone and Coastal A zone with a LiMWA and an AE zone with a base flood elevation of 11 to 12. As a result, redevelopment of the fire station and art campus will need to be elevated 11 to 14 feet. The orientation of the towers with the architectural elements and streetscaping ensures the future building will be compatible with the adjacent single, multi-family and community facilities along Donora Boulevard.

At the ground level, the proposed structure will be elevated and future development on adjacent properties will also be required to elevate consistent with base flood elevation. The building podium of the proposed structure is proposed to be shielded through architectural elements and enhanced landscaping consistent with Policies 1-B-2, 2-B-1, 3-A-5, 4-A-1, 4-A-2. At the intersection of Estero and Donora Boulevard, the commercial restaurant provides a dining terrace and coastal architecture that wraps from Estero to Donora Boulevard consistent with Policy 4-A-3. This design ensures that the Donora Boulevard frontage adjacent to Estero Boulevard is activated and provides a step back from the requested increased height. Traveling further north on Donora Boulevard the north/south residential towers increase in height and the street level is proposed to be enhanced through

architectural treatments, an increased planting area for streetscaping and a public art installation. Finally, a new sidewalk will be constructed to provide pedestrian interconnections from the existing residential neighborhoods, the proposed linear park and Estero Boulevard. The remaining building façade along Estero Boulevard is proposed to be terraced landscaping with water feature to shield the structure and supporting infrastructure while enhancing the pedestrian environment and promoting a special landscape feature along Estero Boulevard consistent with Policies 1-A-1, 1-B-3, 4-A-1. The landscaped terraces, water feature, and restaurant are consistent with the bay side height limitation of 3 stories and 30 feet in height²⁰ and architectural exceptions.²¹ Designing the uses and structure in this manner ensures the requested height does not crowd the Town's roadway network promoting openness and light and the ground level environment contributes to the pedestrian realm.

Promoting a mixed-use structure in the central portion of the Property for 137 of the permitted 141 residential units with increased height enables a reduced building footprint to utilize other portions of the property for improvements that benefit existing and future Town residents. The public parks, linear park, and view corridors are provided to promote public gathering, recreation, views and access to the Gulf and the bay. On the Gulf side, two 120-foot view corridors will maintain a permanent view of the Gulf of Mexico. The western view corridor is a new public park with a 10 foot public pedestrian access to the sandy beach. On the north side of Estero Boulevard from the Gulf front park, a public park is proposed with the origination point for a proposed linear park. Aligning the Gulf front and bay side parks in this manner promotes a centrally located park to the entire Village district and a single pedestrian crossing of Estero Boulevard. A linear park parallels the western property boundary and the new east/west extension of Donora Boulevard to enhance interconnectivity through the Property for existing and future residents without a vehicle. An opportunity to expand the linear park to the west is available when the remainder of the property within the Village zoning district redevelops, furthering enhancing mobility without a vehicle.



Figure 4. View down Donora Boulevard

The linear park terminates at the intersection of the north/south and east/west portions of Donora

Boulevard. In this general location, adjacent to Matanzas Pass Preserve is the final public park. The location of this park maintains the previous view corridor that was available down Donora Boulevard. Additionally, the existing residential lots to the east can utilize this area as a neighborhood park.

The programmatic development of the parks has not been finalized. The applicant has included language in the Development Agreement to require on-going coordination with the Town of Fort Myers Beach to ensure the final design is consistent with the Town's vision. The Development Agreement also commits that the Applicant will maintain ownership and maintenance of the park and an easement will be recorded for public access and use. As a result of this structure, the Town will have a new public park with beach access without requiring an investment in tax funds for purchase, development or maintenance of the park.

The public health, safety and welfare will be improved through the proposed design through the shielding, ground level interactions and activated street frontage that will be provided by the public parks, terraced landscaping with water feature and enhanced architectural elements consistent with Policies 1-B-2, 2-B-1, 4-A-1, and 4-A-2.

5. **Sec. 34-693(i)** restricts Floor Area Ratio (FAR) to 1.2 and 34-633 includes all stories of covered parking in the measurement of FAR to allow:

Elimination of covered parking and parking decks from the calculation of FAR and permit a FAR of 1.5 (626,156.2 square feet) consistent with Policy 4-C-2.

6. **Sec. 34-693(l)** requires off-street parking under a commercial or mixed-use building to be separated from primary streets by usable commercial space at least 20 feet deep, meet all commercial design standards and have a driveway that connects to a secondary street to allow:

Parking under a commercial or mixed-use building with no commercial space on the ground level and permit access from Estero Boulevard or an internal street.

Justification for Deviations # 5 and 6: The Village district establishes a maximum FAR of 1.2 for commercial uses and the Town's comprehensive plan establishes a maximum FAR of 1.5 in Policy 4-C-2. This same policy establishes "the land development code shall specify maximum commercial intensities using floor-area ratios (the total area of the building divided by the area of the site in the category allowing the commercial uses)." LDC Section 34-633(1) specifies "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..."

When considered together, the Comprehensive Plan and LDC establish FAR as a measure of commercial intensity that includes parking structures and unenclosed space on the ground floor. At the time LDC Section 34-633 was adopted in 2003, commercial retail space could be provided in certain locations within the Town on the ground floor level to shield parking and provide an active street front. The vision statements for the Civic Center, which includes the Property, acknowledge that

even in 1999 “the current floodplain and coastal setback regulations severely restrict what can be done here.”⁸ Since 1999, there have been multiple changes to the floodplain mapping and building code requirements which continue to increase development restrictions. The proposed development along the gulf side of Estero Boulevard is within a VE-14 floodzone which is an area subject to high velocity wave action. The remaining portion of the property, on the bay side is within a Coastal A Zone; which is an area subject to breaking waves ranging from 1.5 to 3 feet⁹. The building requirements for the flood zones and CCCL significantly limit the permitted enclosed space to a dimension that is not feasible for commercial uses below base flood elevation. Additionally, a portion of the property on the bay side is also within the 1991 CCL; which the Town’s comprehensive plan acknowledges includes structural regulations administered by the Department of Environmental Protection¹⁰ also limiting enclosed space and requiring breakaway walls which are not feasible for commercial uses below base flood elevation¹¹. Without the ability to utilize the area below base flood elevation for residential or commercial space, a deviation is requested to eliminate the area of the parking structure from the calculation of FAR and a second deviation is requested to eliminate commercial usable space between the parking and Estero or Donora Boulevards.

Another deviation is requested to increase the allowable FAR on the property to 1.5 (616,156.2 square feet) and accommodate the proposed uses. Policy 4-C-2 permits FAR requests up to 1.5 within the Boulevard and Mixed Residential FLU categories. The public restaurant at approximately 10,000 square feet and the 137 multi-family units will be constructed within an integrated structure that classified as a mixed-use building per Policy 4-B-12. The Town’s land development code establishes membership organizations as a commercial use. Consistent with past interpretations of Town policy, mixed use structures must comply with the FAR calculations. The combined total area of the structures exceeds the permitted 1.2 FAR even when the parking structure is eliminated from the FAR calculation. It should be noted that the single family units are a residential product therefore per Policy 4-B-12 do not need to be included in the calculation of FAR for commercial intensity. The requested deviations are consistent with the maximum FAR outlined in Policy 4-C-2 and the current coastal regulations. The additional FAR is being utilized to support multi-family units and a membership organization and does not represent an increase in commercial intensity or intrusion into a residential neighborhood. Consistent with Policy 4-C-3, the Property previously had approximately 10,000 square feet of commercial uses with setback variances and no formal parking.

The public health, safety and welfare will be improved through the mix of uses proposed with the building orientation and layout. The uses provided within the proposed structures are appropriately classified as mixed use through the provision of residential and commercial uses. The request does not promote an increase in commercial intensity or intrusion into a residential neighborhood and reflects appropriate limited commercial uses consistent with the anticipated

⁸ FMB Comprehensive Plan, Community Design Element, Page 3-6

⁹ *Ibid.*

¹⁰ FMB Comprehensive Plan, Future Land Use Element, Page 4-9

¹¹ FMB Comprehensive Plan, Future Land Use Element, Page 4-10

redevelopment in the surrounding area.

7. **Sec. 34-693(m)** requires commercial and mixed-use buildings that are visible from Estero Boulevard to abide by the commercial design standards outlined in 34-991-34-1010 to allow:

Conceptual approval of the architectural renderings and the proposed pattern book to permit review of designed elevations as part of the Development Order process.

Justification for Deviation #7: As part of the Development Agreement, Exhibit B is Conceptual Plans and Renderings and Exhibit D is a pattern book to demonstrate the anticipated features of the proposed development. These exhibits provide a conceptual site plan, renderings of the proposed multi-family and beach club structures, perspective viewsheds and expected architectural elements demonstrating the anticipated architectural form and features of the proposed structures. However, detailed architectural elevations and floor plans have not been prepared to evaluate against the commercial design standards outlined in the LDC.

LDC Section 34-992(d)2 permits compliance with architectural standards to be established with the submittal of a development order application. The Conceptual Plans and Renderings with the Pattern Book are provided as exhibits to the DA to demonstrate the anticipated elements of the future building architecture and floor plans. Providing a framework for review and approval of the detailed architectural plans with the development order applications.

The public health, safety and welfare will be maintained through the deviation request. The provided renderings and pattern book establish an architectural theme that reflects a coastal contemporary style. Through the conditions provided in the Development Agreement, this same architectural theme will need to be provided with the Development Order application. At that time Town Staff can review the detailed architectural elevations and floor plans to ensure consistency with Exhibit B Conceptual Plans and Renderings and Exhibit D Pattern Book.

8. **Sec. 34-631(b)(3)** requires mechanical structural appurtenances that extend above the height limit provided they do not exceed 250 square feet and screening is provided to allow:

No square footage limitation or screening for the portions of the residential tower above 11 stories.

Justification for Deviation #8: The mechanical equipment to support the 137 multi-family residential units will be integrated into the mixed-use structure and located on the roof. Due to the ranging height of the residential towers, the Applicant requests elimination of the limitations regarding square footage and screening for the portions above 11 stories. From the ground level, the mechanical equipment will not be visible and therefore these additional limitations are not necessary to protect the public health, safety and welfare.

APPLICATION FOR DEVELOPMENT AGREEMENT with DEVIATIONS

[LDC Section 2-94]

Project Name: 3001 Estero Boulevard

Current Zoning: Village

1. Name of Applicant: Seagate Fort Myers Beach, LLC

Address: 9921 Interstate Commerce Drive

City, State, Zip: Fort Myers, FL 33913

Phone Number: _____

E-mail Address: mprice@seagatedevelopmentgroup.com

2. Relationship of Applicant to owner (check one) and provide [Affidavit of Authorization](#) form:

☐ Applicant is the sole owner of the property.

☒ Applicant has been authorized by the owner(s) to represent them for this action.

3. Authorized Agent: (If different than applicant) Name of the person who is to receive all County-initiated correspondence regarding this application.

a. Company Name: Stearns Weaver Miller, PA

Contact Person: Tina M. Ekblad, MPA, AICP

Address: 106 E. College Avenue, Suite 700

City, State, Zip: Tallahassee, FL 32301

Phone Number: 850-354-7624 Email: tekblad@stearnsweaver.com

b. [Additional Agent\(s\)](#): Provide the names of other agents that the County may contact concerning this application.

4. Property owner(s): If multiple owners (corporation, partnership, trust, association), provide a list with owner interest.

Name: Seagate Fort Myers Beach, LLC

Address: 9921 Interstate Commerce Drive

City, State, Zip: Fort Myers, FL 33913

Phone Number: _____ E-mail: mprice@seagatedevelopmentgroup.com

5. Disclosure of Interest

☒ Attach [Disclosure of Interest](#) Form.

6. STRAP Number(s)

29-46-24-W1-00145.100; 0120A.0010; 00145.5000

30-46-24-W2-00001.0000

7. Street Address of Property: 3001 Estero Boulevard, Fort Myers Beach, FL

8. Legal Description (must submit one):

☒ Legal description (metes and bounds) and sealed sketch of the legal description.

OR

☐ Legal description (NO metes and bounds) if the property is located within a subdivision platted per F.S. Chapter 177, and is recorded in the Official Records of Lee County under Instruments or Plat Books. ([Click here](#) to see an example of a legal description with no metes and bounds.)

9. Future Land Use: Boulevard and Mixed Residential

10. Zoning District: Village

10. **Written Narrative:** Provide a written narrative statement explaining exactly what is proposed.
11. **Deviations:** If any relief is requested from the provisions of the Land Development Code (LDC), provide a **written explanation** of the specific relief requested (a schedule of deviations). Explain what conditions currently exist which warrant this request for relief from the regulations (a written justification for each of the requested deviations). Include specific references to any section (number{s} and name{s}) of the LDC from which relief is sought including why the requested relief is necessary and how it will affect the project. All deviation requests must be specifically keyed to the location on the Master Concept Plan. LDC 34-932(b)
12. **Master Concept Plan (MCP):** Provide a MCP and detailed drawings of any deviations or changes being proposed at a size of 24"x36" consistent with LDC 34-212(4)

SUBMITTAL REQUIREMENT CHECKLIST

Clearly label your attachments as noted in bold below.

☒	Completed application
☐	Filing Fee
☒	Affidavit of Authorization Form
☐	Additional Agents
☐	Multiple Owners List
☒	Disclosure of Interest Form
☒	Legal description (must submit one)
☒	Legal description (metes and bounds) and sealed sketch of legal description
	OR
☐	Legal description (NO metes and bounds) if the property is located within a subdivision platted per F.S. Chapter 177, and is recorded in the Official Records of Lee County under Instruments or Plat Books. (Click here to see an example of a legal description with no metes and bounds.)
☒	Narrative of Request
☒	Schedule of Deviations (if applicable)
☒	MCP and detailed drawings of any proposed deviations (if applicable) (24"x36")

Note: All information submitted with the application becomes a part of the public record and will be a permanent part of the file. Department staff will review this application for compliance with requirements of the Land Development Code. The applicant will be notified of any deficiencies.

Acceptance of an application in no way guarantees its approval. If the Town Manager determines that the requested amendment is beyond the scope of Land Development Code and that a public hearing is necessary, then all fees paid toward the administrative application may be applied toward an application for public hearing.



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 A HOME RULE DEVELOPMENT AGREEMENT FOR PROPERTY LOCATED AT 3001 ESTERO BOULEVARD, FORT MYERS BEACH, FL, STRAP NO. _____ AND OWNED BY SEAGATE FORT MYERS BEACH LLC, AS AUTHORIZED BY SECTION 2-100 OF THE TOWN'S LAND DEVELOPMENT CODE AND IN COMPLIANCE WITH THE PROCEDURES FOR APPLICATION AND APPROVAL OF DEVELOPMENT AGREEMENTS WITH DEVIATIONS SET FORTH IN RESOLUTION NUMBER 24-73 FOR THE PURPOSE OF REDEVELOPMENT OF THE PROPERTY PREVIOUSLY KNOWN AS THE RED COCONUT RV PARK; PROVIDING FOR TERMS AND CONDITIONS INCLUDING BUT NOT LIMITED TO THE IDENTIFICATION OF THE PROPOSED USE OF THE PROPERTY, A FINDING OF CONSISTENCY WITH THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN, COMMITMENTS AND DEVELOPMENT OBLIGATIONS, DEVIATIONS NEEDED FOR DEVELOPMENT; 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;

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

- ☐ 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 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):

This ordinance approves a home rule development agreement between the Town and the developer, Seagate Fort Myers Beach, LLC. This ordinance furthers the health, safety, welfare, and morals of the residents of the Town by allowing developers to rebuild the Town following catastrophic losses after Hurricanes Irma, Ian, Helene, and Milton. A rebuilding and redevelopment of the Town would benefit the local tourism and promote the growth of the Town.

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.



NOTICE OF PUBLIC HEARING/DEVELOPMENT AGREEMENT (Seagate Fort Myers Beach, LLC)

Notice is hereby given that the Town Council of the Town of Fort Myers Beach will hold two public hearings regarding an ordinance for the redevelopment of real property formerly known as the Red Coconut RV Park, as follows:

**Monday, October 28, 2024
9:00 AM
Town Hall Council Chambers
2731 Oak Street, Fort Myers Beach, FL 33931**

**Monday, November 4, 2024
9:00 AM
Town Hall Chambers
2731 Oak Street, Fort Myers Beach, FL 33931**

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A HOME RULE DEVELOPMENT AGREEMENT FOR PROPERTY LOCATED AT 3001 ESTERO BOULEVARD, 2943 ESTERO BOULEVARD, 2932 ESTERO BOULEVARD, 211 DONORA BOULEVARD, FORT MYERS BEACH, FL, STRAP NO. 29-46-24-W1-00145.1000, 29-46-24-W1-00145.5000, 30-46-24-W2-00001.0000, 29-46-24-W1-0120A.0010 AND OWNED BY SEAGATE FORT MYERS BEACH LLC, AS AUTHORIZED BY SECTION 2-100 OF THE TOWN'S LAND DEVELOPMENT CODE AND IN COMPLIANCE WITH THE PROCEDURES FOR APPLICATION AND APPROVAL OF DEVELOPMENT AGREEMENTS WITH DEVIATIONS SET FORTH IN RESOLUTION NUMBER 24-73 FOR THE PURPOSE OF REDEVELOPMENT OF THE PROPERTY PREVIOUSLY KNOWN AS THE RED COCONUT RV PARK; PROVIDING FOR TERMS AND CONDITIONS INCLUDING BUT NOT LIMITED TO THE IDENTIFICATION OF THE PROPOSED USE OF THE PROPERTY, A FINDING OF CONSISTENCY WITH THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN, COMMITMENTS AND DEVELOPMENT OBLIGATIONS, DEVIATIONS NEEDED FOR DEVELOPMENT; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.



If any person should choose to appeal a decision made at any of these public hearings, such person would need a record of the proceedings, and for that purpose may need to ensure that a verbatim record of the proceedings is made, which record indicates the testimony and evidence upon which the appeal is to be based.

Copies of the full ordinance text are available 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, Monday through Friday. Reasonable accommodation will be made in accordance with the Americans with Disabilities Act. If you are in need of reasonable accommodation, contact Town Hall at 239-765-0202. Amy Baker, Town Clerk

NOTICE OF PUBLIC HEARING/ DEVELOPMENT AGREEMENT

(Seagate Fort Myers Beach, LLC)

Notice is hereby given that the Town Council of the Town of Fort Myers Beach will hold a public hearing regarding an ordinance for the redevelopment of real property formerly known as the Red Coconut RV Park, as follows:
Monday, November 18, 2024, 9:00 AM, Town Hall Chambers, 2731 Oak Street, Fort Myers Beach, FL 33931

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A HOME RULE DEVELOPMENT AGREEMENT FOR PROPERTY LOCATED AT 3001 ESTERO BOULEVARD, 2943 ESTERO BOULEVARD, 2932 ESTERO BOULEVARD, 211 DONORA BOULEVARD, FORT MYERS BEACH, FL, STRAP NO. 29-46-24-W1-00145.1000, 29-46-24-W1-00145.5000, 30-46-24-W2-00001.0000, 29-46-24-W1-0120A.0010 AND OWNED BY SEAGATE FORT MYERS BEACH LLC, AS AUTHORIZED BY SECTION 2-100 OF THE TOWN'S LAND DEVELOPMENT CODE AND IN COMPLIANCE WITH THE PROCEDURES FOR APPLICATION AND APPROVAL OF DEVELOPMENT AGREEMENTS WITH DEVIATIONS SET FORTH IN RESOLUTION NUMBER 24-73 FOR THE PURPOSE OF REDEVELOPMENT OF THE PROPERTY PREVIOUSLY KNOWN AS THE RED COCONUT RV PARK; PROVIDING FOR TERMS AND CONDITIONS INCLUDING BUT NOT LIMITED TO THE IDENTIFICATION OF THE PROPOSED USE OF THE PROPERTY, A FINDING OF CONSISTENCY WITH THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN, COMMITMENTS AND DEVELOPMENT OBLIGATIONS, DEVIATIONS NEEDED FOR DEVELOPMENT; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.



Interested parties may appear and be heard. If any person should choose to appeal a decision made at any of this public hearing, such person would need a record of the proceedings, and for that purpose may need to ensure that a verbatim record of the proceedings is made, which record indicates the testimony and evidence upon which the appeal is to be based. Copies of the full ordinance text are available 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, Monday through Friday. Reasonable accommodation will be made in accordance with the Americans with Disabilities Act. If you are in need of reasonable accommodation, contact Town Hall at 239-765-0202. Amy Baker, Town Clerk

1. Request:

Meeting Date: November 18, 2024

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. Between first and second reading of the proposed ordinance, the Town Manager has reached out to the County to determine if the County would consider again providing this service. The Town Manager can provide an update of the most recent conversations at the public hearing.

Attachments:

1. Ordinance Final 24-30, Unsafe Building Code Amendment Ordinance (1st 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
5. Aff of Publication Ords 24-19, 24-20, 24-24, 24-25 AND 24-30

Financial Impact:

None

6. Alternative Action

7. Management Recommendations:

Approve this ordinance.

8. Recommended Approval:

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

Created/Initiated - 11/7/2024
Approved - 11/12/2024
Approved - 11/12/2024
Final Approval - 11/12/2024

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 second reading was scheduled for October 28, 2024 and was continued to November 18, 2024; 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 and final 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 COUNIL 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 ~~Magistrates Lee County Board of Adjustment and Appeals~~ **Town of Fort Myers Beach Special**; 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, § 49.062

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.

AFFIDAVIT OF PUBLICATION

Amy Baker
Town Clerk/Town of Fort Myers Beach
2731 Oak St.
Fort Myers Beach FL 33931

STATE OF WISCONSIN, COUNTY OF BROWN

Before the undersigned authority personally appeared, who on oath says that he or she is the Legal Advertising Representative of the News-Press, a daily newspaper published at Fort Myers on Lee County, Florida; that the attached copy of advertisement, being a Legal Ad in the matter of Govt Public Notices, was published on the publicly accessible website of Lee County, Florida, or in a newspaper by print in the issues of, on:

09/13/2024

Affiant further says that the website or newspaper complies with all legal requirements for publication in chapter 50, Florida Statutes
Subscribed and sworn to before me, by the legal clerk, who is personally known to me, on 09/13/2024

Legal Clerk

Notary, State of WI, County of Brown

My commission expires

Publication Cost: \$759.12

Tax Amount: \$0.00

Payment Cost: \$759.12

Order No: 10562666

Customer No: 1124390

PO #:

of Copies:

1

THIS IS NOT AN INVOICE!

Please do not use this form for payment remittance.

NICOLE JACOBS
Notary Public
State of Wisconsin

NOTICE OF PUBLIC HEARINGS

Notice is hereby given that the Town Council of the Town of Fort Myers Beach will hold a public hearing at a meeting regarding the ordinances listed below beginning at 6:30 pm on Monday, September 23, 2024 at Fort Myers Beach Town Hall Council Chambers, located at 2731 Oak Street Fort Myers Beach, FL 33931.

ORDINANCE NO. 24-19

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 20-30 "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.

ORDINANCE NO. 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., 231 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-W3-00009.0000 (MCP PARCEL #1), 24-46-23-W3-00009.0000 (MCP PARCELS #2 AND #3), 19-46-24-W4-U0494.2629 (MCP PARCEL #2), 24-46-23-W3-00205.0070, 19-46-24-W4-U0494.2629 (MCP PARCEL #2), 19-46-24-W4-U0494.2629 (MCP PARCELS #2 AND #3), 19-46-24-W4-U0494.2629 (MCP PARCEL #2), AND #6) FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATION, SEVERABILITY, SCRIVENER'S ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

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 NOT (18) 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 34-475(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 34-483 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 34-493 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.

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.

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 4 "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'S ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

If any person should choose to appeal a decision made at this public hearing, such person would need a record of the proceedings, and for that purpose may need to ensure that a verbatim record of the proceedings is made, which record indicates the testimony and evidence upon which the appeal is to be based. Copies of the full ordinance text are available at Fort Myers Beach Town Hall. Call 239-765-0292 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM Monday-Friday. Reasonable accommodation will be made in accordance with the Americans with Disabilities Act. If you are in need of reasonable accommodation, contact Town Hall at 239-765-0292. Amy Baker, Town Clerk.
Sept. 13, 2024 10562666

Town of Fort Myers Beach

OCT 2 2024

Received by: _____

1. **Request:**

Meeting Date: November 18, 2024

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 5 OF RESOLUTION 23-182 AS AMENDED BY RESOLUTION 24-178, TO INCLUDE CERTIFICATION OF THE VOTE BY THE TOWN COUNCIL BEFORE A VOTE TO APPOINT MEMBERS TO THE TOWN'S ADVISORY BOARDS, COMMITTEES, AGENCY AND COMMISSIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

5. **Background:**

On October 21, 2024, the Town Council appointed individuals to its committees, boards, and commissions in compliance with its adopted Rules of Procedure. At its Management and Planning meeting on November 7, 2024, the Town Council discussed additional changes to provide greater transparency in the voting process and eliminate any other issues raised by the Town's current procedure.

Attachments:

1. Resolution 24-246 Amending Section 5 of the Town's Procedures re Certification of Votes

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Jason Freeman, Deputy Town Clerk / Legislative Liaison
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 10/30/2024
Approved - 11/5/2024
Approved - 11/6/2024
Final Approval - 11/13/2024

RESOLUTION NUMBER 24-246

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 5 OF RESOLUTION 23-182 AS AMENDED BY RESOLUTION 24-178, TO INCLUDE CERTIFICATION OF THE VOTE BY THE TOWN COUNCIL BEFORE A VOTE TO APPOINT MEMBERS TO THE TOWN'S ADVISORY BOARDS, COMMITTEES, AGENCY AND COMMISSIONS; 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 again on October 28, 2024 by Resolution 24-178; and

WHEREAS, the Town Council desires to now further amend Section 5 of its procedural rules to include a vote certifying the results following a public announcement of each vote cast to be followed by appointment of individuals receiving the most votes to provide greater transparency to the appointment process; and

WHEREAS, adoption of this Resolution promotes public participation and enhanced transparency in the best interest of the Town and its residents.

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 Section 5 of the Town Council's Policies and Procedures Manual, as amended in Exhibit "A," are approved.

Section 4. This Resolution shall take effect immediately upon its adoption by the Town Council.

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 roll call 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”

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

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

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.

Voting:

1. Each Council member makes selections, marking no more than the total number of seats available (or writes the names down), and signs his or her ballot. Each Council member and the Mayor publicly announce their votes. The Town Clerk records each vote and announces the number of votes each individual received.
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 of the remainder of candidates who were not otherwise selected.
4. Once the Town Clerk announces the results and the Mayor will ask for a motion to certify the results. Once the votes have been certified, Council will vote to appoint the individuals, who have been chosen in accordance with the above procedure.

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 unselected 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

1. **Request:**

Meeting Date: November 18, 2024

Appoint members to the FY2024-2025 Anchorage Advisory Committee (AAC) and if necessary, waive any prohibition for service on more than one committee

Why the action is necessary:

Five seats on the Anchorage Advisory Committee are vacant as of September 30, 2024

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

The Anchorage Advisory Committee (AAC) advises the Town Council of 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.

There are currently five vacancies on the Anchorage Advisory Committee. Six applications have been received by the Town Clerk requesting appointment to the committee; five island residents and one off-island resident.

Members were appointed to the Committee on October 21, 2024; however, concerns were raised regarding the accuracy of the vote and transparency and to address these concerns the prior appointment action should be rescinded and appointments made following a new voting procedure adopted by Town Council.

Section 6(c) of Ordinance 18-06 provides:

A member may not be a member of another Town of Fort Myers Beach board or committee unless this prohibition is specifically waived by the Town Council during their appointment. If the appointed individual serves on more than 1 committee, Town Council should consider granting a waiver pursuant to Section 6(c).

Attachments:

1. Hockett, Jim AAC
2. Lawwill, Ted
3. Lurie, Sam
4. Nash, John Wesley AAC
5. * Rusk, Jennifer AAC
6. Weber, Rebecca AAC

Financial Impact:

None

6. **Alternative Action**

Do not appoint members and advertise for the vacancies

7. **Management Recommendations:**

Appoint members to the committee

8. **Recommended Approval:**

Jason Freeman, Deputy Town Clerk / Legislative Liaison
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 11/7/2024
Approved - 11/8/2024
Approved - 11/8/2024
Final Approval - 11/8/2024

**RECEIVED**

By Amy Baker at 2:18 pm, Sep 03, 2024

Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date: 09/03/20

Name: Hockett

Jim

Last

First

Middle initial

Telephone Number: (940) 210-3074

Email Address: jim.hockett@yahoo.com

Home Address: 11771 Isle of Palms Drive Ft Myers Beach FL 33931

Mailing Address

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☒ No ☐

If yes, which committee(s)? Anchorage Advisory

If yes, when is your term expiration? 2024

I am applying for appointment to: (Check one)

☒ Anchorage Advisory Committee

☐ Audit Committee *must attach resume

☐ Bay Oaks Recreational Campus Advisory Board

☐ Cultural and Environmental Learning Center Advisory

☐ Board Historic Preservation Advisory Committee

☐ Local Planning Agency *must attach resume

☐ Marine and Environmental Resources Task Force

☐ Nuisance Abatement Board

☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office? Yes ☐ No ☒

Do you have unpaid fines or liens due the Town? Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction? Yes ☐ No ☒

Are you a resident within the Town's jurisdiction?

Yes ☐ No ☒

Are you an owner of real property within the Town's jurisdiction?

Yes ☐ No ☒

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

To assist the community in areas related to marine operations

Community Involvement:

serve on AAC and volunteer for other local events

Interests / Activities:

licensed USGC Boat Captain and PADI certified diver

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed

Hockett, James

Digitally signed by Hockett, James
Date: 2024.09.03 12:57:09 -04'00'

Date

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2731 Oak Street, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____



Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date: 8/17/22

Name: LAWWill Ted
Last First Middle initial

Telephone Number: 239-935-9395

Email Address: Ted@TedLI.com

Home Address: 7225 ESTERO BLVD

Mailing Address: 7205 ESTERO BLVD #740

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☒ No ☐

If yes, which committee(s)? AAC

If yes, when is your term expiration? 2022

I am applying for appointment to: (Check one)

- ☒ Anchorage Advisory Committee
☐ Audit Committee
☐ Bay Oaks Recreational Campus Advisory Board
☐ Community Resource Advisory Board
☐ Cultural and Environmental Learning Center Advisory Board
☐ Historic Preservation Advisory Committee
☐ Local Planning Agency
☐ Marine Resources Task Force
☐ Nuisance Abatement Board
☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office? Yes ☐ No ☒

Do you have unpaid fines or liens due the Town? Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction? Yes ☒ No ☐

Town of Fort Myers Beach

AUG 17 2022

Received by: _____

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☐ No ☒

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

Continuing Service

Community Involvement:

Coast Guard Auxiliary FMB

Interests / Activities:

Boating Safety

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed

Gay Lawwill, MD

Date

8/17/22

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931 www.fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____



AUG 2 2 2022

Received by: _____

Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date: 8-18-22

Name: LURIE SAM
Last First Middle initial

Telephone Number: 239-463-3520

Email Address: SAM7245@COMCAST.NET

Home Address: 8163 LAGDON RD. FMB 33931

Mailing Address: PO BOX 6221 FMB 33932

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☒ No ☐

If yes, which committee(s)? ANCHORAGE

If yes, when is your term expiration? 10/22

I am applying for appointment to: (Check one)

- ☒ Anchorage Advisory Committee
☐ Audit Committee
☐ Bay Oaks Recreational Campus Advisory Board
☐ Community Resource Advisory Board
☐ Cultural and Environmental Learning Center Advisory Board
☐ Historic Preservation Advisory Committee
☐ Local Planning Agency
☐ Marine Resources Task Force
☐ Nuisance Abatement Board
☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office? Yes ☐ No ☒

Do you have unpaid fines or liens due the Town? Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction? Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

LONG TIME MEMBER OF THIS COMMITTEE- SEEKING RE-APPOINTMENT.

Community Involvement:

Interests / Activities:

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed

Samuel L. Lucie

Date

8-18-22

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931 www.fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____



Town of Fort Myers Beach

AUG 29 2024

Received by: _____

Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date: 08/28/24

Name: Nash John Wesley
Last First Middle initial

Telephone Number: (703) 887-1836

Email Address: jwn54@outlook.com

Home Address: 4137 Bay Beach Lane, #595, Fort Myers Beach, FL 33931

Mailing Address

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☒ No ☐

If yes, which committee(s)? Anchorage Advisory Committee

If yes, when is your term expiration? September 30, 2024

I am applying for appointment to: (Check one)

- ☒ Anchorage Advisory Committee
☐ Audit Committee *must attach resume
☐ Bay Oaks Recreational Campus Advisory Board
☐ Cultural and Environmental Learning Center Advisory
☐ Board Historic Preservation Advisory Committee
☐ Local Planning Agency *must attach resume
☐ Marine and Environmental Resources Task Force
☐ Nuisance Abatement Board
☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office?

Yes ☐ No ☒

Do you have unpaid fines or liens due the Town?

Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction?

Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

These are the reasons I believe I will continue being an asset to ACC: Having over 25 years of past maritime experience. Past holder of 50T USCG Captain License. Lifetime experience boating on and around the Chesapeake Bay area. Involvement with local boating, marine regulations, & boating safety. Being on the ACC since February 2023.

Community Involvement:

Board of Director Member of Friends of Lovers Key (FOLK)
Volunteer for Clinic for the Rehabilitation of Wildlife (CROW)
Assisting with FMB Woman's Club fund raising events

Interests / Activities:

Learning & Teaching Marine & Boating Safety & Technology courses and seminars
Recreational Boating & Fishing
Studying Advanced TV/Radio & Electronics Technology
Florida's environment & wildlife

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed



Date

08/28/24

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2731 Oak Street, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____



RECEIVED

By Amy Baker at 1:54 pm, Aug 29, 2024

Town of Fort Myers Beach Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date: 8/28/24

Name: Rusk Jennifer
Last First Middle initial

Telephone Number: 757-450-5451

Email Address: JRUSKFMB@Gmail.com

Home Address: 193 Miramar st

Mailing Address: 193 Miramar st. FMB. FL. 33931

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☒ No ☐

If yes, which committee(s)? MESTF

If yes, when is your term expiration? October 2024

I am applying for appointment to: (Check one)

- ☒ Anchorage Advisory Committee
☐ Audit Committee *must attach resume
☐ Bay Oaks Recreational Campus Advisory Board
☐ Cultural and Environmental Learning Center Advisory
☐ Board Historic Preservation Advisory Committee
☐ Local Planning Agency *must attach resume
☐ Marine and Environmental Resources Task Force
☐ Nuisance Abatement Board
☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office?

Yes ☐ No ☒

Do you have unpaid fines or liens due the Town?

Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction?

Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

I support our good stewardship of our Town Anchorage

Community Involvement:

Long term MERTF member. Full time Town resident. Avid user of our local water ways. Advocate for responsible boating practices.

Interests / Activities:

*Boating, Kayaking, diving, Advocate for Manatee wildlife safety.
I strongly support good water quality.*

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed

John Rush

Date

8/28/24

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2731 Oak Street, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____



RECEIVED

By Amy Baker at 3:48 pm, Sep 18, 2024

Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date: 09/18/24

Name: Rebecca Weber
Last First Middle initial

Telephone Number: (732) 614-4420

Email Address: becki.weber@gmail.com

Home Address: 266 Curlew St, Fort Myers Beach, Florida 33931

Mailing Address

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☐ No ☒

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

- ☒ Anchorage Advisory Committee
- ☐ Audit Committee *must attach resume
- ☐ Bay Oaks Recreational Campus Advisory Board
- ☐ Cultural and Environmental Learning Center Advisory
- ☐ Board Historic Preservation Advisory Committee
- ☐ Local Planning Agency *must attach resume
- ☐ Marine and Environmental Resources Task Force
- ☐ Nuisance Abatement Board
- ☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office?

Yes ☐ No ☒

Do you have unpaid fines or liens due the Town?

Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction?

Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

To provide voluntary service to The Town of Fort Myers Beach utilizing my experience/knowledge/contacts gained from 30 years of living on a barrier Island in New Jersey and assisting with the Island's recovery after Hurricane Sandy.

Community Involvement:

Member of the Community Advisory Committee until this committee was dissolved.

Founding member of Let's Go FMB, a resident group formed to assist the residents of FMB recover after Hurricane Ian.

Interests / Activities:

Still do Healthcare IT and Security consulting part time
Golf
Beach walking
Travel

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out Public Records Exemption Request form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed



Date

9/18/24

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2731 Oak Street, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____

1. **Request:**

Meeting Date: November 18, 2024

Appoint Members to the FY2024-2025 Audit Committee and if necessary, waive any prohibition for service on more than one committee

Why the action is necessary:

Four seats on the Audit Committee are vacant as of September 30, 2024.

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

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 218.39 F.S., or any other topic(s) as assigned by the Town Council.

There are currently four vacancies on the Audit Committee. Four applications have been received by the Town Clerk requesting appointment to the committee from island residents.

Members were appointed to the Committee on October 21, 2024; however, concerns were raised regarding the accuracy of the vote and transparency and to address these concerns the prior appointment action should be rescinded and appointments made following a new voting procedure adopted by Town Council.

Attachments:

1. Dutton Deborah
2. Leson, John
3. Sandberg, David Audit
4. Thomas, Bryan G

Financial Impact:

None

6. **Alternative Action**

Do not appoint members and advertise for the vacancies

7. **Management Recommendations:**

Appoint members to the committee

8. **Recommended Approval:**

Jason Freeman, Deputy Town Clerk / Legislative Liaison
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 11/8/2024
Approved - 11/12/2024
Approved - 11/12/2024
Final Approval - 11/12/2024



Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date: 01/27/23

Name: Dutton Deborah L
Last First Middle initial

Telephone Number: (248) 366-9797

Email Address: ddutton7700@gmail.com

Home Address: 112 Sand Dollar Drive

Mailing Address same

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☐ No ☒

If yes, which committee(s)? N/A

If yes, when is your term expiration? N/A

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
☒ Audit Committee
☐ Bay Oaks Recreational Campus Advisory Board
☐ Community Resource Advisory Board
☐ Historic Preservation Advisory Committee
☐ Local Planning Agency
☐ Marine and Environmental Resources Task Force Nuisance
☐ Abatement Board
☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office?

Yes ☐ No ☒

Do you have unpaid fines or liens due the Town?

Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction?

Yes ☒ No ☐

Town of Fort Myers Beach

JAN 27 2023

Received by: _____

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☐

If yes, what board, etc., and since when? N/A

Why are you seeking appointment to this board or committee?

I would like to be more involved in our wonderful community. The Audit Committee is a perfect fit for me. I have extensive experience in auditing, internal control, accounting and finance at Ford Motor Company for over 36 years. I recently retired.

Community Involvement:

Presently, I am the Treasurer for the Laguna Shores HOA. I would like to get more involved in more areas.

Interests / Activities:

My husband I moved to FMB about 2 1/2 years ago. We love going for walks and bike rides. We are also avid boaters.

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out Public Records Exemption Request form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed



Date

01/27/23

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____

Assistant Controller, Dearborn Frame and Glass Plants**April 1993 - March 1996**

Managed teams in two manufacturing plant controller's offices. Responsible for plants' daily and monthly reporting and forecasting, including labor, overhead, inventory and material costs and revenues. Reported cost performance to plant management team. Forecasted and explained variances to expected outcomes. Established ground-up annual budgets. Led budget planning meetings with operations. Ensured robust and accurate financial analyses to support decisions. Developed detailed cost and revenue studies. Managed payroll and personnel planning. Approved spending plans. Ensured accurate accounting. Established and tracked new detailed Internal Control self-assessment program. Developed detailed revenue and price study of the plant's windshield sales. Demonstrated strong leadership and motivated employees to perform up to their capabilities. Coordinated effort to add \$100 million in automation to the Frame plant.

Various Finance Positions, Vehicle Operations Finance**February 1988 - March 1993**

Analyzed and reported labor and overhead costs for manufacturing plants. Established budgets. Supported corporate management to direct plants to reduce costs. Analyzed investment spending, identified funding and supported approval for spending. Created and rolled-out new plant raw material cost reporting method.

Various Finance Positions, St. Louis Assembly Plant**September 1986 - January 1988**

Automated hand-written cost analysis to spreadsheets to establish more efficient and accurate reporting of labor and overhead. Analyzed investment spending. Launched new timekeeping system.

Education**University of Pittsburgh, Pittsburgh, Pennsylvania September 1981 - August 1986**

Master of Business Administration - Finance, Accounting minor

Bachelor of Science - Mathematics and Business Administration, Economics minor

Professional Accreditations

Certified Six Sigma Master Black Belt: Possesses exceptional expertise and knowledge of current industry practice. Outstanding leadership ability, innovative, and demonstrate a strong commitment to the practice and advancement of quality and improvement. Substantial experience in each of the major topic areas within the portfolio.

Certified Six Sigma Black Belt: Demonstrates team leadership, understands team dynamics and assigns team member roles and responsibilities. Can explain Six Sigma philosophies and principles, including supporting systems and tools. Thorough understanding of all aspects of the define, measure, analyze, improve and control (DMAIC) model in accordance with Six Sigma principles. Basic knowledge of lean enterprise concepts, are able to identify non-value-added elements and activities and are able to use specific tools.

Additional Experience**Fort Myers Beach Laguna Shores Homeowners' Association Treasurer**

Responsible for collecting dues and paying bills. Forecast and budget costs and revenues. Created first budget and forecast for the HOA.

Debbie Dutton

January 2023

ddutton7700@gmail.com
248.366.9797

Summary

- Highly motivated business transformation leader in Ford Motor Company; used a very broad experience to drive for continuous improvement in both business and Finance operations. Worked closely with all departments and levels to identify improvements to shape and implement effective business operations with a focus on process transformation to deliver direct business impact.
- Draws upon considerable professional experience to apply creative practical solutions to the challenges of managing business needs. Builds specific strengths in business management, leadership, costing and pricing, performance measurement and management operations.
- Drives for continuous improvement to quickly identify issues and processes, then develop and implement plans to improve. Consistently exhibits a can-do attitude and conveys a sense of team work to drive projects to closure with a very practical approach to problem solving.

Ford Motor Company, Dearborn, Michigan Business Process Manager, Ford Business Services

January 2021 - November 2022

Drove global process standardization, optimization, efficiency and improved experience through workflow simplification, and utilization of design thinking. Drove performance improvement by identifying and leading projects that improve process execution by leveraging automation and lean principles.

Internal Control Manager, Treasury Operations & Investor Relations

June 2019 - December 2020

Supported corporate Treasury Operations and Investor Relations with achievement of control milestones and identification and remediation of control deficiencies. Reported directly to corporate treasurer. Drove improved control performance through risk assessment, corrective actions identification and directing agile teams. Ensured GAAP compliance. Audited process compliance.

Control Improvement Team Manager, Corporate Internal Control

December 2007 - May 2019

Utilized Six Sigma methodology to assess and improve processes throughout the corporation. Considered an expert in process mapping throughout the organization. Leveraged tools and analytics to streamline processes, improve accuracy and enhance insight. Ensured compliance with GAAP. Created process to secure over \$1 billion low interest loan from Department of Energy. Established method to improve processes and controls to improve adherence to federal fuel economy labelling laws.

Lump Sum and Tooling Finance Manager, Purchasing Finance

April 2006 - November 2007

Managed \$400 million budget and forecast. Identified and implemented method to reduce spending by assigning and tracking spending responsibility to appropriate operations group and holding them responsible. Eliminated workload.

Emerging Markets & New Model Programs Finance Manager, PD Finance

August 1999 - March 2006

Coordinated effort to source tooling to low cost countries, achieving \$9 million in savings the first year. Reported actual and forecasted personnel levels in new emerging markets. Managed billings of new offices and working conditions costs. Improved processes to reduce costs and workload between Purchasing and Product Development (PD).

Strategic Planning Manager, Purchasing Finance

November 1997 - July 1999

Developed method to sustain global Finance processes. Identified and established method to reduce global tooling costs by 15%. Established roles, responsibilities and procedure for the initiative. Prepared and presented communications to suppliers and Ford management.

Material Cost Finance Manager, Purchasing Finance

April 1996 - October 1997

Worked closely with cross-functional team to identify requirements and reduce costs. Created first global report to track total material cost by vehicle and commodity. Actively supported and trained Purchasing management in connecting financials to physicals. Performed an detailed analysis to insource stamped parts.



Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date:

Name:
Last First Middle initial

Telephone Number:

Email Address:

Home Address:

Mailing Address

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☐ No ☒

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
☒ Audit Committee
☐ Bay Oaks Recreational Campus Advisory Board
☐ Community Resource Advisory Board
☐ Historic Preservation Advisory Committee
☐ Local Planning Agency
☐ Marine and Environmental Resources Task Force Nuisance
☐ Abatement Board
☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office? Yes ☐ No ☒

Do you have unpaid fines or liens due the Town? Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction? Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

AS A CPA I HAVE EXPERIENCE IN
AUDITING MUNICIPALITIES AND WORKING WITH
VARIOUS COMMITTEES

Community Involvement:

NEW HORIZONS - AFTER SCHOOL MENTORING
PROGRAM.

Interests / Activities:

TRAVEL

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed

Jack Leman

Date

11/25/23

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2525 Estero Boulevard,
Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____



RECEIVED

By Amy Baker at 12:55 pm, Aug 21, 2024

Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date:

Name:
Last First Middle initial

Telephone Number:

Email Address:

Home Address:

Mailing Address

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☐ No ☒

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
☒ Audit Committee
☐ Bay Oaks Recreational Campus Advisory Board
☐ Cultural and Environmental Learning Center Advisory
☐ Board Historic Preservation Advisory Committee
☐ Local Planning Agency
☐ Marine and Environmental Resources Task Force Nuisance
☐ Abatement Board
☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office?

Yes ☐ No ☒

Do you have unpaid fines or liens due the Town?

Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction?

Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

My professional background as a CPA with 35 years of audit and private sector financial leadership experience will allow me to positively support and advise the town on financial and audit issues raised via the Audit Committee. I have recently retired and see this as an opportunity to support our community as it rebuilds post hurricane Ian.

Community Involvement:

My wife and I have owned property on the island since 2012. I served as our condo HOA treasurer up to 2020 when we purchased our home on Bayview Blvd. Post Ian, I have helped out neighbors as they rebuild, participated in beach and park clean ups and am a volunteer with Special Olympics. I also serve as an election judge for Lee County.

Interests / Activities:

I enjoy fishing, golfing, boating and spending time on our beautiful beaches. We enjoy having friends and family join us to share our wonderful island home and community. My wife and I also like to travel and explore different areas of the US and around the world. We are avid Chicago Cubs fans and have a goal of seeing them play in each MLB ballpark.

You may attach a resume in addition to the above information.

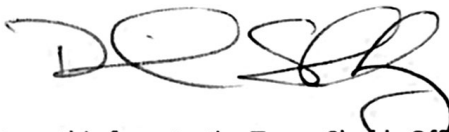
Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out Public Records Exemption Request form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed



Date

8/21/2024

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____



Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date: AUGUST 16 2022

Name: THOMAS G. BRYAN
Last First Middle initial

Telephone Number: 917 202 4407

Email Address: bthomas@comst.com

Home Address: 263 PALERMO CIRCLE FT. MYERS BEACH, FL

Mailing Address

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☒ No ☐

If yes, which committee(s)? AUDIT

If yes, when is your term expiration? OCTOBER 22

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
☒ Audit Committee
☐ Bay Oaks Recreational Campus Advisory Board
☐ Community Resource Advisory Board
☐ Cultural and Environmental Learning Center Advisory Board
☐ Historic Preservation Advisory Committee
☐ Local Planning Agency
☐ Marine Resources Task Force
☐ Nuisance Abatement Board
☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office? Yes ☐ No ☒

Do you have unpaid fines or liens due the Town? Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction? Yes ☒ No ☐

Town of Fort Myers Beach

AUG 16 2022

Received by: _____

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

TO SERVE MY COMMUNITY

Community Involvement:

Interests / Activities:

BOATING / TRAVEL / SKITSEEING

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed

Amy Brown

Date

8/16/22

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____

1. **Request:**

Meeting Date: November 18, 2024

Appoint Members to the FY2024-2025 Bay Oaks Recreational Campus Advisory Board (BORCAB) and if necessary, waive any prohibition for service on more than one committee

Why the action is necessary:

Three seats on the Bay Oaks Recreational Campus Advisory Board are vacant as of September 30, 2024

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

The purpose of Bay Oaks Recreational Campus Advisory Board (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.

There are currently three vacancies on the Bay Oaks Recreational Campus Advisory Board. Five applications have been received by the Town Clerk requesting appointment to the committee; four from island residents and one from an owner of real property within the Town's jurisdiction.

Members were appointed to the Committee on October 21, 2024; however, concerns were raised regarding the accuracy of the vote and transparency and to address these concerns the prior appointment action should be rescinded and appointments made following a new voting procedure adopted by Town Council.

Section 6(c) of Ordinance 18-06 provides:

A member may not be a member of another Town of Fort Myers Beach board or committee unless this prohibition is specifically waived by the Town Council during their appointment. If the appointed individual serves on more than 1 committee, Town Council should consider granting a waiver pursuant to Section 6(c).

Attachments:

1. Cherney, Michelle BORCAB
2. Dussliere, John BORCAB
3. Fleming, Dawn BORCAB
4. * Schoonover, Ed BORCAB
5. * Simpson, Betty BORCAB

Financial Impact:

None

6. **Alternative Action**

Do not appoint members and advertise for the vacancies

7. **Management Recommendations:**

Appoint members to the committee

8. **Recommended Approval:**

Jason Freeman, Deputy Town Clerk / Legislative Liaison
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 11/12/2024
Approved - 11/12/2024
Approved - 11/12/2024
Final Approval - 11/12/2024



RECEIVED

By Amy Baker at 1:16 pm, Sep 10, 2024

Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date:

Name:
Last First Middle initial

Telephone Number:

Email Address:

Home Address:

Mailing Address

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☐ No ☒

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
☐ Audit Committee *must attach resume
☒ Bay Oaks Recreational Campus Advisory Board
☐ Cultural and Environmental Learning Center Advisory
☐ Board Historic Preservation Advisory Committee
☐ Local Planning Agency *must attach resume
☐ Marine and Environmental Resources Task Force
☐ Nuisance Abatement Board
☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office? Yes ☐ No ☒

Do you have unpaid fines or liens due the Town? Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction? Yes ☒ No ☐

Are you a resident within the Town's jurisdiction? Yes ☒ No ☐
Are you an owner of real property within the Town's jurisdiction? Yes ☒ No ☐
Are you currently serving on a board, authority, committee or commission for another governmental agency? Yes ☐ No ☒
If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

I have been using the BORC and truly enjoy it, the hurricane it this facility hard. Now its time to rebuild it even bigger and better. I have owned here since 2010, and I believe this facility is under utilized, many locals have never even used it. I would love to be part of the rebuilding, and working to get the community more involved in utilizing the BORC. I know most of the staff, I worked closely with Erin during the hurricane.

Community Involvement:

President of Fairview Isles Home Owner Association 178 resident homes
Breast Cancer Supporter - SW Florida formed a team involving our residents

Interests / Activities:

Pickleball
Golf
Gym
Fishing/Boating
Swimming/beach
Biking

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S. Yes ☐ No ☒
If yes, fill out Public Records Exemption Request form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed 

Date

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2731 Oak Street, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____

MICHELE M. CHERNEY

21 Fairview Blvd, Fort Myers Beach, FL 33931
920.621.5033 • mcherney20@outlook.com

PROFESSIONAL MANAGEMENT EXPERIENCE

DEBAUCHE COMMUNICATION SERVICES, LLC, Green Bay, Wisconsin 11/10 – 10/2023

Telecommunications & Business Consulting Services

Owner

- Develops long-term Marketing strategy & tactical initiatives, budgets, product potential
- Works closely with clients offering strategic contract engineering, staffing, consulting services
- Assists small to mid-size businesses; create business plan, identify new market, increase sales such as Marinette Marine
- All accounting functions including taxes, monthly financials, payroll
- Human Resources, hired, fired background checks, developed company HR Employee HR manual

TUFCO TECHNOLOGIES, INC., Green Bay, Wisconsin

1996 - 2011

Sr. Vice President of Sales / Marketing

- Honored with bi-annual ***“Top Strategic Vendor Award”*** for eight consistent years
- Led sales team increasing sales from ***\$4M to \$68M*** via capital investment and organic growth
- ***Global management*** for all sales acquiring and closing the ***Business Area’s Top Fortune 500*** customers to include Procter & Gamble, Kimberly-Clark and SC Johnson
- Developed and implemented annual and ***five-year strategic business plans***
- International marketing responsibilities include advertising, product and pricing strategies
- Effectively negotiated multiple, long-term supply contracts with large consumer companies

Market Manager

- Strategically developed market segment of home care wipes resulting increased sales of \$45M,
- Successfully launched manufacturing concept of ***Swiffer*** for Procter & Gamble globally
- Created and implemented strong marketing tools with regards to pricing, products and strategies
- Developed ingenious marketing campaigns; graphics, print advertising, collateral, product videos
- Initiated and designed a product performance machine to display features and benefits for a new product launch, which resulted in becoming an ***industry standard test method***
- Built strong relationships with trade journalists and editors for maximum exposure to industry

WAUSAU PAPERS, Harrodsburg, Kentucky

1988 - 1996

Area Sales Manager, Boca Raton, Florida

- Led market segment expansion with first year sales of \$4M, second year sales of \$7.5M
- Consistently exceeded company revenue goals and built reputable clientele every year
- Managed pricing, strategy and competitive market trends on a national level
- Trained and managed new field sales personnel working one-on-one ensuring performance

Customer Service Manager, Harrodsburg, Kentucky

- ***Managed plant shut down*** and entire customer service / marketing group of our Green Bay operations and ***setup new plant operations*** and hiring staff in Harrodsburg, KY
- Hired and trained staff of 25 (customer service reps, marketing and pricing managers, costs)

District Sales Manager, San Antonio, Texas

- Sales rep for the San Antonio/Austin, Texas market

Customer Service Representative, Green Bay, Wisconsin

- Internship for sales covering Midwest territory of the United States

EDUCATION

Accounting & Real Estate, NWTC – Green Bay, Wisconsin

AFFILIATIONS

Curative Connections Board Member

Green Bay Chamber of Commerce

Advanced Economic Development - Board Member / Advance Incubator - Board Member / Business Attraction Committee Board Member

INDA - Association of Nonwoven Fabrics, Board of Directors 2007 – 2011

TEC/EA Member since 2005 - 2016

FFTA - Member since 1998

**RECEIVED**

By Amy Baker at 8:46 am, Sep 10, 2024

Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date:

Name:
Last First Middle initial

Telephone Number:

Email Address:

Home Address:

Mailing Address

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☒ No ☐

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
- ☐ Audit Committee *must attach resume
- ☒ Bay Oaks Recreational Campus Advisory Board
- ☐ Cultural and Environmental Learning Center Advisory
- ☐ Board Historic Preservation Advisory Committee
- ☐ Local Planning Agency *must attach resume
- ☐ Marine and Environmental Resources Task Force
- ☐ Nuisance Abatement Board
- ☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office? Yes ☐ No ☒

Do you have unpaid fines or liens due the Town? Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction? Yes ☐ No ☒

Are you a resident within the Town's jurisdiction?

Yes ☐ No ☒

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

As my wife and I rebuild the home that will become our permanent residence, We currently in Colorado. We both have lived in the town for more than a year during COVID. I wish to continue the work I started on BORCAB. My expertise in swimming facility planning, maintenance, upkeep and my experience in coaching competitive swimming and triathlon at the Olympic and Paralympic levels has proven crucial.

Community Involvement:

As relative "newbies" to Fort Myers BEach, and with the storm, we had not been active participants other than swimming daily at Bay Oaks and using the gym. Without recognition (not seeking recognition), over the last 2 years when in town for BORCAB meetings, I spend 3-5 hours per day on my personal watercraft removing fishing line and debris from the Estero Bay Mangrove Islands. Over the past 2 years I have removed

Interests / Activities:

Swimming, Paddle Boarding, Kayaking, Open Water Swimming, Masters Swimming, PWC/Boating. Also keeping the mangroves in the back bay free of fishing line and debris.

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed



Date

9/9/24

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2731 Oak Street, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____



SEP 18 2024

Received by: _____

Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date: 09/17/24

Name: Fleming Dawn M
Last First Middle initial

Telephone Number: (708) 601-0336

Email Address: dawnfleming91@gmail.com

Home Address: 21 Sunview Blvdv.

Mailing Address

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☐ No ☒

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
☐ Audit Committee
☒ Bay Oaks Recreational Campus Advisory Board
☐ Community Resource Advisory Board
☐ Cultural and Environmental Learning Center Advisory Board
☐ Historic Preservation Advisory Committee
☐ Local Planning Agency
☐ Marine and Environmental Resources Task Force
☐ Nuisance Abatement Board
☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office? Yes ☐ No ☒

Do you have unpaid fines or liens due the Town? Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction? Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☐

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

Bay Oaks has supported our community and has a lot to offer to our residents. Would like to learn more about the services and would like to offer my knowledge and assistance moving the projects forward.

Community Involvement:

For the past 10 years I have served as our neighborhood HOA (which is a voluntary association) Secretary. Our mission is to keep our community informed, common grounds taken care of, social aspect for the neighborhood so we can meet and know our neighbors.

Interests / Activities:

Just started playing pickleball at Bay Oaks and really enjoy it. Appreciate the staff setting up the nets and providing what we need.

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out Public Records Exemption Request form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed



Date

09/17/24

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____



RECEIVED

By Amy Baker at 3:53 pm, Aug 27, 2024

Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date: 08/26/24

Name: Schoonover Edward J
Last First Middle initial

Telephone Number: (218) 820-3389

Email Address: ed.schoonover@jandjholmes.com

Home Address: 8180 Lagoon Rd

Mailing Address

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☒ No ☐

If yes, which committee(s)? AAC, BORCAB

If yes, when is your term expiration? AAC 10/25 BORCAB 10/24

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
☐ Audit Committee
☒ Bay Oaks Recreational Campus Advisory Board
☐ Community Resource Advisory Board
☐ Cultural and Environmental Learning Center Advisory Board
☐ Historic Preservation Advisory Committee
☐ Local Planning Agency
☐ Marine and Environmental Resources Task Force
☐ Nuisance Abatement Board
☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office?

Yes ☐ No ☒

Do you have unpaid fines or liens due the Town?

Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction?

Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

I would like to continue to support BORCABS efforts to rehab Bay Oaks Park and related projects. I feel that the three meetings that I will have attended at time of term expiration wasn't enough to express my ideas and concerns moving forward.

Community Involvement:

AAC

Interests / Activities:

Sports and local news.

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed



Date

08/26/24

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____



RECEIVED

By Amy Baker at 11:21 am, Aug 30, 2024

Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date: 08/21/24

Name: Simpson Betty D
Last First Middle initial

Telephone Number: (239) 851-4407

Email Address: bdsimpson2@comcast.net

Home Address: 4753 Estero Blvd. Unit 705, Fort Myers Beach, FL 33931

Mailing Address

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☐ No ☒

If yes, which committee(s)? BORCAB, CELCAB

If yes, when is your term expiration? BORCAB-September, 2024

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
- ☐ Audit Committee *must attach resume
- ☒ Bay Oaks Recreational Campus Advisory Board
- ☐ Cultural and Environmental Learning Center Advisory
- ☐ Board Historic Preservation Advisory Committee
- ☐ Local Planning Agency *must attach resume
- ☐ Marine and Environmental Resources Task Force
- ☐ Nuisance Abatement Board
- ☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office?

Yes ☐ No ☒

Do you have unpaid fines or liens due the Town?

Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction?

Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☒ No ☐

If yes, what board, etc., and since when? Lee County Parks and Recreation

Why are you seeking appointment to this board or committee?

Having been a Fort Myers Beach resident/owner for the past 58 years, I have an ongoing desire to continue working for our community and specifically on BORCAB. I feel I can serve as a historic resource, and I am eager to participate in the growth of our facility.

Community Involvement:

Currently also serving on CELCAB. Vice chair of the friends of the Matanzas Pass Preserve, past chair Fort Myers Beach pilot club (now in FMB community foundation), Director on the Estero Island Historic Society. Participated in the town of Fort Myers Beach incorporation transition team, past FMB Fire commissioner, and past president of FMB Chamber of Commerce. I love my involvement with our community.

Interests / Activities:

I have a great interest in the re-growth of our island with emphasis on recreational activities for families. I have enjoyed walking the beach and picking up shells. I have always enjoyed playing golf, golf has now become a spectator sport for me. I enjoy the evening sunsets, and the morning sun rises.

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed

Betty L. Simpson

Date

8/28/2024

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2731 Oak Street, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____

1. **Request:**

Meeting Date: November 18, 2024

Appoint Members to the FY2024-2025 Cultural and Environmental Learning Center Advisory Board (CELCAB) and if necessary, waive any prohibition for service on more than one committee

Why the action is necessary:

Four seats on the Cultural and Environmental Learning Center Advisory Board expired September 30, 2024.

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

The broad objectives of the Cultural and Environmental Learning Center Advisory Board (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.

There are currently four vacancies on the Cultural and Environmental Learning Center Advisory Board. Four applications have been received by the Town Clerk requesting appointment to the committee; three island residents and one from an owner of real property within the Town's jurisdiction.

Members were appointed to the Committee on October 21, 2024; however, concerns were raised regarding the accuracy of the vote and transparency and to address these concerns the prior appointment action should be rescinded and appointments made following a new voting procedure adopted by Town Council.

Section 6(c) of Ordinance 18-06 provides:

A member may not be a member of another Town of Fort Myers Beach board or committee unless this prohibition is specifically waived by the Town Council during their appointment. If the appointed individual serves on more than 1 committee, Town Council should consider granting a waiver pursuant to Section 6(c).

Attachments:

1. Henderson, Kerrie CELCAB
2. * Hill, Barbara CELCAB
3. * Simpson, Betty CELCAB
4. Smith, Cheryl CELCAB

Financial Impact:

None

6. **Alternative Action**

Do not appoint members and advertise for the vacancies

7. **Management Recommendations:**

Appoint members to the committee

8. **Recommended Approval:**

Jason Freeman, Deputy Town Clerk / Legislative Liaison

Amy Baker, Town Clerk

nancy stuparich, Town Attorney

Amy Baker, Town Clerk

Andy Hyatt, Town Manager

Created/Initiated - 11/8/2024

Approved - 11/12/2024

Approved - 11/12/2024

Approved - 11/13/2024

Final Approval - 11/13/2024



RECEIVED

By Amy Baker at 12:46 pm, Sep 13, 2024

Town of Fort Myers Beach

Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date: 09/13/24

Name: Henderson Kerrie
Last First Middle initial

Telephone Number: (317) 590-8570

Email Address: khcomplete@khcompleteadvertising.com

Home Address: 10815 Seascape Court Indianapolis, IN 46237

Mailing Address

(if different from home address): FMB Address: White Cap Condos, 4633 Estero Blvd., Suite B

Are you currently serving on any of the Town's committees? Yes ☒ No ☐

If yes, which committee(s)? CELCAB

If yes, when is your term expiration? OCT 2024

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
- ☐ Audit Committee *must attach resume
- ☐ Bay Oaks Recreational Campus Advisory Board
- ☒ Cultural and Environmental Learning Center Advisory
- ☐ Board Historic Preservation Advisory Committee
- ☐ Local Planning Agency *must attach resume
- ☐ Marine and Environmental Resources Task Force
- ☐ Nuisance Abatement Board
- ☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office?

Yes ☐ No ☒

Do you have unpaid fines or liens due the Town?

Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction?

Yes ☐ No ☒

Are you a resident within the Town's jurisdiction?

Yes ☐ No ☒

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

I love our island and enjoy helping the parks on the island grow and also stay the way they should be clean, easy to access for all the visitors on the island. I have enjoyed being on the board and would like to continue to help the board achieve the goals we set for the committee.

Community Involvement:

I participate in many different fund raisers for the island and Fort Myers. I look forward now that I will be in Florida more being involved in more community events and helping raise money and awareness for the island.

Interests / Activities:

I love the water, the community and want to help keep it a visitors paradise and a proud owner of the area. We need to make sure after this hurricane we bring things back the right way and help people start finding our island a destination for their vacations again. I own an advertising agency so I find it very easy to help promote the island and activities on the island.

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed

Kerrie Henderson

Date

09/13/24

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2731 Oak Street, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____



SEP 4 2024

Received by: _____

Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date:

Name:
Last First Middle initial

Telephone Number:

Email Address:

Home Address:

Mailing Address

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☒ No ☐

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
- ☐ Audit Committee *must attach resume
- ☐ Bay Oaks Recreational Campus Advisory Board
- ☒ Cultural and Environmental Learning Center Advisory
- ☐ Board Historic Preservation Advisory Committee
- ☐ Local Planning Agency *must attach resume
- ☐ Marine and Environmental Resources Task Force
- ☐ Nuisance Abatement Board
- ☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office? Yes ☐ No ☒

Do you have unpaid fines or liens due the Town? Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction? Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

I believe my professional museum and cultural institution experience benefits the Mound House as it strives to advance programs and operations; in addition, to continue to be part of the ongoing conversation regarding redevelopment of Newton Park.

Community Involvement:

Vice Chair, BORCAB. Permanent fulltime resident of Fort Myers Beach 2005 to present; permanent fulltime resident of FMB 1954 to 1962. Community activist concerned about the future development of our island.

Interests / Activities:

Retired with small art consulting practice, I spend time with my 3 married children, all of whom live locally, 6 grandchildren and friends. I participate in community events and Bay Oaks programs, Florida friendly gardening and preserving our island's natural environment.

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out Public Records Exemption Request form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed

Barker Hill

Date

08/29/24

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2731 Oak Street, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____



RECEIVED

By Amy Baker at 9:49 am, Sep 06, 2024

Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date: 09/02/24

Name: Simpson Betty D
Last First Middle initial

Telephone Number: (239) 851-4407

Email Address: bdsimpson2@comcast.net

Home Address: 4753 Estero Blvd. Unit 705, Fort Myers Beach, FL 33931

Mailing Address

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☒ No ☐

If yes, which committee(s)? CELCAB, BORCAB

If yes, when is your term expiration? CELCAB-September, 2024

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
☐ Audit Committee *must attach resume
☐ Bay Oaks Recreational Campus Advisory Board
☒ Cultural and Environmental Learning Center Advisory
☐ Board Historic Preservation Advisory Committee
☐ Local Planning Agency *must attach resume
☐ Marine and Environmental Resources Task Force
☐ Nuisance Abatement Board
☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office?

Yes ☐ No ☒

Do you have unpaid fines or liens due the Town?

Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction?

Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☒ No ☐

If yes, what board, etc., and since when? Lee County Parks and Recreation

Why are you seeking appointment to this board or committee?

There is nothing on our island like the Mound House and adjacent property. Starting as an original docent and participating continuously through the years, I humbly request the opportunity to be a part of the ever-growing programs that make the Mound House what it is today.

Community Involvement:

Currently also serving on BORCAB, Vice-Chair friends of Matanzas Pass Preserve, Director of the Estero Island Historic Society, Vice President Friends of the Mound House, past President FMB Chamber of Commerce, past FMB Fire Commissioner. I truly love being a part of our Fort Myers Beach community.

Interests / Activities:

I have a strong ongoing desire to help Fort Myers Beach rebuild itself. It is an ongoing process. As a resident of the Beach for 58 years, I have always had an interest in the history of the beach, especially the early years which the Mound House represents. I have enjoyed walking the beach and picking up shells. I've always enjoyed playing golf, which is now a spectator sport for me. Especially enjoy the sunsets and sunrises.

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed

Betty L. Simpson

Date

Sept 4, 2024

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2731 Oak Street, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____

Received by: _____

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Today's Date: Sept. 16, 2024

Telephone Number: 239-233-1252

Email Address: reTi2eeee@gmail.com

Home Address: 180 E. GRET ST. FT. MYERS Bch, FL 33931

Mailing Address | "S A M E"

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☒ No ☐

If yes, which committee(s)? CELCAB

If yes, when is your term expiration? Sept. 18. 2024

I am applying for ^{RE} appointment to: (Check one)

- ☐ Anchorage Advisory Committee
- ☐ Audit Committee *must attach resume
- ☐ Bay Oaks Recreational Campus Advisory Board
- ☒ Cultural and Environmental Learning Center Advisory
- ☐ Board Historic Preservation Advisory Committee
- ☐ Local Planning Agency *must attach resume
- ☐ Marine and Environmental Resources Task Force
- ☐ Nuisance Abatement Board
- ☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office? Yes ☐ No ☐

Do you have unpaid fines or liens due the Town?

Are you a registered voter within the Town's jurisdiction?

Yes ☐ No ☒

Yes ☐ No ☒

Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

the Museum has always been a number one priority to me. I want to contribute to it's growth and importance as a cultural center in Southwest Florida. I have been involved from it's inception + wish to continue make it grow. The Underground is A Gem.

Community Involvement:

As one of the remaining members of the Fort Myers Incorporation committee (1995), I have been very involved in the Town's evolution. There isn't a club I didn't belong to. My Time now is spent on CEICAB, Friends, + being a docent.

Interests / Activities:

Acrylic painting, voracious reader + Book Clubs,
Archeology + Travel - Scuba Diving.
Avid Football fan (Go Packers) + many other sports, Tennis, Baseball, etc.

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed Carol L Smith

Date

9/16/2024

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2731 Oak Street, Fort Myers Beach, FL 33931

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____

1. **Request:**

Meeting Date: November 18, 2024

Appoint Members to the FY2024-2025 Marine and Environmental Resources Task Force (MERTF) and if necessary, waive any prohibition for service on more than one committee

Why the action is necessary:

Four seats on the Marine and Environmental Resources Advisory Board are vacant as of September 30, 2024.

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

The broad objectives of Marine and Environmental Resources Task Force (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.

There are currently five vacancies on the Marine and Environmental Resources Task Force. Twelve applications have been received by the Town Clerk requesting appointment to the committee; ten island residents, one from an owner of real property within the Town's jurisdiction, and one off-island resident.

Members were appointed to the Committee on October 21, 2024; however, concerns were raised regarding the accuracy of the vote and transparency and to address these concerns the prior appointment action should be rescinded and appointments made following a new voting procedure adopted by Town Council.

Section 6(c) of Ordinance 18-06 provides:

A member may not be a member of another Town of Fort Myers Beach board or committee unless this prohibition is specifically waived by the Town Council during their appointment. If the appointed individual serves on more than 1 committee, Town Council should consider granting a waiver pursuant to Section 6(c).

Attachments:

1. Hegstrom, Sharon MERTF
2. Howell, Robert MERTF
3. Kocisko, Maureen MERTF
4. Larkin, Rose MERTF
5. Onoda, James MERTF
6. Patton, David MERTF
7. Richardson, Diane MERTF
8. Rood, Edward MERTF
9. * Rusk, Jennifer MERTF
10. Sand, Leo MERTF
11. Torgerson, Thomas MERTF

Financial Impact:

None

6. Alternative Action

Do not appoint members and advertise for the vacancies

7. Management Recommendations:

Appoint /reappoint members to the committee

8. Recommended Approval:

Jason Freeman, Deputy Town Clerk / Legislative Liaison

Amy Baker, Town Clerk

nancy stuparich, Town Attorney

Amy Baker, Town Clerk

Andy Hyatt, Town Manager

Created/Initiated - 11/8/2024

Approved - 11/8/2024

Approved - 11/12/2024

Approved - 11/12/2024

Final Approval - 11/12/2024



JUL 26 2024

Received by: _____

Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date: 7-27-24

Name: Hegstrom Sharon N.
Last First Middle initial

Telephone Number: 238-410-3005

Email Address: momnzie@aol.com

Home Address: 8300 Estero Blvd #102 Fort Myers Beach FL 33931

Mailing Address P.O. Box 2813 Fort Myers Beach FL 33932

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☐ No ☒

If yes, which committee(s)? _____

If yes, when is your term expiration? _____

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
- ☐ Audit Committee
- ☐ Bay Oaks Recreational Campus Advisory Board
- ☐ Cultural and Environmental Learning Center Advisory
- ☐ Board Historic Preservation Advisory Committee
- ☐ Local Planning Agency
- ☒ Marine and Environmental Resources Task Force Nuisance
- ☐ Abatement Board
- ☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office? Yes ☐ No ☒

Do you have unpaid fines or liens due the Town? Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction? Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

Because I care about protecting the ever-changing environment of Fort Myers Beach and its precious resources of water, sand & wild life, it would be an honor to serve on this important committee.

Community Involvement:

I have recently joined the FMB Chamber of Commerce. I have a long-standing relationship with FMB as President of Castle Beach as we worked with them every year for the best plan during shore-bird nesting.

Interests / Activities:

I am a watercolor artist & member of Fort Myers Beach Art Association.

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed

Sharon N. Hegstrom

Date

7-27-24

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____



Town of Fort Myers Beach

AUG 27 2024

Received by: _____

Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date: 8/25/24

Name: Howell Robert M
Last First Middle initial

Telephone Number: 330-347-5725

Email Address: Robhowell14@yahoo.com

Home Address: 28094 Chingua pin Dr Punta Gorda, FL

Mailing Address _____

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☒ No ☐

If yes, which committee(s)? MERTF

If yes, when is your term expiration? 2024, Sept

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
- ☐ Audit Committee
- ☐ Bay Oaks Recreational Campus Advisory Board
- ☐ Community Resource Advisory Board
- ☐ Cultural and Environmental Learning Center Advisory Board
- ☐ Historic Preservation Advisory Committee
- ☐ Local Planning Agency
- ☒ Marine and Environmental Resources Task Force
- ☐ Nuisance Abatement Board
- ☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office? Yes ☐ No ☒

Do you have unpaid fines or liens due the Town? Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction? Yes ☐ No ☒

Are you a resident within the Town's jurisdiction?

Yes ☐ No ☒

Are you an owner of real property within the Town's jurisdiction?

Yes ☐ No ☒

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☒ No ☐

If yes, what board, etc., and since when? MERTF/2022

Why are you seeking appointment to this board or committee?

To help the Committee with decisions that will affect our Natural world. Over all to make a positive difference in our world through education.

Community Involvement:

MERTF, FWC Volunteer, Turtle Time Volunteer, Community Educator, Media Outreach, School Outreach, Crow Rescuer/Volunteer, PEACE River Rescuer/Volunteer, Calusa water Keeper Ranger

Interests / Activities:

Education, Wildlife, Animal Behavior, Wildlife Rescue, School Outreach, Conservation, Kayaking, MERTF Lunch Breaks & Free Time @ MERTF Pop ups

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed



Date

8/25/24

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____



RECEIVED

By Amy Baker at 8:47 am, Jul 18, 2024

Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date:

Name:
Last First Middle initial

Telephone Number:

Email Address:

Home Address:

Mailing Address

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☐ No ☒

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
- ☐ Audit Committee
- ☐ Bay Oaks Recreational Campus Advisory Board
- ☐ Cultural and Environmental Learning Center Advisory
- ☐ Board Historic Preservation Advisory Committee
- ☐ Local Planning Agency
- ☒ Marine and Environmental Resources Task Force Nuisance
- ☐ Abatement Board
- ☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office?

Yes ☐ No ☒

Do you have unpaid fines or liens due the Town?

Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction?

Yes ☒ No ☐

Are you a resident within the Town's jurisdiction? Yes ☒ No ☐
Are you an owner of real property within the Town's jurisdiction? Yes ☒ No ☐
Are you currently serving on a board, authority, committee or commission for another governmental agency? Yes ☐ No ☒
If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

I am the program senior director of a global sustainability program for a pharmaceutical company, responsible for overall program management and governance. This committee would allow me to apply an area I have experience and strong interest in at the community level. And I would love to have an opportunity to contribute to the resiliency of FMB.

Community Involvement:

My time and focus has been on my family (children and husband) and my profession. I have had roles as a forensic scientist, auditor, quality governance head, and now as a sustainability leader in a FTSE100 company. However, as I get to the later stages of my career, I am looking for ways to get more involved in my community- through volunteer work or local government.

Interests / Activities:

Please see attached resume.
Note: We are currently renting in Fort Myers while building our house at 159 Curlew. We are expecting to be able to move into the house in September 2024. We have owned the property since 2009.

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S. Yes ☐ No ☒
If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed 

Date

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____

MAUREEN J. KOCISKO

159 Curlew Street
Fort Myers Beach, FL 33931

(919) 986-4421
maureenkocisko@gmail.com

SUMMARY OF QUALIFICATIONS

Leader with approximately 25 years of increasing responsibility in delivering global programmes, environmental sustainability, investigations, auditing, remediation, and governance. Expertise includes programme delivery, data compliance, cGMP manufacturing investigations, and change management. Noted for the following:

- Exceptional oral and written communication skills honed through authoring technical reports, courtroom expert witness testimony, and engagement with senior company leaders
- Ability to effectively prioritize work and lead multiple, concurrent projects in a timely and professional manner
- Proven success in leading cross-functional programmes
- Successfully worked under Corporate Integrity Agreement, Consent Decree, and Warning Letter situations to drive long term improvements and compliance
- Strong sense of teamwork, and a desire to mentor

PROFESSIONAL EXPERIENCE

GLAXOSMITHKLINE (GSK)

Program Senior Director, GSK Global Sustainability

February 2021 – Present

Responsibilities:

- Lead within a global team to develop and deliver the Enterprise environmental sustainability strategy.
- Develop, implement and evolve the data and systems strategy.
- Build accountability and delivery to enable successful change management across business units as well as the Sustainable Supplier, Employee Engagement and External Engagement & Advocacy workstreams.
- Support the coordination of internal and external communications strategy, building compelling cases for business and employee engagement.
- Implement program governance within the enterprise organization and Procurement, including risk management, metric development and monitoring.
- Build and agree financials for program.

Head, Pharma Quality Governance

November 2018 – February 2021

Responsibilities:

- Headed a global team to deliver the QMS Next Generation program across the Pharma Supply organization.
- Provided Quality Governance leadership to manage improvements and compliance: lead Pharma Quality Council, Quality Executive Team governance, Incident management (recalls/ quality alerts).
- Ensure Quality Executive Team business as usual delivery: strategy development, budget, communications, metrics.
- Support special programs, including acquisitions and integrations.

Head, Data Compliance and Governance

September 2015 – November 2018

Responsibilities:

- Headed a global team to design and implement a network strategy around data integrity for Global Manufacturing and Supply (GMS). (>70 Pharma and Consumer manufacturing sites and central functions).
- Created interfaces across GMS and other business units of GSK to build capability around data integrity.
- Built robust policies, procedures and training to equip GMS to fully comply with regulatory requirements on data.
- Provided leadership in the development, deployment, training, and on-going sustainability of data and documentation systems.
- Developed global auditing and investigation expertise within the organization.
- Developed risk modeling for data compliance; a system which is now used to identify key data integrity risks across the organization.

Director, Compliance Audit Group

June 2014 – September 2015

Responsibilities:

- Developed capability for data integrity focused auditing and consultancy within GMS. To support this effort, developed guidance, pilot program, and training for auditors, site Quality and company leadership.
- Functioned as global SME for compliance investigations, supporting regulatory and internal responses.
- Managed a team of Audit Managers to assure the quality, safety & efficacy of GSK products by auditing GSK sites and Corporate Functions against the QMS and other relevant regulatory guidelines. This process included a risk-based approach to auditing, and approval of proposed CAPA.
- Provided Quality Leadership and Compliance support to GSK sites on a day-to-day basis and supplied formal training and consultancy services to support continuous improvement.

LOCARD SOLUTIONS, LLC- Newton, MA

June 2011 – June 2014

Owner/ Founder

Consultant for the pharmaceutical and biotechnology industries with a focus on investigations, data integrity, foreign matter analysis and quality systems remediation. Worked independently as well as through notable consultancies such as The Quantic Group, LLC. Accomplishments included:

- As a work stream lead coordinating a team of 9 consultants, supported complaint investigations and Annual Product Reviews. Coordinated workflow, mentored client employees and developed investigation strategies.
- Provided mentoring and expertise for remediation of laboratory controls and deviation quality systems for both sterile injectable and solid dosage manufacturing clients to bring standards into compliance with cGMPs.
- Developed a comprehensive approach to particle reduction for a vaccine manufacturing operation. The program incorporated all aspects of the cGMP manufacturing lifecycle: vendor management, manufacturing, filling, visual inspection, analysis and investigation support.
- Provided guidance to clients on laboratory design, implementation and validation, training, and expert interactions with regulatory agencies related to foreign matter analysis in facilities that had contamination issues.

GENZYME CORPORATION- *Allston, MA*

Principal Analyst, Quality Control

June 2010 – June 2011

Senior Analyst, Quality Control

April 2009 – June 2010

Analyst II, Quality Control

April 2007 – April 2009

- Established a forensic-style analytical laboratory for foreign matter and manufacturing investigations within a sterile injectable cGMP facility under Consent Decree. All aspects of laboratory design incorporated user requirements, change control, instrument needs and budget, and laboratory infrastructure changes.
- Assisted with written and oral responses to regulatory agency findings related to foreign matter contamination.
- Acted as company subject matter expert on particle related investigations.
- Purchased and validated an FTIR microscope and SEM/EDS for the QC laboratory. Authored SOPs for the new instrumentation and developed a training curriculum for the particle analysis program. Trained four analysts within the curriculum.
- Expanded the foreign matter analytical capabilities to support investigations for additional sterile injectable manufacturing sites in the US, Ireland and Belgium. Initiated the development of an additional analytical lab at the Ireland facility using the system established in Allston.
- Analyzed particulates submitted from customer complaints and investigated sources of contaminants. Supported manufacturing investigations of unknown materials.

MONTANA STATE CRIME LABORATORY- *Missoula, MT*

2003 – 2007

Forensic Scientist, Chemical Analysis Unit

- Analyzed controlled substances, clandestine drug manufacturing evidence, and arson evidence using GC/MS, FTIR and Raman spectroscopy, and SEM/EDS.
- Testified as an expert witness. Assisted law enforcement and prosecutors with investigations and court preparation.
- Assisted with quality improvements to the crime lab to achieve accreditation by the American Society of Crime Lab Directors (ASCLD), the leading accreditation agency for crime labs nationwide.

QUEENSLAND POLICE SERVICE-*Brisbane, Australia*

1998 – 2000

Forensic Scientist, Chemistry Unit

- Analyzed trace evidence such as fire debris and paint employing GC/MS and SEM/EDS.
- Prepared statements for court and assisted law enforcement and prosecutors with investigations and court preparation.
- Published a study on how the composition of plastic bags used to store arson evidence could interfere with analysis.

US SECRET SERVICE-*Washington, DC*

1997 – 1998

Research Intern, Forensic Science Division

- Researched the chemistry of latent fingerprints under the guidance of Dr. Antonio Cantu, a renowned expert in the field. Projects included the study of lipid components in latent fingerprints, and the study of ninhydrin analogs for the development of fluorescent fingerprints.

PIERCE COUNTY MEDICAL EXAMINER'S OFFICE-*Tacoma, WA*

1995 – 1997

Forensic Associate

- Assisted with forensic autopsies, collection and preservation of evidence, photography, and the presentation of evidence in courts of law.

- Developed the curriculum and the standards for the student internship program and supervised the education and progress of the interns. Taught interns and visiting students how to perform an autopsy, collect evidence and take photographs.

EDUCATION

THE GEORGE WASHINGTON UNIVERSITY – <i>Washington, DC</i>	
<i>Master's degree in Forensic Science</i>	1997-1998
UNIVERSITY OF PUGET SOUND – <i>Tacoma, WA</i>	
<i>Bachelor of Arts in Biology</i>	1991-1995

ADDITIONAL TRAINING

Microscopical Identification of Pharmaceutical Materials and Contaminants. McCrone College of Microscopy. Westmont, Illinois. August 2009

Microscopic Particle Handling: Particle Isolation, Manipulation and Mounting. McCrone College of Microscopy. Westmont, Illinois. October 2008

Advanced Fire Debris Analysis School. Hosted by the National Center for Forensic Science. Augusta, Maine. September 2005

Basic Fire Debris Analysis School. Hosted by the Bureau of Alcohol, Tobacco, Firearms and Explosives. Ammendale, Maryland. August 2005

Analysis of Samples from Clandestine Methamphetamine Laboratories. American Academy of Forensic Sciences meeting. New Orleans, Louisiana. February 2005

Forensic Investigation of Clandestine Laboratories. Northwest Association of Forensic Scientists meeting. Missoula, Montana. April 2004

DEA Forensic Chemist Seminar. Forty-hour course taught by members of the Drug Enforcement Administration. Sterling, Virginia. December 2003

Training in the analysis of marijuana, powdered drugs, opiates and steroids. Montana State Crime Laboratory. July-September 2003

PUBLICATION

Kocisko MJ. Absorption of ignitable liquids into polyethylene/ polyvinylidene dichloride evidence bags. J Forensic Sci 2001; 46(2): 356-362.



RECEIVED

By Amy Baker at 3:47 pm, Aug 27, 2024

Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date:

Name:
Last First Middle initial

Telephone Number:

Email Address:

Home Address:

Mailing Address

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☒ No ☐

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
- ☐ Audit Committee
- ☐ Bay Oaks Recreational Campus Advisory Board
- ☐ Cultural and Environmental Learning Center Advisory
- ☐ Board Historic Preservation Advisory Committee
- ☐ Local Planning Agency
- ☒ Marine and Environmental Resources Task Force *Finance*
- ☐ Abatement Board
- ☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office? Yes ☐ No ☒

Do you have unpaid fines or liens due the Town? Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction? Yes ☐ No ☒

Are you a resident within the Town's jurisdiction?

Yes ☐ No ☒

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

I would like to be reappointed to this advisory committee because I believe in order to provide objective information to the Town Council, the group needs to consist of people knowledgeable about our local environment and demonstrating by their actions that they are striving to sustain or improve it. I feel that I am one of those people and I want to continue working to educate residents and visitors on the best environmental practices.

Community Involvement:

I am a member of the Estero Island Garden Club and have contributed to the planning and installation of the Times Square Garden between the Wavy Wall and the Lynn Hall parking lot as well as replanting the Ann Reasoner Memorial Garden. I have also spent over 100 hours in the past two years volunteering at the MERTF Pop-Up information booth. Please see Page 3 for additional involvement within the community and educational activities.

Interests / Activities:

My personal interests include traveling, snorkeling and scuba diving, walking the beach, playing piano and creating butterfly habitats.

Page 3 sites educational activities that I have engaged in.

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out Public Records Exemption Request form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed

Rose A. Larkin

Date

8/26/2024

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____

Marine and Environmental Resource Task Force

Advisory Board Application

Prior to my last reappointment in 2022 I took two Florida Master Naturalist Coastal Systems courses; one in Lee County held at Ostego Bay and the second was at Mote Marine Laboratory in Sarasota.

I am an active Lee County Master Gardener Volunteer and I have developed PowerPoints and given presentations on Low Maintenance Plants and Florida Friendly Landscaping on Fort Myers Beach, Sanibel, Estero and North Fort Myers. I also have attended these in-person lectures:

Post Storm Landscaping

Palms

Container Gardening

The Importance of Insects

Butterfly Gardening

Local Soil Composition

Native Orchids

Webinars on vegetation and related topics have also been taken. Below is the list of classes I've taken over the past two years:

Everblooming Plants

Medicinal Plants

Old Garden Roses

Invasives following Hurricane Ian

FL Invasive Plants 101

Special Pest Alert (Thrip parvispinus)

Island Ecosystems

Invasive Termites

Perennial Peanut Groundcover

Management of Insects

I've also assisted with Yard Consultations for the Lee County Master Gardener Volunteer Program and the local Coccoloba Chapter of the Florida Native Plant Society.

JUL 29 2024



JUL 29 2024

Received by: _____

Received by: _____

Town of Fort Myers Beach

Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date: 7-29-24

Name: Last Onoda First James Middle initial M

Telephone Number: 312 339-7021

Email Address: jonoda2@gmail.com

Home Address: 4182 Bay Beach Lane, Unit 772

Mailing Address Fort Myers Beach, FL 33931

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☒ No

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

Anchorage Advisory Committee

Audit Committee

Bay Oaks Recreational Campus Advisory Board

Cultural and Environmental Learning Center Advisory

Board Historic Preservation Advisory Committee

Local Planning Agency

☒ Marine and Environmental Resources Task Force Nuisance

Abatement Board

Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office? Yes ☒ No

Do you have unpaid fines or liens due the Town? Yes ☒ No

Are you a registered voter within the Town's jurisdiction? Yes ☒ No

Are you a resident within the Town's jurisdiction?

Yes ☒ No

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

Residents of FMB should serve on advisory committees aligned with their interests and knowledge.

Community Involvement:

Maintenance Committee, Manatee Bay, Waterside

Interests / Activities:

Fishing
Boating
Hiking

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed

James Oruda

Date

7-29-24

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____



Town of Fort Myers Beach

AUG 5 2024

Received by: _____

Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date:

Name:
Last First Middle initial

Telephone Number:

Email Address:

Home Address:

Mailing Address

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☐ No ☒

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
- ☐ Audit Committee
- ☐ Bay Oaks Recreational Campus Advisory Board
- ☐ Community Resource Advisory Board
- ☐ Cultural and Environmental Learning Center Advisory Board
- ☐ Historic Preservation Advisory Committee
- ☐ Local Planning Agency
- ☒ Marine and Environmental Resources Task Force
- ☐ Nuisance Abatement Board
- ☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office? Yes ☐ No ☒

Do you have unpaid fines or liens due the Town? Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction? Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

Please note response on attached page 3.

Community Involvement:

Please note response on attached page 3.

Interests / Activities:

Please note response on attached page 3.

You may attach a resume in addition to the above information. (See page 3 of 3)

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed

David L Patton

Date

07/30/24

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____

Why Seeking Appointment

I have always been interested in the stewardship of our environment and in particular the marine environment. This comes from growing up in Bath, Maine overlooking the Kennebec River, then spending decades near or on the ocean. However especially after Hurricane Ian. I believe it is extremely important to sustain the quality of life effort that needs to be provided for a healthy Estero Bay and the surrounding water, while supporting and sustaining the Fort Myer's Beach community.

Community Involvement

Over the years, I have been involved with sailing clubs and offshore sailboat racing, not only participating in club events but also as past Commodore of Blue Water Sailing Club and past President of the Trustees of the Marion, MA to Hamilton, Bermuda Off Shore Sailboat Race. In addition, I have been a volunteer docent at the Maine Maritime Museum and recently a captain on the 70 passenger cruise boat. The Maine Maritime Museum twenty acre waterfront campus includes the country's only surviving historic wooden shipyard.

Volunteer within the AARP's tax aid program (free to seniors with low or moderate income) for seven years now, which supports and helps many FMB residents during tax season.

Presently Vice President of the Friends of Seguin Light House Station Trustees. The Seguin Light House Station is on the National Registry of Historic Places.

Since my wife and I became residents on Bay Beach Lane, I work with Florida DEP Estero Bay Aquatic Preserve, in particular on their rookery effort.

Interests / Activities

Travel, boating (both sail and power), skiing, historic preservation, educating people regarding Maine's coast, being with friends and family.

Resume

Retired professional licensed mechanical engineer participating over four decades in the development, environmental permitting, engineering, design and construction of large assets, primarily electric power generating facilities. My last 20 years, I was one of the owners of an engineering company with over 500 employees that provided independent reviews of large assets to the financial community plus developers, owners, and operators of large assets.



RECEIVED

By Amy Baker at 4:19 pm, Aug 20, 2024

Town of Fort Myers Beach **Advisory Boards and Committees Application**

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date: 08/20/24

Name: Diane

Richardson

L

Last

First

Middle initial

Telephone Number: 612-810-7325

Email Address: diane@snopro.com

Home Address: 650 Matanzas Ct, Fort Myers Beach, FL 33931

Mailing Address 650 Matanzas Ct, Fort Myers Beach, FL 33931

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☐ No ☒

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
- ☐ Audit Committee
- ☐ Bay Oaks Recreational Campus Advisory Board
- ☐ Cultural and Environmental Learning Center Advisory
- ☐ Board Historic Preservation Advisory Committee
- ☐ Local Planning Agency
- ☒ Marine and Environmental Resources Task Force ~~Nuisance~~
- ☐ Abatement Board
- ☐ Public Safety Committee

* Or another committee as needed

Have you been convicted of a felony, an offense involving moral turpitude while in office? Yes ☐ No ☒

Do you have unpaid fines or liens due the Town? Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction? Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☒ No ☐

If yes, what board, etc., and since when? Treasurer, Cane Palm Beach Condo Assn.

Why are you seeking appointment to this board or committee?

I am currently retired and would like to support the town via a volunteer position as needed.

Community Involvement:

My husband and I completed a new home build on the north end of FMB just prior to hurricane Ian. We just recently completed our storm repairs and now spend most of our time in FMB however, we do travel during some times of the year. I love the area and am available to help as a volunteer if there is a suitable position for me.

Interests / Activities:

My husband and I love boating, fishing, pickle ball, walking on the beach, going to the Beach Bar to listen to music. I have 3 grandchildren with another one on the way.

We own 2 rental condos on the beach and I have served as the treasurer for that board for 6 years.

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed 

Date

8-20-24

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____



RECEIVED

By Amy Baker at 2:40 pm, Jul 15, 2024

Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date:

Name:
Last First Middle initial

Telephone Number:

Email Address:

Home Address:

Mailing Address

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☐ No ☒

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
☐ Audit Committee
☐ Bay Oaks Recreational Campus Advisory Board
☐ Cultural and Environmental Learning Center Advisory
☐ Board Historic Preservation Advisory Committee
☐ Local Planning Agency
☒ Marine and Environmental Resources Task Force Nuisance
☐ Abatement Board
☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office?

Yes ☐ No ☒

Do you have unpaid fines or liens due the Town?

Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction?

Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

As a resident of Fort Myers Beach and a beach front property owner, I have great interest in and concern for the protection of the wildlife. Having a residence adjacent to the CWA gives me a unique perspective and understanding of the needs of the local marine environment and the wildlife on Fort Myers Beach.

I believe my experience and organizational skills will be an asset to the MERFT Board.

Community Involvement:

I am the administrator for the non-profit group "Friends of Little Estero Island".

Interests / Activities:

My interests mainly include fishing, golfing and enjoying nature.

You may attach a resume in addition to the above information.

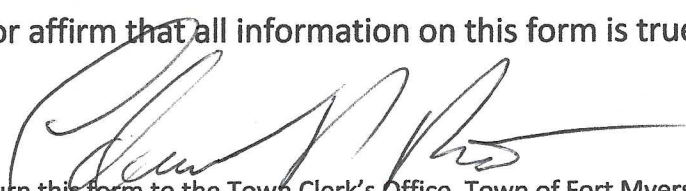
Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed



Date

07/13/24

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____



RECEIVED

By Amy Baker at 2:07 pm, Sep 18, 2024

Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date: 9-6-2024

Name: Rusk Jennifer
Last First Middle initial

Telephone Number: 1-757-450-5451

Email Address: Jruskfmb@gmail.com

Home Address: 193 Miramar St. FMB Fl 33931

Mailing Address Same

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☒ No ☐

If yes, which committee(s)? MERTF

If yes, when is your term expiration? Nov 2024

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
- ☐ Audit Committee
- ☐ Bay Oaks Recreational Campus Advisory Board
- ☐ Community Resource Advisory Board
- ☐ Cultural and Environmental Learning Center Advisory Board
- ☐ Historic Preservation Advisory Committee
- ☐ Local Planning Agency
- ☒ Marine and Environmental Resources Task Force
- ☐ Nuisance Abatement Board
- ☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office? Yes ☐ No ☒

Do you have unpaid fines or liens due the Town? Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction? Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

I would be honored to continue on MERTF, to be a good steward of Estero Island's environment. I would like to continue with MERFT's educational outreach that helps with environmental protection that supports our economy, businesses, school, tourism and our residents.

Community Involvement:

I am a FWC Sea Turtle Permit Holder for Turtle Time Inc. I am a CROW volunteer, I supply town staff with cages to help with sick and injured wildlife. I helped daily during 2017 Red Tide rescue sick wildlife, I have cared for many sick Sea Turtles to help them back to the water. I am TIOF's FMB Monitor (The international Osprey Foundation) I have been involved with Town Summer Programs, I have curated an FMB activity book.

Interests / Activities:

I enjoy serving my community, kayaking, scuba diving, helping with wildlife conservation, cleaning and walking the beach, learning, educating, meeting visitors and new friends, Helping our local non-profits. Spending time with friends, family and my old pup. I have been an active member of our community for several wildlife conservation organizations as well as community non-profits.

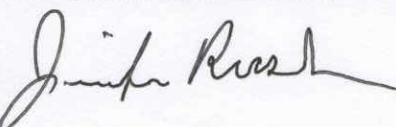
You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed 

Date

9-6-2024

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____



RECEIVED

By Amy Baker at 1:28 pm, Aug 21, 2024

Town of Fort Myers Beach

Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date: 08/21/24

Name: Sand Leo M
Last First Middle initial

Telephone Number: (320) 260-4474

Email Address: LMSand@SandCompanies.com

Home Address: 2800 Estero Blvd, Apt 1005, Fort Myers Beach, FL 33931

Mailing Address Same

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☐ No ☒

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
- ☐ Audit Committee
- ☐ Bay Oaks Recreational Campus Advisory Board
- ☐ Community Resource Advisory Board
- ☐ Cultural and Environmental Learning Center Advisory Board
- ☐ Historic Preservation Advisory Committee
- ☐ Local Planning Agency
- ☒ Marine and Environmental Resources Task Force
- ☐ Nuisance Abatement Board
- ☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office?

Yes ☐ No ☒

Do you have unpaid fines or liens due the Town?

Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction?

Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

To further enhance our community beaches while balancing property owner' rights with that of the enviroment.

Community Involvement:

Our company, Sand Construction, LLC just completed the rebuild of the 104 condos at Caper Beach Club at 2800 & 2810 Estero Blvd. I have been a Florida Certified General Contractor for about 15 years. I have own on FMB since 2004 and have been through 2 hurricanes as well as multiple tropical storms. I have been a resident of FMB FL since 2019.

Interests / Activities:

Fishing, hunting, golfing, walking the beach, listening to good music and enjoying the outdoors.

You may attach a resume in addition to the above information.

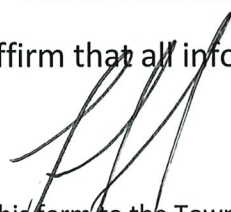
Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out Public Records Exemption Request form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed

 LEO M. SAND

Date

08/21/24

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____

LEO M. SAND

HOME ADDRESS: 2800 Estero Blvd, Apt. 1005
Fort Myers Beach, FL 33931-3535

WORK ADDRESS: Sand Companies, Inc.
366 10th Avenue South
PO Box 727
Waite Park, MN 56387
www.SandCompanies.com

PHONE: Office - (320) 202-3100
EMAIL : LMSand@SandCompanies.com

Mobile - (320) 260-4474

EDUCATION & ASSOCIATIONS:

Graduated Albany High School 1977	Colorado GC License 1993 – Inactive
Arizona GC License 1985 - Inactive	Minnesota Multi-Housing Association 1997
MN RE Broker's License 1986 - Inactive	Associated Builders and Contractor
St. Cloud, MN Class A GC License 1991	Idaho GC License 2006 - Inactive
Minnesota GC License 1992 - Inactive	Florida Certified GC License 2009

WORK EXPERIENCES:

Owner	Sand Companies, Inc.	1991-Present
Chairman	Sand Companies, Inc.	2008-2022
Chief Executive Officer	Sand Companies, Inc.	1991-2008
Member	Parktown, LLC	1986-2008
Chief Executive Officer, Owner	Sand Properties, Inc.	1994-Present
Chief Executive Officer, Owner	Sand Lodging, Inc.	1993-Present
President, CEO, Owner	SCS Management, Inc.	1995-1997
Owner, G.M., Project Manager	SMS Construction	1978-1991

PRESENT BUSINESS ACTIVITIES:

Sand Companies, Inc.	Construction, Property Management, Architecture & Real Estate Development	1991	28.07% Owner
Sand Properties, Inc.	Apartments & Real Estate Investments	1994	100.00% Owner
Sand Lodging, Inc.	Hospitality Investments	1993	100.00% Owner

COMMUNITY & CIVIC SERVICES:

Current Vice President and Past President of Albany Area Industries, Inc. a non-profit company to promote & attract business & industry to the Albany Area, Past President & Former Member of the Albany Jaycees including Project Chairperson for Lake Wobegon Trails, Albany Jaycee Volunteer of the Year Award in 2000 from the Albany Chamber of Commerce, Lifetime Achievement Award in 2008 for Founding the Lake Wobegon Trail from the Albany Jaycees, Past President of Lake Wobegon Trails, Inc. a non-profit organization for promoting the trails in Stearns County, Inducted in 1999 to the Minnesota Hall of Fame by Minnesota Recreational Trail Users, Member of the Catholic Aid Association, Received the 1996 Innkeeper of the Year Award from Minnesota Innkeepers Association, Member of Minnesota Multi-Housing Association, Received the 2005 President's Award from Carlson Companies, Past Member of Carlson Companies Brand Advisory Committee for Select Service Hotels, Member of Radisson Hotel Group's Franchise Advisory Committee Past Member of Stearns County Pheasants Forever, and former Board Member at Neighborhood National Bank.

WORK EXPERIENCES – DETAILS:

Owner

Sand Companies, Inc. 1991 – Present

Sand Companies, Inc. is a general contractor, property management, real estate, and architectural company of commercial, hotels, multifamily, commercial, and industrial real estate deals. They have built, renovated, developed, and managed over 4,500 rental units and 3,000 hotel keys since 1991. Currently they manage over 1,850 rental units and over 2,000 hotel keys in 8 different states.

Chairman

Sand Companies, Inc. June 2008 – June 2022

My primary focus as Chairman was overseeing all opportunities that Sand Companies, Inc. may be involved in. I was responsible for overall long-range planning, vision and investment opportunities for the company and its clients.

Chief Executive Officer, President

Sand Companies, Inc. 1991 – June 2008

During my period as CEO and President at Sand Companies, Inc., my focus was business growth and staff development for the Construction and Management Company. In December of 1997 Sand Companies, Inc. purchased SCS Management, Inc. a hotel property management company primarily managing Country Inns & Suites by Radisson™. I maintain a real estate broker license with Sand Companies, Inc. purchasing land for all client real estate deals as well as dealing with the laws of the State of Minnesota, which govern company real estate activities. My previous real estate experience was 1986 - 1992 with Sand Realty in Albany, Minnesota and 1992 - 1994 with Century 21 - First Realty, Inc. in St. Cloud, Minnesota. In addition, I have a Certified General Contractor's license in Florida and had a General Contractor's license in Minnesota as well as various other State and City GC licenses throughout the United States.

Member

Parktown, LLC 1986 - 2008

Ownership & oversight of the property management of 40 units of market rate housing in Albany & Avon, MN. Parktown sold these apartments and then I sold my interest in Parktown to Jim Sand in 2008.

Chief Executive Officer, Owner

Sand Properties, Inc. 1994 - Present

Overseeing the ownership interest of Sand Properties, Inc. since 1994 as well as responsible for overall corporate management and arranging financing for new and existing rental properties. Sand Properties, Inc. has ownership in 48 rental communities with 1,850 rental townhome and apartment units throughout the Midwest.

Chief Executive Officer, Owner

Sand Lodging, Inc. 1993-Present

Overseeing the ownership interest of Sand Lodging, Inc. and arranging financing for new and existing hotel properties as well as responsible for overall corporate management. Sand Lodging, Inc. owns 19 hotels in 8 different states throughout the United States, which consist of over 2,000 hotel keys.

General Manager, Project Manager

SMS Construction 1978 - 1991

Working for SMS Construction, a general contractor, in all aspects of the construction industry, as a manager of the overall construction division, which included purchasing, scheduling, coordinating, negotiating, and awarding contracts, overseeing all superintendents and foremen, enforcement of safety and quality control, as well as overall supervision of all construction projects.



Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date:

Name:
Last First Middle initial

Telephone Number:

Email Address:

Home Address:

Mailing Address

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☐ No ☒

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
- ☐ Audit Committee
- ☐ Bay Oaks Recreational Campus Advisory Board
- ☐ Cultural and Environmental Learning Center Advisory
- ☐ Board Historic Preservation Advisory Committee
- ☐ Local Planning Agency
- ☒ Marine and Environmental Resources Task Force Nuisance
- ☐ Abatement Board
- ☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office? Yes ☐ No ☒

Do you have unpaid fines or liens due the Town? Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction? Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

My love of the waters and the beaches. A property owner on FMB both on the back water of San Carlos Bay and on the Gulf. My daughter previously served on MERF prior to her relocation.

Community Involvement:

Year round immersion into the community of FMB, this is my wife's and my only residence.

Interests / Activities:

water, boating, bicycling, beaches and sunsets along with involvement in community

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed

Thomas R Torgerson Digitally signed by Thomas R Torgerson
Date: 2024.06.13 08:30:21 -04'00'

Date

06/13/24

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____

1. **Request:**

Meeting Date: November 18, 2024

Appoint Members to the FY2024-2025 Public Safety Committee (PSC) and if necessary, waive any prohibition for service on more than one committee

Why the action is necessary:

Four seats on the Public Safety Committee (PSC) are vacant as of September 30, 2024.

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

The Public Safety Committee (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 citizens and visitors to the Town of Fort Myers Beach. 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.

There are currently four vacancies on the Public Safety Committee. Three applications have been received by the Town Clerk requesting appointment to the committee; two island residents and one off-island resident.

Members were appointed to the Committee on October 21, 2024; however, concerns were raised regarding the accuracy of the vote and transparency and to address these concerns the prior appointment action should be rescinded and appointments made following a new voting procedure adopted by Town Council.

Section 6(c) of Ordinance 18-06 provides:

A member may not be a member of another Town of Fort Myers Beach board or committee unless this prohibition is specifically waived by the Town Council during their appointment. If the appointed individual serves on more than 1 committee, Town Council should consider granting a waiver pursuant to Section 6(c).

Attachments:

1. Capela, Todd PSC
2. Farrell, Keran PSC
3. Johnson, Cynthia PSC

Financial Impact:

None

6. **Alternative Action**

Do not appoint members and advertise for the vacancies

7. **Management Recommendations:**

Appoint members to the committee

8. **Recommended Approval:**

Jason Freeman, Deputy Town Clerk / Legislative Liaison

Amy Baker, Town Clerk

nancy stuparich, Town Attorney

Amy Baker, Town Clerk

Andy Hyatt, Town Manager

Created/Initiated - 11/11/2024

Approved - 11/11/2024

Approved - 11/12/2024

Approved - 11/13/2024

Final Approval - 11/13/2024



Town of Fort Myers Beach

SEP 6 2024

Received by: _____

Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date: 9/6/24

Name: Capela Todd L.
Last First Middle initial

Telephone Number: 281-610-1624

Email Address: ToddCapela@yahoo.com

Home Address: 4223 Bay Beach Lane, #62, FMB 33931

Mailing Address _____

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☐ No ☒

If yes, which committee(s)? _____

If yes, when is your term expiration? _____

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
- ☐ Audit Committee
- ☐ Bay Oaks Recreational Campus Advisory Board
- ☐ Cultural and Environmental Learning Center Advisory
- ☐ Board Historic Preservation Advisory Committee
- ☐ Local Planning Agency
- ☐ Marine and Environmental Resources Task Force Nuisance
- ☐ Abatement Board
- ☒ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office? Yes ☐ No ☒

Do you have unpaid fines or liens due the Town? Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction? Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

I have some ideas concerning traffic and safety that I hope could improve the quality of life on our island paradise.

Community Involvement:

I have been attending many community events and have spoken with several residents and visitors of the island.

Interests / Activities:

Boating (USCG-licensed captain)
Classic cars (have a Ford Mustang problem 😊)
Beach days!

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed



Date

9/6/24

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____



Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date:

Name:
Last First Middle initial

Telephone Number:

Email Address:

Home Address:

Mailing Address

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☒ No ☐

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
- ☐ Audit Committee *must attach resume
- ☐ Bay Oaks Recreational Campus Advisory Board
- ☐ Cultural and Environmental Learning Center Advisory
- ☐ Board Historic Preservation Advisory Committee
- ☐ Local Planning Agency *must attach resume
- ☐ Marine and Environmental Resources Task Force
- ☐ Nuisance Abatement Board
- ☒ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office?

Yes ☐ No ☒

Do you have unpaid fines or liens due the Town?

Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction?

Yes ☐ No ☒

Are you a resident within the Town's jurisdiction?

Yes ☐ No ☒

Are you an owner of real property within the Town's jurisdiction?

Yes ☐ No ☒

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

I believe that tourism continues to be the driving economy here in Fort Myers Beach, and in order for that industry to thrive, we need to do everything we can to assure the safety of not only our own residents, but also our visitors. I believe I can continue to be a contributing member of this committee.

Community Involvement:

I currently serve as Treasurer for the Fort Myers Beach Friends of the Arts. I also serve as an Ambassador member of the Chamber of Commerce. You'll see me volunteering at various community events throughout the year: Shrimp Fest, Taste of the Beach, etc.

Interests / Activities:

I also work many weekends as a Motorcycle Safety Instructor for the Motorcycle Safety Foundation. Our range is located at the Naples/Bonita Springs dog track, and I think my background as an instructor gives me some pretty good insight to safety on the road.

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed

Date

08/29/24

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2731 Oak Street, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____



RECEIVED

By Amy Baker at 3:05 pm, Sep 19, 2024

Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date:

Name:
Last First Middle initial

Telephone Number:

Email Address:

Home Address:

Mailing Address

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☐ No ☒

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
☐ Audit Committee *must attach resume
☐ Bay Oaks Recreational Campus Advisory Board
☐ Cultural and Environmental Learning Center Advisory
☐ Board Historic Preservation Advisory Committee
☐ Local Planning Agency *must attach resume
☐ Marine and Environmental Resources Task Force
☐ Nuisance Abatement Board
☒ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office? Yes ☐ No ☒

Do you have unpaid fines or liens due the Town? Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction? Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

As an almost daily bike rider on Estero Blvd pre-lan, I would like to move forward plausible projects to make bike riding safer on our island.

Community Involvement:

Turtle Time, FWC Marine Mammal Volunteer, MERTF Pop Up Volunteer, Harry Chaplin Food Pantry Volunteer during 2018 Red Tide and COVID, Island Hopper Songwriter Festival. Previous life volunteer positions-PTA (Variety Show Director, Science Awareness Chair, Art Awareness Chair, Environmental Awareness Chair), Softball Coach, High School Club Ice Hockey President, Sunday School Teacher, etc.

Interests / Activities:

My husband, my kids and grandkids, my dogs, turtling, fishing, crabbing, biking, hiking, making Florida memories.

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☐

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed



Date

09/19/24

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2731 Oak Street, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____

1. **Request:**

Meeting Date: November 18, 2024

Appoint a new member to the FY2024-2025 Public Safety Committee (PSC)

Why the action is necessary:

What the action accomplishes:

Fills vacancy on Public Safety Committee

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

There is currently one vacancy on the seven member board. Island resident Dawn Thomas has requested appointment to the Public Safety Committee. Council members should individually announce if they approve of Ms. Thomas' service and the Town Clerk will announce the vote to be followed by a vote of appointment.

Attachments:

1. Dawn Thomas PSC

Financial Impact:

6. **Alternative Action**

Do not appoint a new member and readvertise the vacancy

7. **Management Recommendations:**

8. **Recommended Approval:**

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

Created/Initiated - 11/7/2024
Approved - 11/12/2024
Approved - 11/13/2024
Final Approval - 11/13/2024



RECEIVED

By Amy Baker at 1:26 pm, Nov 01, 2024

Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date:

Name:
Last First Middle initial

Telephone Number:

Email Address:

Home Address:

Mailing Address

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☒ No ☐

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
- ☐ Audit Committee *must attach resume
- ☐ Bay Oaks Recreational Campus Advisory Board
- ☐ Cultural and Environmental Learning Center Advisory
- ☐ Board Historic Preservation Advisory Committee
- ☐ Local Planning Agency *must attach resume
- ☐ Marine and Environmental Resources Task Force
- ☐ Nuisance Abatement Board
- ☒ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office?

Yes ☐ No ☒

Do you have unpaid fines or liens due the Town?

Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction?

Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

To continue to be involved in the Fort Myers Beach Community

Community Involvement:

President of the FMB Woman's Club
Community Foundation member

Interests / Activities:

sports, travel entertaining

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed

Dawn Thomas

Digitally signed by Dawn Thomas
Date: 2024.11.01 11:06:42 -04'00'

Date

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2731 Oak Street, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____

1. **Request:**

Meeting Date: November 18, 2024

Discuss and approve the monthly schedule for Town Council meetings for calendar year 2025

Why the action is necessary:

Assists to prepare the calendar for the upcoming months

What the action accomplishes:

Sets the 2024 Council schedule

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

Town Council establishes its meeting schedule each year.

Attachments:

1. PROPOSED 2025 Town Council Meeting Schedule

Financial Impact:

None

6. **Alternative Action**

Select alternative dates.

7. **Management Recommendations:**

8. **Recommended Approval:**

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

Created/Initiated - 10/29/2024
Approved - 10/29/2024
Approved - 11/4/2024
Final Approval - 11/13/2024



2025 PROPOSED Town Council Meeting Schedule

JANUARY 2025

Monday, January 6, 2025	9:00 a.m.	Regular Town Council meeting
Thursday, January 9, 2025*	9:00 a.m.	Management & Planning Session
TUESDAY, January 21, 2025	9:00 a.m.	Regular Town Council meeting

FEBRUARY 2025

Monday, February 3, 2025	9:00 a.m.	Regular Town Council meeting
Thursday, February 6, 2025	9:00 a.m.	Management & Planning Session
TUESDAY, February 18, 2025	9:00 a.m.	Regular Town Council meeting

MARCH 2025

Monday, March 3, 2025	9:00 a.m.	Regular Town Council meeting
Thursday, March 6, 2025	9:00 a.m.	Management & Planning Session
Monday, March 17, 2025	9:00 a.m.	Regular Town Council meeting

APRIL 2025

Monday, April 7, 2025	9:00 a.m.	Regular Town Council meeting
Thursday, April 10, 2025*	9:00 a.m.	Management & Planning Session
Monday, April 21, 2025	9:00 a.m.	Regular Town Council meeting

MAY 2025

Monday, May 5, 2025	9:00 a.m.	Regular Town Council meeting
Thursday, May 8, 2025*	9:00 a.m.	Management & Planning Session
Monday, May 19, 2025	9:00 a.m.	Regular Town Council meeting

JUNE 2025

Monday, June 2, 2025	9:00 a.m.	Regular Town Council meeting
Thursday, June 5, 2025	9:00 a.m.	Management & Planning Session
Monday, June 16, 2025	9:00 a.m.	Regular Town Council meeting

AUGUST 2025

Monday, August 4, 2025	9:00 a.m.	Regular Town Council meeting
Thursday, August 7, 2025	9:00 a.m.	Management & Planning Session
Monday, August 18, 2025	9:00 a.m.	Regular Town Council meeting

SEPTEMBER 2025

meeting dates/times TBD based on DOR requirements for millage and budget

OCTOBER 2025

Monday, October 6, 2025	9:00 a.m.	Regular Town Council meeting
Thursday, October 9, 2025*	9:00 a.m.	Management & Planning Session
Monday, October 20, 2025	9:00 a.m.	Regular Town Council meeting

NOVEMBER 2025

Monday, November 3, 2025	9:00 a.m.	Regular Town Council meeting
Thursday, November 6, 2025	9:00 a.m.	Management & Planning Session
Monday, November 17, 2025	9:00 a.m.	Regular Town Council meeting

DECEMBER 2025

Monday, December 1, 2025	9:00 a.m.	Regular Town Council meeting
Thursday, December 4, 2025	9:00 a.m.	Management & Planning Session
Monday, December 15, 2025	9:00 a.m.	Regular Town Council meeting

*Conflicts with Lee County TDC meeting

1. **Request:**

Meeting Date: November 18, 2024

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA ADOPTING THE UNIFORM METHOD FOR THE LEVY, COLLECTION AND ENFORCEMENT OF NON-AD VALOREM ASSESSMENTS PURSUANT TO SECTION 197.3632, FLORIDA STATUTES FOR DEMOLITION OF UNSAFE STRUCTURES DETERMINED BY THE BUILDING OFFICIAL AND REMOVAL OF RESULTING DEBRIS, ANY TITLE SEARCH FEES, ANY AND ALL COSTS ASSOCIATED WITH APPELLATE REVIEW OF A PROPERTY OWNER'S APPEAL OF THE TOWN'S BUILDING OFFICIAL'S DETERMINATION DEEMING A STRUCTURE UNSAFE UNDER CHAPTER 34 OF THE TOWN'S LAND DEVELOPMENT CODE, AS AMENDED FROM TIME TO TIME, FOR THE FISCAL YEAR BEGINNING ON OCTOBER 1, 2024 AND SUBSEQUENT FISCAL YEARS, WITHIN THE TERRITORIAL BOUNDARIES OF THE TOWN; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

Approval and adoption of this Resolution is necessary to allow the Town to collect any costs resulting from demolition of unsafe structures in the Town, including, but not limited to the costs associated with the appellate review of property owners' appeals, through uniform method of collection, as authorized by Section 197.3632, Florida Statutes, and the Town's Unsafe Building Abatement Code, starting with the tax year 2024.

What the action accomplishes:

Approval and adoption of this Resolution will allow the Town to collect any costs resulting from the Town's demolition of unsafe structures, including any costs associated with the appellate review of property owners' appeals, through uniform method of collection (as authorized under Section 197.3632, Florida Statutes, and the Town's Unsafe Building Abatement Code), by placing such non ad-valorem assessments on the 2024 tax roll.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Nancy Stuparich, Town
Attorney

5. **Background:**

On June 3, 2024, the Town Council adopted Resolution 24-13, amending the Town's Unsafe Building Abatement Code to clarify existing provisions related to notice and exceptions, to authorize notification by constructive service, to include attorney's fees and costs and notice expenses for the demolition lien against the property on which the unsafe building was located, and to authorize the use of the uniform method of collection for collection of liens.

Section 197.3632, Florida Statutes, outlines the steps a local government needs to take to implement a uniform method of collecting non ad-valorem assessments. Section 197.3632 further provides that a public hearing must be held prior to the end of the year (i.e. January 1) for the Town to be able to consider placing such assessments on the tax roll for the current fiscal year. Approval of the attached Resolution will allow the Town to place such assessments related to demolition of unsafe structures on the 2024 tax roll.

This Resolution was noticed for a public hearing on November 18, 2024, at 9:00 a.m. Pursuant to Section 197.3632, Florida Statutes, an advertisement was published for 4 consecutive weeks, specifically, on October 11, October 18, October 25, and November 1 in News-Press.

Attachments:

1. Res. 2024-251 - Uniform Method Resolution (rev. 11-13-24 mrns)
2. Ex. A to Resolution - Affidavit of Publication - FNP 10656194
3. Exh A. DR-413 Affidavit of Proof of Publication

Financial Impact:**6. Alternative Action****7. Management Recommendations:**

Approve the Resolution

8. Recommended Approval:

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

Created/Initiated - 11/8/2024
Approved - 11/13/2024
Approved - 11/13/2024
Final Approval - 11/13/2024

RESOLUTION NUMBER 24-251

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA ADOPTING THE UNIFORM METHOD FOR THE LEVY, COLLECTION AND ENFORCEMENT OF NON-AD VALOREM ASSESSMENTS PURSUANT TO SECTION 197.3632, FLORIDA STATUTES FOR DEMOLITION OF UNSAFE STRUCTURES DETERMINED BY THE BUILDING OFFICIAL AND REMOVAL OF RESULTING DEBRIS, ANY TITLE SEARCH FEES, ANY AND ALL COSTS ASSOCIATED WITH APPELLATE REVIEW OF A PROPERTY OWNER'S APPEAL OF THE TOWN'S BUILDING OFFICIAL'S DETERMINATION DEEMING A STRUCTURE UNSAFE UNDER CHAPTER 34 OF THE TOWN'S LAND DEVELOPMENT CODE, AS AMENDED FROM TIME TO TIME, FOR THE FISCAL YEAR BEGINNING ON OCTOBER 1, 2024 AND SUBSEQUENT FISCAL YEARS, WITHIN THE TERRITORIAL BOUNDARIES OF THE TOWN; 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, the Town Council (the "Council") of Fort Myers Beach, Florida (the "Town") is contemplating the imposition of special assessments for the provision of the costs of providing demolition of unsafe structures determined by the Town Building Official and removal of resulting debris, any title search fees, any and all costs associated with appellate review of a property owner's appeal of the Town's Building Official's determination deeming a structure unsafe under Chapter 34 of the Town's Land Development Code, as amended from time to time, for the fiscal year beginning on October 1, 2024 and subsequent fiscal years; and

WHEREAS, the Town Council intends to use the uniform method for collecting non-ad valorem special assessments for the cost of demolition of unsafe structures determined by the Building Official and removal of resulting debris, any title search fees, any and all costs associated with appellate review of a property owner's appeal of the Town's Building Official's determination deeming a structure unsafe under Chapter 34 of the Town's Land Development Code, as amended from time to time, because this method will allow such special assessments to be collected annually commencing on October 1, 2024, in the same manner as provided for ad valorem taxes; and

WHEREAS, the Town Council duly advertised and held a public hearing prior to the adoption of this Resolution, proof of publication of such hearing being attached hereto as Exhibit “A”; and

WHEREAS, the Town Council has determined it is in the best interest of the Town of Fort Myers Beach and its residents and business owners to adopt this Resolution.

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

Section 1. Commencing with the Fiscal Year beginning on October 1, 2024, and with the tax statement mailed for such Fiscal Year, the Town intends to use the uniform method of collecting non-ad valorem assessments authorized in Section 197.3632, Florida Statutes, as amended, for collecting non-ad valorem assessments for the cost of demolition of unsafe structures determined by the Building Official and removal of resulting debris, any title search fees, any and all costs associated with appellate review of a property owner’s appeal of the Town’s Building Official’s determination deeming a structure unsafe under Chapter 34 of the Town’s Land Development Code, as amended from time to time. Such non-ad valorem assessments shall be levied within the territorial boundaries of the Town, as further described in the Town Charter.

Section 2. Upon adoption, the Town Clerk is hereby directed to send a copy of this Resolution by United States mail to the Florida Department of Revenue, the Lee County Tax Collector, and the Lee County Property Appraiser by January 10, 2025.

Section 3. This Resolution shall be effective immediately upon adoption.

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.

AFFIDAVIT OF PUBLICATION

Amy Baker
Town Clerk
Town Of Ft Myers Beach Legals
2523 ESTERO BLVD
FORT MYERS BEACH FL 33931-3354

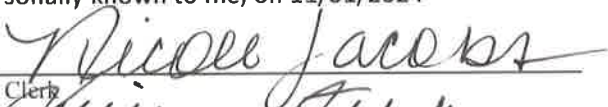
STATE OF WISCONSIN, COUNTY OF BROWN

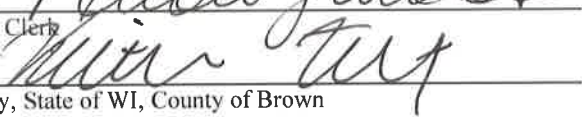
Before the undersigned authority personally appeared, who on oath says that he or she is the Legal Advertising Representative of the News-Press, a daily newspaper published at Fort Myers in Lee County, Florida; that the attached copy of advertisement, being a Legal Ad in the matter of Main Legal CLEGL, was published on the publicly accessible website of Lee County, Florida, or in a newspaper by print in the issues of, on:

10/11/2024, 10/18/2024, 10/25/2024, 11/01/2024

Affiant further says that the website or newspaper complies with all legal requirements for publication in chapter 50, Florida Statutes.

Subscribed and sworn to before me, by the legal clerk, who is personally known to me, on 11/01/2024


Legal Clerk


Notary, State of WI, County of Brown

3.7.27

My commission expires

Publication Cost:	\$1954.50	
Tax Amount:	\$0.00	
Payment Cost:	\$1954.50	
Order No:	10656194	# of Copies:
Customer No:	1124390	1
PO #:		

THIS IS NOT AN INVOICE!

Please do not use this form for payment remittance.

KAITLYN FELTY
Notary Public
State of Wisconsin

NOTICE OF INTENT TO USE
UNIFORM METHOD OF
COLLECTING NON-AD VALOREM
ASSESSMENTS

The Town of Fort Myers Beach, Florida (the "Town") hereby provides notice, pursuant to Section 197.3632(3) (a), Florida Statutes, of its intent to use the uniform method of collecting non-ad valorem special assessments to be levied within the territorial boundaries of the Town, as described in the Town Charter, for the cost of providing any or all of the following services: demolition of unsafe structures determined by the Building Official and removal of resulting debris, any title search fees, any and all costs associated with appellate review of a property owner's appeal of the Town's building official's determination deeming a structure unsafe under Chapter 34 of the Town's Land Development Code, as amended from time to time, for the fiscal year beginning on October 1, 2024, and for subsequent fiscal years. The Town will consider the adoption of a resolution electing to use the uniform method of collecting demolition assessments as authorized by Section 197.3632, at a public hearing to be held on **Monday, November 18, 2024 at 9:00 a.m.**, in the Bay Oaks Recreation Center, 2731 Oak Street, Fort Myers Beach, FL 33931. Such resolution will state the need for the levy and will contain a legal description of the boundaries of the real property subject to the levy. Copies of the proposed form of resolution, which contains the legal description of the real property subject to the levy, are on file at the Office of the Town Clerk of Fort Myers Beach, Florida. All interested persons are invited to attend.

In the event any person decides to appeal any decision by the Town Council with respect to any matter relating to the consideration of the resolution at the above-referenced public hearing, a record of the proceeding may be needed and in such an event, such person may need to ensure that a verbatim record of the public hearing is made, which record includes the testimony and evidence on which the appeal is to be based. In accordance with the American with Disabilities Act, persons needing special accommodations to participate in this proceeding should contact Fort Myers Beach Town Clerk at 239-765-0202.

Dated this 7th day of October, 2024.

DAN ALLERS, TOWN MAYOR
FORT MYERS BEACH, FLORIDA

AMY BAKER, TOWN CLERK
FORT MYERS BEACH, FLORIDA

Publish: News-Press
October 11, 2024
October 18, 2024
October 25, 2024
November 1, 2024

NP-40441930



AFFIDAVIT OF PROOF OF PUBLICATION

State of Florida
County of Lee

Before the undersigned authority, personally appeared _____, who on oath says that he is the _____ Publisher of the _____ News-Press, a newspaper published at _____ Fort Myers Beach, in Lee County, Florida; that the attached copy of advertisement, being a notice of the local government’s intent to use the uniform method for collecting a non-ad valorem assessment, was published in said newspaper in the four consecutive weeks of

10/11/2024	10/18/2024	10/25/2024	11/01/2024	<table><tr><td>2</td><td>0</td><td>2</td><td>4</td></tr><tr><td colspan="4">year</td></tr></table>	2	0	2	4	year			
2	0	2	4									
year												

The affiant further says that the said _____ is a newspaper published at _____ Fort Myers Beach, in said County, Florida, and that the said newspaper has heretofore been continuously published in said Lee County, Florida, each day, and has been entered as second class mail matter at the post office in _____ Fort Myers Beach in said Lee County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and the affiant further says that he has neither paid nor promised any person, firm, or corporation any discount, rebate, commission, or refund for the purpose of securing this advertisement for publication in the said newspaper.

Sworn to and subscribed before me this _____ day of _____ A. D.

2	0	2	4
year			

Notary Public
My Commission Expires:

Original to: Tax Collector
Copies to: Property Appraiser
Local Government
Florida Department of Revenue
Property Tax Oversight
P O Box 3000
Tallahassee, Florida 32315-3000

1. **Request:**

Meeting Date: November 18, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING RESOLUTION 24-73, CONTAINING THE PROCEDURES FOR DEVELOPMENT AGREEMENTS WITH DEVIATIONS TO CLARIFY THAT THESE DEVELOPMENT AGREEMENTS ARE HOME RULE DEVELOPMENT AGREEMENTS AND TO AMEND RELATED NOTICE REQUIREMENTS FOR CONSISTENCY WITH NOTICE REQUIREMENTS IN SECTION 2-98 AND CHAPTER 34 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE AND REQUIRE A RECOMMENDATION FROM THE TOWN MANAGER REGARDING THE PROPOSED DEVELOPMENT AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

Adoption of this Resolution is necessary to ensure that the Town's Procedures for Development Agreements with Deviations are consistent with the Town Land Development Code, section 2-98, pertaining to notices and hearings regarding development agreements. Amendment of paragraph 3 of the Town's Procedures for Development Agreements with Deviations, as outlined in Exhibit A to Resolution 24-247 is further necessary, as not all notice requirements pertaining to development agreements are applicable to every Home Rule Development Agreement.

What the action accomplishes:

This Resolution amends the Town's Procedures for Development Agreements with Deviations for consistency with section 2-98 of the Town Land Development Code.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

5. **Background:**

On April 1, 2024, the Town Council of the Town of Fort Myers Beach adopted Resolution 24-73, approving an administrative code setting forth procedures for the application and approval of development agreements with deviations. The Town Council wishes to amend paragraph 3.3. "Public Hearings" of the Town's Procedures for Development Agreements with Deviations for consistency with Section 2-98 of the Town Land Development Code.

Attachments:

1. 24-247 Resolution Amending Resolution 24-73 Final 11-12-2024
2. ARTICLE_III.____DEVELOPMENT_AGREEMENTS (1) (1)
3. Final Exhibit A Development Agreement Procedures - 11-12-24 ns

Financial Impact:

None

6. **Alternative Action**

7. **Management Recommendations:**

Adopt the Resolution

8. **Recommended Approval:**

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

Created/Initiated - 11/8/2024
Approved - 11/12/2024
Approved - 11/13/2024
Final Approval - 11/13/2024

RESOLUTION NUMBER 24-74

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING RESOLUTION 24-73, CONTAINING THE PROCEDURES FOR DEVELOPMENT AGREEMENTS WITH DEVIATIONS TO CLARIFY THAT THESE DEVELOPMENT AGREEMENTS ARE HOME RULE DEVELOPMENT AGREEMENTS AND TO AMEND RELATED NOTICE REQUIREMENTS FOR CONSISTENCY WITH NOTICE REQUIREMENTS IN SECTION 2-98 AND CHAPTER 34 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE AND REQUIRE A RECOMMENDATION FROM THE TOWN MANAGER REGARDING THE PROPOSED DEVELOPMENT AGREEMENT; 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, on April 1, 2024, the Town Council of the Town of Fort Myers Beach adopted Resolution 24-73, approving an administrative code setting forth procedures for the application and approval of home rule development agreements, which among other things may provide for deviations; and

WHEREAS, the Town Council wishes to amend Resolution 24-73 for clarity and consistency with notice provisions in Section 2-98 and Chapter 34 of the Town's Land Development Code; and

WHEREAS, the Town Council has determined it is in the best interests of the residents of Fort Myers Beach to adopt this Resolution.

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 adopts the changes as set forth in Exhibit "A."

Section 3. This Resolution shall be effective retroactive to April 1, 2024 upon adoption by the Town Council.

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, Councilmember _____
Scott Safford, Councilmember _____
Karen Woodson, Councilmember _____

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, LLP, Town Attorney

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

Sec. 2-91. - Statutory authority.

The Town of Fort Myers Beach has the authority to adopt this article pursuant to article VIII, § 1(f), of the Constitution of the state and F.S. §§ 163.3220(5), 163.3223, and 166.021.

Sec. 2-92. - Applicability of article.

This article shall apply to the entire incorporated area of the town.

Sec. 2-93. - Intent of article.

This article is intended to enable the Town of Fort Myers Beach to invoke the provisions of the Florida Local Government Development Agreement Act while retaining all of the home rule authority given it pursuant to article VIII of the Constitution of the state and F.S. chs. 163, 166 and 380, to enter into other similar agreements beyond the provisions of the Florida Local Government Development Agreement Act, and to establish specific notice and hearing procedures when it makes certain such similar agreements pursuant to its home rule authority.

Sec. 2-94. - Purpose of article.

- (a) The purpose of this article is to invoke the authority recognized in the town by the state in F.S. § 163.3223, to enter into development agreements with any and all persons having legal or equitable interests in real property located in the incorporated area of the town pursuant to the provisions of the Florida Local Government Development Agreement Act. Vendees under a specifically enforceable contract for the sale of real property shall be recognized as having a sufficient equitable interest so as to have legal capacity to become a party to a development agreement made pursuant to the Florida Local Development Agreement Act, but persons having only a mere option to purchase real property shall not be so recognized.
- (b) It is also the purpose of this article to establish notice and hearing procedures similar to those set forth in the Florida Local Development Agreement Act when the town makes agreements pursuant to its home rule authority in those type of agreements which are defined in this article as home rule development agreements. Development agreements made pursuant to this article, whether they are home rule development agreements as defined in this article or agreements made pursuant to the Florida Local Government Development Agreement Act, are intended to protect and further the public health, safety and welfare by providing certain guarantees to land developers in exchange for their agreement to provide specified public facilities or services which are related to and consistent with the town's capital improvement planning and financing.

Sec. 2-95. - Definitions.

- (a) The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Development agreement means either a home rule development agreement or a statutory development agreement.

Home rule development agreement means an agreement made by the town pursuant to its home rule powers, and not pursuant to the Florida Local Government Development Agreement Act, but only in those cases where development, as defined in F.S. § 163.3221(3), is to be undertaken by a person who is not a local government, as defined in F.S. § 163.3221(9), or an agency of the state or the United States of America. Moreover, home rule development agreements specifically do not mean agreements made between the town and other parties where the purpose of the agreement is exclusively to provide or pay for the construction, improvement, maintenance, or other alteration of land or personalty by third parties where the property in question is owned or is to be owned by the town or some other governmental agency.

Statutory development agreement means any agreement made specifically pursuant to the Florida Local Government Development Agreement Act.

- (b) All other terms which are used in any statutory development agreement made by the town pursuant to the Florida Local Government Development Agreement Act, as such act may be amended from time to time, shall be defined as set forth in F.S. § 163.3221, unless otherwise specifically defined in a particular statutory development agreement. Terms not so defined shall be given their ordinary and customary meanings.

Cross reference— Definitions and rules of construction generally, § 1-2 of this LDC.

Sec. 2-96. - Applications for development agreements.

No person shall have the right to apply for or receive development agreement approval, unless such right is so provided in an appropriate administrative code which establishes procedures for such applications. Should such an administrative code be adopted, then the town shall establish a schedule of fees and charges which shall be imposed for the filing and processing of each such application. Unless otherwise provided by administrative code, development agreements shall be considered by the town council only upon the recommendation of the town manager, who may submit a proposed development agreement, in written form, for consideration by the town council pursuant to the public hearing requirements of F.S. § 163.3225 and § 2-98 of this LDC. Each such proposed development agreement so submitted shall include the town manager's recommendation as to whether the council should become or decline to become a party to the agreement, or a modified form of the agreement, with such information as the town manager deems necessary to support his recommendation.

Sec. 2-97. - Minimum requirements of a statutory development agreement.

Statutory development agreements shall include, at a minimum, all of the items enumerated in F.S. § 163.3227, plus such conditions, terms, restrictions, or other requirements which the parties to the agreement may desire to include and which are not otherwise prohibited by law or which exceed the authority of the parties. If a statutory development agreement provides that any public facilities are to be designed or constructed by the developer, then the agreement shall require that the design and construction be in compliance with all applicable federal, state, and town standards and requirements, including but not to be limited to guarantees of performance and quality and project controls, including scheduling, quality, and quality assurance. When public facilities are to be designed or constructed by the developer, or when the developer agrees to dedicate land to the town, the statutory development agreement shall specifically state the extent to which such design or construction or dedication shall be eligible for impact fee credits pursuant to such impact fee ordinances as the town may have in effect at the time when the statutory development agreement is to become effective. Statutory development agreements also shall incorporate the administrative appeal process set forth in § 2-102 of this LDC.

Sec. 2-98. - Notices and hearings.

No statutory development agreement shall be made pursuant to this article unless and until all of the requirements of F.S. § 163.3225 relating to the agreement have been satisfied. To that end, an affected property owner, as the term is used in F.S. § 163.3225, means all owners of property, as reflected on the current year's tax roll, lying within 375 feet in every direction of the subject property. The town council, by adopting an appropriate administrative code, may prescribe more stringent notice requirements. In addition, if a statutory development agreement is intended to rezone property, grant variances, or accomplish any other approval which otherwise would be controlled by ch. 34 of this LDC, the notices required in ch. 34 also shall be given. The same notice and hearing requirements also should be observed when making home rule development agreements. However, failure to satisfy all of such notice and hearing requirements shall not be grounds to invalidate a home rule development agreement.

Sec. 2-99. - Amendment or cancellation of development agreement by mutual consent.

A statutory development agreement adopted pursuant to this article may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest utilizing the same public hearing and notice requirements as are prescribed for the adoption of development agreements pursuant to this article and any administrative code authorized by § 2-98 of this LDC.

Sec. 2-100. - Reservation of home rule authority.

Nothing contained in this article shall be construed so as to prevent the town from entering into an agreement which is substantially similar to a development agreement adopted pursuant to the Florida Local Government Development Agreement Act, but which is based upon the home rule authority granted the town pursuant to article VIII, § 1(f), of the Constitution of the state and F.S. chs. 163, 166 and 380, and specifically recognized by the state legislature in F.S. § 163.3220(5).

Sec. 2-101. - Conflicts between development agreement and other land development regulations.

To the extent that this code may permit it and a development agreement purports to rezone land, grant deviations or variances from this code, including article II of this chapter, grant development orders or amendments to or extensions thereof equivalent to those which are available pursuant to ch. 10 of this LDC, implement development orders or amendments to development orders for developments of regional impact, or grant building permits or other permits which specifically allow the physical alteration or improvement of land, the development agreement must explicitly identify each instance of conflict with other ordinances and expressly provide for the development agreement to control, or else all of the provisions of such other ordinances shall control to the extent that the development agreement fails to expressly provide otherwise. Any ambiguity with respect to whether a development agreement or an ordinance is to control shall be interpreted to favor the ordinance.

Sec. 2-102. - Appeals.

No person may challenge the validity of a development agreement on the grounds that the agreement conflicts with the town's comprehensive plan except pursuant to the procedures set forth in F.S. § 163.3215. A party or a successor in interest to a party to a development agreement may bring suit to challenge the town's administration of a development agreement only after he has exhausted the administrative remedies prescribed in ch. 34 of this LDC for appeals from administrative actions.

EXHIBIT A

TOWN OF FORT MYERS BEACH ADMINISTRATIVE CODE PROVIDING PROCEDURES FOR HOME RULE DEVELOPMENT AGREEMENTS ~~WITH~~ ~~DEVIATIONS~~

Pursuant to Section 2-100 and 2-96 of the Town's Land Development Code, the Town may enter into a Home Rule Development Agreement ~~with Deviations~~ with a property owner. A Home Rule Development Agreement ~~with Deviations~~ is a non-statutory development agreement authorized pursuant to the Town's home rule authority that may allow for approval of amendments, modifications, deviations, variances or exceptions (~~"deviations"~~) from the Town's Land Development Code, and, if appropriate under the provisions of the Town's Comprehensive Plan, relief from the building height limitations in the Comprehensive Plan. Approval of a Home Rule Development Agreement and the deviations provided for in such Home Rule Development Agreement shall be considered tantamount to and commensurate to a planned development for purposes of determining consistency with the Comprehensive Plan. Approval of a Home Rule Development Agreement ~~with Deviations~~ shall be subject to the procedures set forth herein.

1. Home Rule Development Agreement ~~with Deviations~~ Application Procedures.

The following information/exhibits shall be required with the application for a Home Rule Development Agreement ~~with Deviations~~ (hereinafter sometimes referred to as "Development Agreement"):

- 1.1. Legal description and address of the parcel of land which will be the subject of the Development Agreement (hereinafter "Land").
- 1.2. The name, address and telephone number of the applicant and any attorney or agent who is or will be representing the applicant.
- 1.3. A title opinion from a Florida attorney (which opinion is in a form acceptable to and in favor of the town), which shall identify and provide the names, addresses and telephone numbers of all legal and equitable owners having interest in the Land, as well as all mortgage or lien holders, holders of easement interests, and other encumbrances, upon the Land. As of the date of recordation of any Development Agreement, the applicant shall be required by the town to update the foregoing information in this subparagraph to the date of recording of the Development Agreement.
- 1.4. An application signed by, or on behalf of, the owner and any lien holder(s) as to the Land subject to the Development Agreement, and if not signed by the owner a notarized consent signed by the owner authorizing the person to sign the application.

1.5. Payment of any required application fee as set by resolution of the town council.

1.6. A survey of the Land showing the approximate location of all environmentally sensitive lands, or lands subject to the jurisdiction of the U.S. Army Corps of Engineers, Florida Department of Environmental Regulation, the Southwest Florida Water Management District or Lee County, Florida.

1.7. A statement and finding demonstrating that the proposed Development Agreement will be consistent with the comprehensive plan of the town.

1.8. The desired duration of the Development Agreement shall not be less than the expected completion of the development on the Land.

1.9. Development uses and regulations currently legally permitted on the Land, including densities, intensities, heights of structures, and setbacks; and, if different, any of the same that are currently on the Land, or that were on the Land at any time in the last 24 months.

1.10. Development uses and regulations, including densities, intensities, heights of structures, and setbacks being requested on the Land.

1.11. A description of the public facilities which will provide services to support the development, the approximate date that new public facilities, if needed, will be constructed, and a schedule to assure that the public facilities and services will be available concurrent with the impacts of development.

1.12. A description of any current or proposed reservation or dedication of land for public purposes.

1.13. Any deed restrictions existing or being imposed upon the Land, and a description of any current or proposed reservation or dedication of land for public purposes.

1.14. The application must explicitly identify each instance of conflict with existing ordinances and expressly provide for the Development Agreement to control, or else all of the provisions of such conflicting ordinances shall control to the extent that the Development Agreement fails to expressly provide otherwise. Any ambiguity with respect to whether a Development Agreement or an ordinance is to control shall be interpreted to favor the ordinance. A statement listing all contemplated zoning districts or land use modifications or requests for more flexibility that will be required if the proposed Development Agreement were to be approved.

1.15. A sketch of site plan showing where buildings (with heights), structures, parking, and other features/amenities of the proposed development shall be

located. If the Land is located on the water, any view corridors or public access location(s), if any, will be located.

1.16. A statement that a copy of the Development Agreement with Deviations Application has been furnished by First Class U.S. Mail to all property owners within 100 feet of the boundaries of the Land at the addresses of such property owners found on the Lee County Property Appraiser website, and a list of such property owners and addresses.

1.17. A concise and complete recital of the proposed contents of the Development Agreement using the Form of Development Agreement with Deviations attached as Ex. "A".

2. Development Agreement Minimum Content Requirements.

The following information shall be required within a Development Agreement.

2.1. A legal description of the land subject to the agreement and the identification of all persons having legal or equitable ownership therein.

2.2. The duration of the development agreement, which duration shall not be less than the anticipated time period needed to fully build out the development.

2.3. The development rights to be permitted on the land, and setting forth densities, intensities, building height(s), and setbacks. Uses of the land shall be those allowed in the underlying zoning district unless otherwise specifically provided, such as when a special exception is a part of the development agreement.

2.4. A description of the public facilities and services, including on-site improvements that will serve the proposed project, including designation of the entity or agency that shall be providing such facilities. Additionally, if new facilities are needed to serve the project, the date by which such facilities will be constructed and a schedule to assure that public facilities and services shall be available concurrent with the impact of the development project.

2.5. A description of any reservation or dedication of land for public purposes. The Development Agreement shall provide specifically how the land dedication obligation for the project, if any, is to be met. In the event that land or any interest herein is to be conveyed to the town or other entity in discharge of the foregoing, the Development Agreement shall provide that such conveyance or dedication will be by warranty deed or easement, or other instrument in form and substance acceptable to the town attorney, together with evidence of title in form acceptable to the town attorney prepared by an attorney who is a member of the Florida Bar, or a title company licensed in Florida, all depicting who is the owner in fee simple of the land subject to the conveyance or dedication, and the holders of

any other interest or liens affecting said land.

2.6. A description of all local permits approved or needed to be approved for the development of the Land, specifically to include at least the following:

Any required submission to the Southwest Florida Regional Planning Council and any required permission of the State of Florida, Department of Environmental Regulation, the U.S. Corps of Army Engineers, the Southwest Florida Water Management District, the U.S. Environmental Protection Agency or any other required governmental permission. The Development Agreement shall specifically provide that said development permission will be obtained at the sole cost of the owner of the Land, and that any approvals previously given, including the Development Agreement, shall not in any manner obligate the town or any other governmental agency to grant other permit approvals. Under these conditions, action in reliance on the Development Agreement or expenditures in pursuance of its terms or any rights accruing to the project owner thereunder shall not vest any development rights in the owner of the Land or the project to a continuation of the Development Agreement.

2.7. A specific finding in the Development Agreement that the proposed project permitted or proposed is consistent with the town's Comprehensive Plan and Land Development Code, or that, if deviations are necessary for the zoning district or land use plan designations on the subject Land, such Development Agreement specifically lists such deviations in detail.

2.8. Statement in the Development Agreement showing how sidewalk and pedestrian travel is being addressed in a conceptual plan showing the proposed layout of streets, lots, green areas, conservation areas, bike ways, parks, public facilities and such other amenities.

2.9. A statement in the Development Agreement describing how environmentally sensitive land, if any, will be preserved and managed.

2.10. A statement in the Development Agreement describing how threatened or endangered species are being protected.

2.11. A statement in the Development Agreement explicitly identifying each instance of conflict with existing ordinances and expressly providing for the Development Agreement to control, or else all of the provisions of such conflicting ordinances shall control to the extent that the Development Agreement fails to expressly provide otherwise. Any ambiguity with respect to whether a Development Agreement or an ordinance is to control shall be interpreted to favor the ordinance. A statement indicating that failure of the Development Agreement to address a particular permit condition, term or restriction shall not relieve the owner or developer of the necessity of complying with the laws governing said permitting requirements, conditions, terms or restriction.

2.12. A provision that any matter or action required under existing ordinances of the town shall not be otherwise amended, modified or waived, unless such modification, amendment or waiver is expressly provided for in the Development Agreement with specific reference to the Code provision so waived, modified or amended (“deviations”).

2.13. A statement whereby if the applicant, upon approval of the Development Agreement, fails to comply with the terms of the agreement, the town may bring an action in a court of law with competent jurisdiction to protect its rights and interests. All associated reasonable costs and attorney's fees shall be reimbursed to the town if an action at law is necessary regardless of whether the Town is the prevailing party

2.14 Post-Development Agreement requirements. An acknowledgement that prior to the issuance of any building permits being issued for the development that:

2.14.1 All existing and proposed utilities and the manner in which existing utilities will be extended to the site and/or expanded for the use of the development including water, sewer, gas, electricity, cable television, and other utilities shall have been approved by the Town;

2.14.2 The proposed drainage plan for the proposed project shall have been approved by the Town;

2.14.3 The proposed grading plan and elevation requirements of the town, including, but not limited to those related to the National Flood Insurance Program as applicable to the town shall have been approved by the town;

2.14.3. The traffic impact and parking plans as applicable to the town shall have been approved by the town; and

2.14.4 All other town requirements are met that are necessary for the initial building permits to build the project on the Land.

2.15. An acknowledgement that the town shall not have any liability whatsoever for any expenses or other damages that may be incurred as a result of denial of the Development Agreement or for denial of building permits due to the failure to meet the town's requirements as to any Post-Development Agreement requirements.

2.16. A description of any special or public benefit to the Town as a result of the development such as, the promotion of economic development, affordable housing, hurricane recovery, provision of needed public facilities, provision of public land or recreation, and/or elimination of blight.

2.17. A finding that the proposed Development Agreement is reasonable and not

arbitrary and in the best interest of the town.

3. Home Rule Development Agreement ~~with Deviations~~ Review Procedures.

The following regulations shall be followed during the review of a Development Agreement ~~_with Deviations_~~.

3.1. Staff negotiation. The town manager or the town manager's designee (typically the town planner) shall review the proposed project and shall meet and hold preliminary nonbinding negotiations with the applicant regarding the appropriate terms and conditions on which said Land should be developed. At such time as a tentative agreement is reached as to the recommended terms and conditions of the Development Agreement, or the town manager or town manager's designee deems that no further negotiations would be useful because of the unlikely possibility of reaching a concurrence on the terms and conditions of a Development Agreement, the proposal shall be reduced to a nonbinding and unexecuted writing. Such tentative agreement, whether oral or written, shall not give rise to any development rights or equitably or legally vest any development rights in the owner of the Land or other substantially affected person.

3.2. Reduction of proposal to writing

3.2.1. In the event that the town manager or the town manager's designee and the applicant have negotiated the terms of a mutually acceptable, nonbinding and tentative Development Agreement, the terms of that Development Agreement shall be reduced to writing in a contractual form for review and for further discussion, consideration and approval or disapproval as provided herein. The Development Agreement may include a provision that authorizes administrative amendments to the site plan provided that height, density and intensity are not increased and the plan remains consistent with the Town's Comprehensive Plan.

3.2.2. In the event that the town manager or town manager's designee and the applicant have been unable to negotiate a mutually satisfactory Development Agreement, within thirty (30) days of said determination by the town manager or the town manager's designee, the applicant may prepare a proposed Development Agreement consistent with all requirements hereof for review by the town's Local Planning Agency ("LPA").

3.2.3 ~~It shall not be required for~~ The town manager, or designee will ~~to~~ make a recommendation as to whether the town council should approve or not approve a Development Agreement prior to adoption and approval of the Development Agreement.

3.3. Public hearings

3.3.1. At such time as the Development Agreement has been reduced to written nonbinding contractual form, or the applicant has prepared a Development Agreement as set forth above in subsection 3.2, the town manager or town manager's designee shall transmit such Development Agreement to the LPA.

3.3.2. A public hearing shall be held by the LPA concerning said application, and the LPA shall issue a recommendation for approval, approval with conditions, or denial of the Development Agreement to the town council. Thereafter, two a public hearings shall be held by the town council prior to approval of as to the Development Agreement. The Development Agreement shall be adopted by Ordinance, following two readings of the title at the two public hearings and publication of a notice 10 days in advance of the second public hearing in a newspaper of general circulation.

3.3.3. ~~Notice of~~ Notice of the each of the public hearings shall be available ~~noticed~~ on the town's website, and a said notice shall be mailed to all property owners within a five hundred (500) foot radius of the boundaries of the Land at the addresses of such property owners found on the Lee County Property Appraiser website prior to the first public hearing in accordance with notice procedures in Chapter 34 of the Land Development Code. ~~Said advertisement and notice of each of the two public hearings may be combined in one notice, but must include:~~

~~3.3.3.1. Location of the Land subject to the Development Agreement.~~

~~3.3.3.2. Proposed development's project land use, building intensities, estimated population and building heights.~~

~~3.3.3.3. Location where a copy of the proposed Development Agreement may be reviewed.~~

~~3.3.3.4. Date, time and place of the public hearing(s).~~

A home rule Development Agreement shall comply with notice requirements in Chapter 34 of the Land Development Code. Notwithstanding the foregoing, as provided in Section 2-98, failure to comply with Chapter 34 notice requirements shall not be a basis for invalidating a Development Agreement.

3.3.3.45. At the public hearings and in compliance with any and all procedures established by law for the conduct of said hearings, the LPA and the Town Council shall accept any public comment on the terms of the Development Agreement. Following the final ~~T~~town ~~C~~council public hearing, the town clerk shall immediately

dispatch, postage prepaid by regular, first class, U.S. mail and in writing, a copy of the determination of the Town Council to the applicant, or anyone who has requested a copy advising them of the town council's decision. The determination shall state that the decision of the town council is final agency action.

4. Development Agreement Execution Procedures and Recording.

Development Agreements shall be executed as established below:

4.1. All Development Agreements shall be executed on behalf of the applicant by all persons having legal or equitable title in the Land subject to the Development Agreement, including the fee simple owner and any mortgagees or other lien holders or owners of other equitable interests in the Land, unless the town attorney approves the execution of the development agreement without the necessity of such joinder or subordination in that the substantial interests of the town will not be adversely affected thereby.

4.2 Development Agreements shall not be executed on behalf of the town and shall not be recorded unless and until all Post-Development Agreement requirements have been met as set forth in Sec. 2-14 above. The applicant shall bear the expense of recording the Development Agreement, which shall be recorded by the town clerk.

5. Amendment to Development Agreement.

5.1 Except for Administrative Amendments, if allowed in the Development Agreement, an amendment to a Development Agreement shall not occur unless and until there have been hearings thereon before the LPA and before the Town Council. ~~Noticing of the LPA and town council hearings shall be in in~~ the same manner as for the original hearings for the Development Agreements.

1. **Request:**

Meeting Date: November 18, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH AUTHORIZING THE TOWN MANAGER TO ENTER INTO A CONTRACT WITH TYLER TECHNOLOGIES TO PROVIDE SOFTWARE AS A SERVICE (SAAS) AND ANNUAL SUPPORT AND IMPLEMENTATION SERVICES TO REPLACE THE TOWN'S FINANCIAL AND ACCOUNTING SOFTWARE WITH TYLER ERP PRO, REPRESENTING AN INITIAL STARTUP FEE OF \$66,620 AND ANNUAL RECURRING FEES OF \$60,921; AUTHORIZING THE TOWN MANAGER TO SIGN THE CONTRACT AND ANY DOCUMENTS PERTAINING TO THE CONTRACT; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

This action is necessary because the combined cost of the implementation and the annual software as a service is \$127,541, and therefore exceeds the purchasing authority of the Town Manager.

What the action accomplishes:

This action authorizes the Town Manager to enter into a contract with Tyler Technologies to implement Tyler ERP Pro as a replacement of the Town's finance and accounting software.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Frankie Kropacek, Operations &
Compliance Director

5. **Background:**

The Town's finance department is currently struggling with the limitations and lack of functionality of its current finance and accounting software, and its efficiency is being adversely impacted. It is difficult to extract and/or report data from the existing software, it is not intuitive, the use of reporting parameters is inconsistent, it lacks the level of functionality and ease of use that other software solutions currently offer.

The Audit Committee unanimously recommended at their first meeting in Fiscal Year 2024 that the town's financial and accounting software be replaced with a more functional and efficient software alternative.

After evaluation of two other alternatives provided by our procurement specialist that met the Town's selection criteria, Tyler Technologies Tyler ERP Pro stood out as the best alternative. It is very easy to use, and to report and extract data from. Its content management features will allow us to easily attach supporting documentation to our transactions. Its automated workflow features will allow us to streamline accounts payable entry and approval processing. Tyler's standby service for A/P payment processing could be utilized in the event of an emergency (e.g. hurricane) where Tyler could actually process payments for us remotely. Its grant management and project management modules would simplify our record keeping and reporting. The ease of data extraction will greatly facilitate analysis and specialized reporting. The integration of the purchasing and contract modules will strengthen internal controls. Its integrated cashing module will simplify the acceptance and processing of customer payments and should resolve the integration issues we are currently struggling with.

It is proposed that the Tyler ERP Pro be procured through Sourcewell, which is a purchasing cooperative that the Town is already a member of. It satisfies the Town's Purchasing Ordinance

bid/RFP requirements since the contracts Sourcewell offer have already been selected via a competitive selection process for which they provide the documentation. And by procuring through Sourcewell, the Town would also receive a 10% discount.

Nearby municipalities use Tyler ERP Pro such as Sanibel and Bonita Springs, and current finance department staff came from municipalities that also utilized software from Tyler Technologies and were very pleased with it.

Representatives from Tyler Technologies will have presented a software demo to the Audit Committee at their November 14th meeting.

The cost of implementation as well as the annual cost of the software is already included in the Town's Fiscal Year 2025 budget. Although a travel policy is included as part of the contract, it is not anticipated that any in-person services will be required of Tyler Technologies. All implementation and training will be provided remotely.

The initial term of the contract is for 3 years. Upon expiration of the initial term, this Agreement will renew automatically for additional one (1) year renewal terms at the then-current SaaS Fees unless terminated in writing by either party at least sixty (60) days prior to the end of the then-current renewal term.

Attachments:

1. Final 24-221, Authorizing Contract with Tyler Technologies (rev. 11-12-24 mr)
2. Ex. A to Resolution - Contract with Tyler Technologies
3. Data & Insights SaaS Services Terms of Service (referenced on p. 13 of Contract)
4. Ex. B to Resolution - Addendum to Contract with Tyler Technologies (rev. 11-12-24 mr)

Financial Impact:

There is an initial implementation cost of \$66,620 and an annual recurring fee of \$60,921.

Year 1: \$127,542

Year 2: \$60,921

Year 3: \$60,921

6. Alternative Action

The Town Council may reject this proposal.

7. Management Recommendations:

The Finance Director recommends approval of this contract.

8. Recommended Approval:

Joe Onzick, Finance Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 10/24/2024
Approved - 10/24/2024
Approved - 11/12/2024
Approved - 11/13/2024
Final Approval - 11/13/2024

RESOLUTION NUMBER 24-221

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH AUTHORIZING THE TOWN MANAGER TO ENTER INTO A THREE YEAR CONTRACT WITH AUTOMATIC 1 YEAR RENEWALS WITH TYLER TECHNOLOGIES TO PROVIDE SOFTWARE AS A SERVICE (SAAS) AND ANNUAL SUPPORT AND IMPLEMENTATION SERVICES TO REPLACE THE TOWN'S FINANCIAL AND ACCOUNTING SOFTWARE WITH TYLER ERP PRO, REPRESENTING AN INITIAL STARTUP FEE OF \$66,620 AND ANNUAL RECURRING FEES OF \$60,921; AUTHORIZING THE TOWN MANAGER TO SIGN THE CONTRACT AND ANY DOCUMENTS PERTAINING TO THE CONTRACT; 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, Sourcewell is a local government unit, public corporation and public agency pursuant to the Minnesota Constitution and enabling law Minn. Stat. Sec. 123A.21, which is authorized to establish competitively awarded cooperative purchasing contracts on behalf of itself and other governmental entities; and

WHEREAS, Sourcewell advertised a solicitation titled RFP No.: #090320 for certain software products and services ("RFP"); and

WHEREAS, Sourcewell thereafter awarded the solicitation to Tyler Technologies, Inc. ("Contractor") based on the terms and conditions set forth in the RFP; and

WHEREAS, the services and products provided by Contractor are needed by the Town, and the Town wishes to enter into an agreement with the Contractor pursuant to the terms of the Software as a Service Agreement, attached hereto and made a part hereof as Exhibit "A"; and

WHEREAS, Section 2.480(g) of the Town Code of Ordinances authorizes cooperative purchasing for the procurement of any goods, services or construction with one or more governmental units, provided that such cooperative purchasing is pursuant to an interlocal agreement approved by Town Council and executed by all participating governmental units; and

WHEREAS, in accordance with Section 2.480(g), the Town Manager seeks Town Council's approval to enter into a contract with Tyler Technologies to implement Tyler ERP Pro as the replacement for the Town's current financial and accounting software (the "Contract"); and

WHEREAS, the Town Council has determined that the use of Tyler ERP Pro, which will allow the Town to improve efficiency and automate workflow of the Town’s operations, is in the best interests of the Town and its residents.

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 and made a specific part of this Resolution.

Section 2. The Town Council hereby approves the Contract between the Town and the Contractor, a copy of which is attached hereto as Exhibit “A,” and authorizes the Town Manager or his designee to execute any and all documents, addendums or amendments pertaining to the Contract, as may be necessary, including without limitation the First Addendum, a copy of which is attached hereto as Exhibit “B.”

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

The foregoing Resolution was adopted by the Town Council upon a motion by _____ 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, Council Member	_____
Scott Safford, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this 18th day of November 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

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



SOFTWARE AS A SERVICE AGREEMENT

This Software as a Service Agreement is made between Tyler Technologies, Inc. and Client.

WHEREAS, Client selected Tyler to provide certain products and services set forth in the Investment Summary, including providing Client with access to Tyler's proprietary software products, and Tyler desires to provide such products and services under the terms of this Agreement;

WHEREAS, Client is a member of Sourcewell (formerly known as National Joint Powers Alliance) ("Sourcewell") under member number 136730.

WHEREAS, Tyler participated in the competitive bid process in response to Sourcewell RFP #090320 by submitting a proposal, on which Sourcewell awarded Tyler a Sourcewell contract, numbered 090320-TTI (hereinafter, the "Sourcewell Contract");

WHEREAS, documentation of the Sourcewell competitive bid process, as well as Tyler's contract with and pricing information for Sourcewell is available at <https://www.sourcewell-mn.gov/cooperative-purchasing/090320-tti>; and

WHEREAS, Client desires to purchase off the Sourcewell Contract to procure certain software functionality from Tyler, which Tyler agrees to deliver pursuant to the Sourcewell Contract and under the terms and conditions set forth below;

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and promises set forth in this Agreement, Tyler and Client agree as follows:

SECTION A – DEFINITIONS

- **"Agreement"** means this Software as a Service Agreement.
- **"Business Travel Policy"** means our business travel policy. A copy of our current Business Travel Policy is attached as Schedule 1 to Exhibit B.
- **"Client"** means the Town of Fort Myers Beach, Florida.
- **"Data"** means your data necessary to utilize the Tyler Software.
- **"Data Storage Capacity"** means the contracted amount of storage capacity for your Data identified in the Investment Summary.
- **"Defect"** means a failure of the Tyler Software to substantially conform to the functional descriptions set forth in our written proposal to you, or their functional equivalent. Future functionality may be updated, modified, or otherwise enhanced through our maintenance and support services, and the governing functional descriptions for such future functionality will be set forth in our then-current Documentation.
- **"Defined Users"** means the number of users that are authorized to use the SaaS Services. The Defined Users for the Agreement are as identified in the Investment Summary. If Exhibit A

contains Enterprise Permitting & Licensing labeled software, defined users mean the maximum number of named users that are authorized to use the Enterprise Permitting & Licensing labeled modules as indicated in the Investment Summary.

- **“Developer”** means a third party who owns the intellectual property rights to Third Party Software.
- **“Documentation”** means any online or written documentation related to the use or functionality of the Tyler Software that we provide or otherwise make available to you, including instructions, user guides, manuals and other training or self-help documentation.
- **“Effective Date”** means the date by which both your and our authorized representatives have signed the Agreement.
- **“Force Majeure”** means an event beyond the reasonable control of you or us, including, without limitation, governmental action, war, riot or civil commotion, fire, natural disaster, or any other cause that could not with reasonable diligence be foreseen or prevented by you or us.
- **“Investment Summary”** means the agreed upon cost proposal for the products and services attached as [Exhibit A](#).
- **“Invoicing and Payment Policy”** means the invoicing and payment policy. A copy of our current Invoicing and Payment Policy is attached as [Exhibit B](#).
- **“Order Form”** means an ordering document that includes a quote or investment summary and specifying the items to be provided by Tyler to Client, including any addenda and supplements thereto.
- **“SaaS Fees”** means the fees for the SaaS Services identified in the Investment Summary.
- **“SaaS Services”** means software as a service consisting of system administration, system management, and system monitoring activities that Tyler performs for the Tyler Software, and includes the right to access and use the Tyler Software, receive maintenance and support on the Tyler Software, including Downtime resolution under the terms of the SLA, and Data storage and archiving. SaaS Services do not include support of an operating system or hardware, support outside of our normal business hours, or training, consulting or other professional services.
- **“SLA”** means the service level agreement. A copy of our current SLA is attached hereto as [Exhibit C](#).
- **“Statement of Work”** means the industry standard implementation plan describing how our professional services will be provided to implement the Tyler Software, and outlining your and our roles and responsibilities in connection with that implementation. The Statement of Work is attached as [Exhibit E](#).
- **“Support Call Process”** means the support call process applicable to all of our customers who have licensed the Tyler Software. A copy of our current Support Call Process is attached as [Schedule 1](#) to [Exhibit C](#).
- **“Third Party Hardware”** means the third party hardware, if any, identified in the Investment Summary.
- **“Third Party Products”** means the Third Party Software and Third Party Hardware.
- **“Third Party SaaS Services”** means software as a service provided by a third party, if any, identified in the Investment Summary.
- **“Third Party Services”** means the third party services, if any, identified in the Investment Summary.
- **“Third Party Software”** means the third party software, if any, identified in the Investment Summary.
- **“Third Party Terms”** means, if any, the end user license agreement(s) or similar terms for the Third Party Products or other parties’ products or services, as applicable.

- **“Tyler”** means Tyler Technologies, Inc., a Delaware corporation.
- **“Tyler Software”** means our proprietary software, including any integrations, custom modifications, and/or other related interfaces identified in the Investment Summary and licensed by us to you through this Agreement.
- **“we”, “us”, “our”** and similar terms mean Tyler.
- **“you”** and similar terms mean Client.

SECTION B – SAAS SERVICES

1. **Rights Granted.** We grant to you the non-exclusive, non-assignable limited right to use the SaaS Services solely for your internal business purposes for the number of Defined Users only. The Tyler Software will be made available to you according to the terms of the SLA. You acknowledge that we have no delivery obligations and we will not ship copies of the Tyler Software as part of the SaaS Services. You may use the SaaS Services to access updates and enhancements to the Tyler Software, as further described in Section C(9). The foregoing notwithstanding, to the extent we have sold you perpetual licenses for Tyler Software, if and listed in the Investment Summary, for which you are receiving SaaS Services, your rights to use such Tyler Software are perpetual, subject to the terms and conditions of this Agreement including, without limitation, Section B(4). We will make any such software available to you for download.
2. **SaaS Fees.** You agree to pay us the SaaS Fees. Those amounts are payable in accordance with our Invoicing and Payment Policy. The SaaS Fees are based on the number of Defined Users and amount of Data Storage Capacity. You may add additional users or additional data storage capacity on the terms set forth in Section H(1). In the event you regularly and/or meaningfully exceed the Defined Users or Data Storage Capacity, we reserve the right to charge you additional fees commensurate with the overage(s).
3. **Ownership.**
 - 3.1 We retain all ownership and intellectual property rights to the SaaS Services, the Tyler Software, and anything developed by us under this Agreement. You do not acquire under this Agreement any license to use the Tyler Software in excess of the scope and/or duration of the SaaS Services.
 - 3.2 The Documentation is licensed to you and may be used and copied by your employees for internal, non-commercial reference purposes only.
 - 3.3 You retain all ownership and intellectual property rights to the Data. You expressly recognize that except to the extent necessary to carry out our obligations contained in this Agreement, we do not create or endorse any Data used in connection with the SaaS Services.
4. **Restrictions.** You may not: (a) make the Tyler Software or Documentation resulting from the SaaS Services available in any manner to any third party for use in the third party’s business operations; (b) modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the SaaS Services; (c) access or use the SaaS Services in order to build or support, and/or assist a third party in building or supporting, products or services competitive to us; or (d) license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the SaaS Services, Tyler Software, or Documentation available to any third party other than as expressly permitted by this Agreement.

5. Software Warranty. We warrant that the Tyler Software will perform without Defects during the term of this Agreement. If the Tyler Software does not perform as warranted, we will use all reasonable efforts, consistent with industry standards, to cure the Defect in accordance with the maintenance and support process set forth in Section C(9), below, the SLA and our then current Support Call Process.
6. SaaS Services.
 - 6.1 Our SaaS Services are audited at least yearly in accordance with the AICPA's Statement on Standards for Attestation Engagements ("SSAE") No. 21. We have attained, and will maintain, SOC 1 and SOC 2 compliance, or its equivalent, for so long as you are timely paying for SaaS Services. The scope of audit coverage varies for some Tyler Software solutions. Upon execution of a mutually agreeable Non-Disclosure Agreement ("NDA"), we will provide you with a summary of our compliance report(s) or its equivalent. Every year thereafter, for so long as the NDA is in effect and in which you make a written request, we will provide that same information. If our SaaS Services are provided using a 3rd party data center, we will provide available compliance reports for that data center.
 - 6.2 You will be hosted on shared hardware in a Tyler data center or in a third-party data center. In either event, databases containing your Data will be dedicated to you and inaccessible to our other customers.
 - 6.3 Our Tyler data centers have fully-redundant telecommunications access, electrical power, and the required hardware to provide access to the Tyler Software in the event of a disaster or component failure. In the event of a data center failure, we reserve the right to employ our disaster recovery plan for resumption of the SaaS Services. In that event, we commit to a Recovery Point Objective ("RPO") of 24 hours and a Recovery Time Objective ("RTO") of 24 hours. RPO represents the maximum duration of time between the most recent recoverable copy of your hosted Data and subsequent data center failure. RTO represents the maximum duration of time following data center failure within which your access to the Tyler Software must be restored.
 - 6.4 We conduct annual penetration testing of either the production network and/or web application to be performed. We will maintain industry standard intrusion detection and prevention systems to monitor malicious activity in the network and to log and block any such activity. We will provide you with a written or electronic record of the actions taken by us in the event that any unauthorized access to your database(s) is detected as a result of our security protocols. We will undertake an additional security audit, on terms and timing to be mutually agreed to by the parties, at your written request. You may not attempt to bypass or subvert security restrictions in the SaaS Services or environments related to the Tyler Software. Unauthorized attempts to access files, passwords or other confidential information, and unauthorized vulnerability and penetration test scanning of our network and systems (hosted or otherwise) is prohibited without the prior written approval of our IT Security Officer.
 - 6.5 We test our disaster recovery plan on an annual basis. Our standard test is not client-specific. Should you request a client-specific disaster recovery test, we will work with you to schedule and execute such a test on a mutually agreeable schedule. At your written request, we will

provide test results to you within a commercially reasonable timeframe after receipt of the request.

6.6 We will be responsible for importing back-up and verifying that you can log-in. You will be responsible for running reports and testing critical processes to verify the returned Data.

6.7 We provide secure Data transmission paths between each of your workstations and our servers.

6.8 Tyler data centers are accessible only by authorized personnel with a unique key entry. All other visitors to Tyler data centers must be signed in and accompanied by authorized personnel. Entry attempts to the data center are regularly audited by internal staff and external auditors to ensure no unauthorized access.

6.9 Where applicable with respect to our applications that take or process card payment data, we are responsible for the security of cardholder data that we possess, including functions relating to storing, processing, and transmitting of the cardholder data and affirm that, as of the Effective Date, we comply with applicable requirements to be considered PCI DSS compliant and have performed the necessary steps to validate compliance with the PCI DSS. We agree to supply the current status of our PCI DSS compliance program in the form of an official Attestation of Compliance, which can be found at <https://www.tylertech.com/about-us/compliance>, and in the event of any change in our status, will comply with applicable notice requirements.

SECTION C – PROFESSIONAL SERVICES

1. Professional Services. We will provide you the various implementation-related services itemized in the Investment Summary and described in the Statement of Work.
2. Professional Services Fees. You agree to pay us the professional services fees in the amounts set forth in the Investment Summary. Those amounts are payable in accordance with our Invoicing and Payment Policy. You acknowledge that the fees stated in the Investment Summary are good-faith estimates of the amount of time and materials required for your implementation. We will bill you the actual fees incurred based on the in-scope services provided to you. Any discrepancies in the total values set forth in the Investment Summary will be resolved by multiplying the applicable hourly rate by the quoted hours.
3. Additional Services. The Investment Summary contains, and the Statement of Work describes, the scope of services and related costs (including programming and/or interface estimates) required for the project based on our understanding of the specifications you supplied. If additional work is required, or if you use or request additional services, we will provide you with an addendum or change order, as applicable, outlining the costs for the additional work. The price quotes in the addendum or change order will be valid for thirty (30) days from the date of the quote.
4. Cancellation. If you cancel services less than four (4) weeks in advance (other than for Force Majeure or breach by us), you will be liable for all (a) daily fees associated with cancelled professional services if we are unable to reassign our personnel and (b) any non-refundable travel expenses already incurred by us on your behalf. We will make all reasonable efforts to reassign personnel in the event you cancel within four (4) weeks of scheduled commitments.

5. Services Warranty. We will perform the services in a professional, workmanlike manner, consistent with industry standards. In the event we provide services that do not conform to this warranty, we will re-perform such services at no additional cost to you.
6. Site Access and Requirements. At no cost to us, you agree to provide us with full and free access to your personnel, facilities, and equipment as may be reasonably necessary for us to provide implementation services, subject to any reasonable security protocols or other written policies provided to us as of the Effective Date, and thereafter as mutually agreed to by you and us.
7. Background Checks. For at least the past twelve (12) years, all of our employees have undergone criminal background checks prior to hire. All employees sign our confidentiality agreement and security policies.
8. Client Assistance. You acknowledge that the implementation of the Tyler Software is a cooperative process requiring the time and resources of your personnel. You agree to use all reasonable efforts to cooperate with and assist us as may be reasonably required to meet the agreed upon project deadlines and other milestones for implementation. This cooperation includes at least working with us to schedule the implementation-related services outlined in this Agreement. We will not be liable for failure to meet any deadlines and milestones when such failure is due to Force Majeure or to the failure by your personnel to provide such cooperation and assistance (either through action or omission).
9. Maintenance and Support. For so long as you timely pay applicable fees according to the Invoicing and Payment Policy, then in addition to the terms set forth in the SLA and the Support Call Process, we will:
 - 9.1 perform our maintenance and support obligations in a professional, good, and workmanlike manner, consistent with industry standards, to resolve Defects in the Tyler Software (subject to any applicable release life cycle policy);
 - 9.2 provide support during our established support hours;
 - 9.3 maintain personnel that are sufficiently trained to be familiar with the Tyler Software and Third Party Software, if any, in order to provide maintenance and support services;
 - 9.4 make available to you all releases to the Tyler Software (including updates and enhancements) that we make generally available without additional charge to customers who have a maintenance and support agreement in effect; and
 - 9.5 provide non-Defect resolution support of prior releases of the Tyler Software in accordance with any applicable release life cycle policy.

We will use all reasonable efforts to perform support services remotely. Currently, we use a third-party secure unattended connectivity tool called Bomgar, as well as GotoAssist by Citrix. Therefore, you agree to maintain a high-speed internet connection capable of connecting us to your PCs and server(s). You agree to provide us with a login account and local administrative privileges as we may reasonably require to perform remote services. We will, at our option, use the secure connection to assist with proper diagnosis and resolution, subject to any reasonably applicable security protocols. If we cannot

resolve a support issue remotely, we may be required to provide onsite services. In such event, we will be responsible for our travel expenses, unless it is determined that the reason onsite support was required was a reason outside our control. Either way, you agree to provide us with full and free access to the Tyler Software, working space, adequate facilities within a reasonable distance from the equipment, and use of machines, attachments, features, or other equipment reasonably necessary for us to provide the maintenance and support services, all at no charge to us. We strongly recommend that you also maintain your VPN for backup connectivity purposes.

For the avoidance of doubt, SaaS Fees do not include the following services: (a) onsite support (unless Tyler cannot remotely correct a Defect in the Tyler Software, as set forth above); (b) application design; (c) other consulting services; or (d) support outside our normal business hours as listed in our then-current Support Call Process. Requested services such as those outlined in this section will be billed to you on a time and materials basis at our then current rates. You must request those services with at least one (1) week's advance notice.

SECTION D – THIRD PARTY PRODUCTS

1. Third Party Hardware. We will sell, deliver, and install onsite the Third Party Hardware, if you have purchased any, for the price set forth in the Investment Summary. Those amounts are payable in accordance with our Invoicing and Payment Policy.
2. Third Party Software. As part of the SaaS Services, you will receive access to the Third Party Software and related documentation for internal business purposes only. Your rights to the Third Party Software will be governed by the Third Party Terms.
3. Third Party Products Warranties.
 - 3.1 We are authorized by each Developer to grant access to the Third Party Software.
 - 3.2 The Third Party Hardware will be new and unused, and upon payment in full, you will receive free and clear title to the Third Party Hardware.
 - 3.3 You acknowledge that we are not the manufacturer of the Third Party Products. We do not warrant or guarantee the performance of the Third Party Products. However, we grant and pass through to you any warranty that we may receive from the Developer or supplier of the Third Party Products.
4. Third Party Services. If you have purchased Third Party Services, those services will be provided independent of Tyler by such third-party at the rates set forth in the Investment Summary and in accordance with our Invoicing and Payment Policy.

SECTION E - INVOICING AND PAYMENT; INVOICE DISPUTES

1. Invoicing and Payment. We will invoice you the SaaS Fees and fees for other professional services in the Investment Summary per our Invoicing and Payment Policy, subject to Section E(2).
2. Invoice Disputes. If you believe any delivered software or service does not conform to the warranties in this Agreement, you will provide us with written notice within thirty (30) days of your

receipt of the applicable invoice. The written notice must contain reasonable detail of the issues you contend are in dispute so that we can confirm the issue and respond to your notice with either a justification of the invoice, an adjustment to the invoice, or a proposal addressing the issues presented in your notice. We will work with you as may be necessary to develop an action plan that outlines reasonable steps to be taken by each of us to resolve any issues presented in your notice. You may withhold payment of the amount(s) actually in dispute, and only those amounts, until we complete the action items outlined in the plan. If we are unable to complete the action items outlined in the action plan because of your failure to complete the items agreed to be done by you, then you will remit full payment of the invoice. We reserve the right to suspend delivery of all SaaS Services, including maintenance and support services, if you fail to pay an invoice not disputed as described above within fifteen (15) days of notice of our intent to do so.

SECTION F – TERM AND TERMINATION

1. **Term.** The initial term of this Agreement is equal to the number of years indicated for SaaS Services in Exhibit A, commencing on the first day of the first month following the Effective Date, unless earlier terminated as set forth below. If no duration is indicated in Exhibit A, the initial term is one (1) year. Upon expiration of the initial term, this Agreement will renew automatically for additional one (1) year renewal terms at our then-current SaaS Fees unless terminated in writing by either party at least sixty (60) days prior to the end of the then-current renewal term. Your right to access or use the Tyler Software and the SaaS Services will terminate at the end of this Agreement.
2. **Termination.** This Agreement may be terminated as set forth below. In the event of termination, you will pay us for all undisputed fees and expenses related to the software, products, and/or services you have received, or we have incurred or delivered, prior to the effective date of termination. Disputed fees and expenses in all terminations other than your termination for cause must have been submitted as invoice disputes in accordance with Section E(2).
 - 2.1 **Failure to Pay SaaS Fees.** You acknowledge that continued access to the SaaS Services is contingent upon your timely payment of SaaS Fees. If you fail to timely pay the SaaS Fees, we may discontinue the SaaS Services and deny your access to the Tyler Software. We may also terminate this Agreement if you don't cure such failure to pay within forty-five (45) days of receiving written notice of our intent to terminate.
 - 2.2 **For Cause.** If you believe we have materially breached this Agreement, you will invoke the Dispute Resolution clause set forth in Section H(3). You may terminate this Agreement for cause in the event we do not cure, or create a mutually agreeable action plan to address, a material breach of this Agreement within the thirty (30) day window set forth in Section H(3).
 - 2.3 **Force Majeure.** Either party has the right to terminate this Agreement if a Force Majeure event suspends performance of the SaaS Services for a period of forty-five (45) days or more.
 - 2.4 **Lack of Appropriations.** If you should not appropriate or otherwise make available funds sufficient to utilize the SaaS Services, you may unilaterally terminate this Agreement upon thirty (30) days written notice to us. You will not be entitled to a refund or offset of previously paid, but unused SaaS Fees. You agree not to use termination for lack of appropriations as a substitute for termination for convenience.

SECTION G – INDEMNIFICATION, LIMITATION OF LIABILITY AND INSURANCE

1. Intellectual Property Infringement Indemnification.

- 1.1 We will defend you against any third party claim(s) that the Tyler Software or Documentation infringes that third party's patent, copyright, or trademark, or misappropriates its trade secrets, and will pay the amount of any resulting adverse final judgment (or settlement to which we consent). You must notify us promptly in writing of the claim and give us sole control over its defense or settlement. You agree to provide us with reasonable assistance, cooperation, and information in defending the claim at our expense.
- 1.2 Our obligations under this Section G(1) will not apply to the extent the claim or adverse final judgment is based on your use of the Tyler Software in contradiction of this Agreement, including with non-licensed third parties, or your willful infringement.
- 1.3 If we receive information concerning an infringement or misappropriation claim related to the Tyler Software, we may, at our expense and without obligation to do so, either: (a) procure for you the right to continue its use; (b) modify it to make it non-infringing; or (c) replace it with a functional equivalent, in which case you will stop running the allegedly infringing Tyler Software immediately. Alternatively, we may decide to litigate the claim to judgment, in which case you may continue to use the Tyler Software consistent with the terms of this Agreement.
- 1.4 If an infringement or misappropriation claim is fully litigated and your use of the Tyler Software is enjoined by a court of competent jurisdiction, in addition to paying any adverse final judgment (or settlement to which we consent), we will, at our option, either: (a) procure the right to continue its use; (b) modify it to make it non-infringing; or (c) replace it with a functional equivalent. This section provides your exclusive remedy for third party copyright, patent, or trademark infringement and trade secret misappropriation claims.

2. General Indemnification.

- 2.1 We will indemnify and hold harmless you and your agents, officials, and employees from and against any and all third-party claims, losses, liabilities, damages, costs, and expenses (including reasonable attorney's fees and costs) for (a) personal injury or property damage to the extent caused by our negligence or willful misconduct; or (b) our violation of PCI-DSS requirements or a law applicable to our performance under this Agreement. You must notify us promptly in writing of the claim and give us sole control over its defense or settlement. You agree to provide us with reasonable assistance, cooperation, and information in defending the claim at our expense.
- 2.2 To the extent permitted by applicable law, you will indemnify and hold harmless us and our agents, officials, and employees from and against any and all third-party claims, losses, liabilities, damages, costs, and expenses (including reasonable attorney's fees and costs) for (a) personal injury or property damage to the extent caused by your negligence or willful misconduct; or (b) your violation of a law applicable to your performance under this Agreement. We will notify you promptly in writing of the claim and will give you sole control over its defense or settlement. We agree to provide you with reasonable assistance, cooperation, and information in defending the claim at your expense.

3. **DISCLAIMER.** EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE HEREBY DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES, DUTIES, OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CLIENT UNDERSTANDS AND AGREES THAT TYLER DISCLAIMS ANY LIABILITY FOR ERRORS THAT RELATE TO USER ERROR.
4. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT, OUR LIABILITY FOR DAMAGES ARISING OUT OF THIS AGREEMENT, WHETHER BASED ON A THEORY OF CONTRACT OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, SHALL BE LIMITED TO YOUR ACTUAL DIRECT DAMAGES, NOT TO EXCEED (A) DURING THE INITIAL TERM, AS SET FORTH IN SECTION F(1), TOTAL FEES PAID AS OF THE TIME OF THE CLAIM; OR (B) DURING ANY RENEWAL TERM, THE THEN-CURRENT ANNUAL SAAS FEES PAYABLE IN THAT RENEWAL TERM. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE PRICES SET FORTH IN THIS AGREEMENT ARE SET IN RELIANCE UPON THIS LIMITATION OF LIABILITY AND TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW, THE EXCLUSION OF CERTAIN DAMAGES, AND EACH SHALL APPLY REGARDLESS OF THE FAILURE OF AN ESSENTIAL PURPOSE OF ANY REMEDY. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS THAT ARE SUBJECT TO SECTIONS G(1) AND G(2).
5. **EXCLUSION OF CERTAIN DAMAGES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL WE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
6. **Insurance.** During the course of performing services under this Agreement, we agree to maintain the following levels of insurance: (a) Commercial General Liability of at least \$1,000,000; (b) Automobile Liability of at least \$1,000,000; (c) Professional Liability of at least \$1,000,000; (d) Workers Compensation complying with applicable statutory requirements; and (e) Excess/Umbrella Liability of at least \$5,000,000. We will add you as an additional insured to our Commercial General Liability and Automobile Liability policies, which will automatically add you as an additional insured to our Excess/Umbrella Liability policy as well. We will provide you with copies of certificates of insurance upon your written request.

SECTION H – GENERAL TERMS AND CONDITIONS

1. **Additional Products and Services.** You may purchase additional products and services at the rates set forth in the Investment Summary for twelve (12) months from the Effective Date by executing a mutually agreed addendum. If no rate is provided in the Investment Summary, or those twelve (12) months have expired, you may purchase additional products and services at our then-current list price, also by executing a mutually agreed addendum. The terms of this Agreement will control any such additional purchase(s), unless otherwise specifically provided in the addendum.
2. **Optional Items.** Pricing for any listed optional products and services in the Investment Summary will be valid for twelve (12) months from the Effective Date.
3. **Dispute Resolution.** You agree to provide us with written notice within thirty (30) days of becoming aware of a dispute. You agree to cooperate with us in trying to reasonably resolve all disputes,

including, if requested by either party, appointing a senior representative to meet and engage in good faith negotiations with our appointed senior representative. Senior representatives will convene within thirty (30) days of the written dispute notice, unless otherwise agreed. All meetings and discussions between senior representatives will be deemed confidential settlement discussions not subject to disclosure under Federal Rule of Evidence 408 or any similar applicable state rule. If we fail to resolve the dispute, then the parties shall participate in non-binding mediation in an effort to resolve the dispute. If the dispute remains unresolved after mediation, then either of us may assert our respective rights and remedies in a court of competent jurisdiction. Nothing in this section shall prevent you or us from seeking necessary injunctive relief during the dispute resolution procedures.

4. Taxes. The fees in the Investment Summary do not include any taxes, including, without limitation, sales, use, or excise tax. If you are a tax-exempt entity, you agree to provide us with a tax-exempt certificate. Otherwise, we will pay all applicable taxes to the proper authorities and you will reimburse us for such taxes. If you have a valid direct-pay permit, you agree to provide us with a copy. For clarity, we are responsible for paying our income taxes, both federal and state, as applicable, arising from our performance of this Agreement.
5. Nondiscrimination. We will not discriminate against any person employed or applying for employment concerning the performance of our responsibilities under this Agreement. This discrimination prohibition will apply to all matters of initial employment, tenure, and terms of employment, or otherwise with respect to any matter directly or indirectly relating to employment concerning race, color, religion, national origin, age, sex, sexual orientation, ancestry, disability that is unrelated to the individual's ability to perform the duties of a particular job or position, height, weight, marital status, or political affiliation. We will post, where appropriate, all notices related to nondiscrimination as may be required by applicable law.
6. E-Verify. We have complied, and will comply, with the E-Verify procedures administered by the U.S. Citizenship and Immigration Services Verification Division for all of our employees assigned to your project.
7. Subcontractors. We will not subcontract any services under this Agreement without your prior written consent, not to be unreasonably withheld.
8. Binding Effect; No Assignment. This Agreement shall be binding on, and shall be for the benefit of, either your or our successor(s) or permitted assign(s). Neither party may assign this Agreement without the prior written consent of the other party; provided, however, your consent is not required for an assignment by us as a result of a corporate reorganization, merger, acquisition, or purchase of substantially all of our assets.
9. Force Majeure. Except for your payment obligations, neither party will be liable for delays in performing its obligations under this Agreement to the extent that the delay is caused by Force Majeure; provided, however, that within ten (10) business days of the Force Majeure event, the party whose performance is delayed provides the other party with written notice explaining the cause and extent thereof, as well as a request for a reasonable time extension equal to the estimated duration of the Force Majeure event.

10. No Intended Third Party Beneficiaries. This Agreement is entered into solely for the benefit of you and us. No third party will be deemed a beneficiary of this Agreement, and no third party will have the right to make any claim or assert any right under this Agreement. This provision does not affect the rights of third parties under any Third Party Terms.
11. Entire Agreement; Amendment. This Agreement represents the entire agreement between you and us with respect to the subject matter hereof, and supersedes any prior agreements, understandings, and representations, whether written, oral, expressed, implied, or statutory. Purchase orders submitted by you, if any, are for your internal administrative purposes only, and the terms and conditions contained in those purchase orders will have no force or effect. This Agreement may only be modified by a written amendment signed by an authorized representative of each party.
12. Severability. If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will be considered valid and enforceable to the fullest extent permitted by law.
13. No Waiver. In the event that the terms and conditions of this Agreement are not strictly enforced by either party, such non-enforcement will not act as or be deemed to act as a waiver or modification of this Agreement, nor will such non-enforcement prevent such party from enforcing each and every term of this Agreement thereafter.
14. Independent Contractor. We are an independent contractor for all purposes under this Agreement.
15. Notices. All notices or communications required or permitted as a part of this Agreement, such as notice of an alleged material breach for a termination for cause or a dispute that must be submitted to dispute resolution, must be in writing and will be deemed delivered upon the earlier of the following: (a) actual receipt by the receiving party; (b) upon receipt by sender of a certified mail, return receipt signed by an employee or agent of the receiving party; (c) upon receipt by sender of proof of email delivery; or (d) if not actually received, five (5) days after deposit with the United States Postal Service authorized mail center with proper postage (certified mail, return receipt requested) affixed and addressed to the other party at the address set forth on the signature page hereto or such other address as the party may have designated by proper notice. The consequences for the failure to receive a notice due to improper notification by the intended receiving party of a change in address will be borne by the intended receiving party.
16. Client Lists. You agree that we may identify you by name in client lists, marketing presentations, and promotional materials.
17. Confidentiality. Both parties recognize that their respective employees and agents, in the course of performance of this Agreement, may be exposed to confidential information and that disclosure of such information could violate rights to private individuals and entities, including the parties. Confidential information is nonpublic information that a reasonable person would believe to be confidential and includes, without limitation, personal identifying information (*e.g.*, social security numbers) and trade secrets, each as defined by applicable state law. Each party agrees that it will not disclose any confidential information of the other party and further agrees to take all reasonable and appropriate action to prevent such disclosure by its employees or agents. The confidentiality covenants contained herein will survive the termination or cancellation of this Agreement. This obligation of confidentiality will not apply to information that:

- (a) is in the public domain, either at the time of disclosure or afterwards, except by breach of this Agreement by a party or its employees or agents;
 - (b) a party can establish by reasonable proof was in that party's possession at the time of initial disclosure;
 - (c) a party receives from a third party who has a right to disclose it to the receiving party; or
 - (d) is the subject of a legitimate disclosure request under the open records laws or similar applicable public disclosure laws governing this Agreement; provided, however, that in the event you receive an open records or other similar applicable request, you will give us prompt notice and otherwise perform the functions required by applicable law.
18. Quarantining of Client Data. Some services provided by Tyler require us to be in possession of your Data. In the event we detect malware or other conditions associated with your Data that are reasonably suspected of putting Tyler resources or other Tyler clients' data at risk, we reserve the absolute right to move your Data from its location within a multi-tenancy Tyler hosted environment to an isolated "quarantined" environment without advance notice. Your Data will remain in such quarantine for a period of at least six (6) months during which time we will review the Data, and all traffic associated with the Data, for signs of malware or other similar issues. If no issues are detected through such reviews during the six (6) month period of quarantine, we will coordinate with you the restoration of your Data to a non-quarantined environment. In the event your Data must remain in quarantine beyond this six (6) month period through no fault of Tyler's, we reserve the right to require payment of additional fees for the extended duration of quarantine. We will provide an estimate of what those costs will be upon your request.
19. Business License. In the event a local business license is required for us to perform services hereunder, you will promptly notify us and provide us with the necessary paperwork and/or contact information so that we may timely obtain such license.
20. Governing Law. This Agreement will be governed by and construed in accordance with the laws of your state of domicile, without regard to its rules on conflicts of law.
21. Multiple Originals and Authorized Signatures. This Agreement may be executed in multiple originals, any of which will be independently treated as an original document. Any electronic, faxed, scanned, photocopied, or similarly reproduced signature on this Agreement or any amendment hereto will be deemed an original signature and will be fully enforceable as if an original signature. Each party represents to the other that the signatory set forth below is duly authorized to bind that party to this Agreement.
22. Cooperative Procurement. To the maximum extent permitted by applicable law, we agree that this Agreement may be used as a cooperative procurement vehicle by eligible jurisdictions. We reserve the right to negotiate and customize the terms and conditions set forth herein, including but not limited to pricing, to the scope and circumstances of that cooperative procurement.
23. Data & Insights Solution Terms. Your use of certain Tyler solutions includes Tyler's Data & Insights data platform. Your rights, and the rights of any of your end users, to use Tyler's Data & Insights data platform is subject to the Data & Insights SaaS Services Terms of Service, available at <https://www.tylertech.com/terms/data-insights-saas-services-terms-of-service>. By signing a Tyler Agreement or Order Form, or accessing, installing, or using any of the Tyler solutions listed at the linked terms, you certify that you have reviewed, understand, and agree to said terms.

24. Contract Documents. This Agreement includes the following exhibits:

Exhibit A	Investment Summary
Exhibit B	Invoicing and Payment Policy
	Schedule 1: Business Travel Policy
Exhibit C	Service Level Agreement
	Schedule 1: Support Call Process
Exhibit D	Statement of Work

IN WITNESS WHEREOF, a duly authorized representative of each party has executed this Agreement as of the date(s) set forth below.

Tyler Technologies, Inc.

Town of Fort Myers Beach, Florida

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address for Notices:

Tyler Technologies, Inc.
One Tyler Drive
Yarmouth, ME 04096
Attention: Chief Legal Officer

Address for Notices:

Town of Fort Myers Beach
2523 Estero Boulevard
Fort Myers Beach, FL 33931-3354
Attention: _____



Exhibit A

Investment Summary

The following Investment Summary details the software and services to be delivered by us to you under the Agreement. This Investment Summary is effective as of the Effective Date, despite any expiration date in the Investment Summary that may have lapsed as of the Effective Date.

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Sales Quotation For:
Town of Fort Myers Beach
2523 Estero Blvd
Fort Myers Beach FL 33931-3354

Quoted BY Jacob Kendell
Quote Expiration 2/18/25
Quote Name Town of Fort Myers Beach
 ERP Pro SaaS Sourcewell
 #136730

Tyler Annual Software – SaaS			
Description	List Price	Discount	Annual
ERP Pro			
ERP Pro 10 Financial Management Suite			
Invoice Approvals	\$ 0	\$ 0	\$ 0
Core Financials	\$ 18,001	\$ 1,800	\$ 16,201
Contracts Management	\$ 0	\$ 0	\$ 0
Fixed Assets	\$ 3,151	\$ 315	\$ 2,836
Grants Management	\$ 1,800	\$ 180	\$ 1,620
Inventory Control	\$ 4,244	\$ 424	\$ 3,820
Project Accounting	\$ 4,202	\$ 420	\$ 3,782
ePurchasing	\$ 2,000	\$ 0	\$ 2,000
Purchasing	\$ 5,602	\$ 560	\$ 5,042
Accounts Receivable	\$ 4,598	\$ 460	\$ 4,138
ERP Pro 10 Customer Relationship Management Suite			
Cashiering	\$ 1,415	\$ 142	\$ 1,273

Tyler Annual Software – SaaS			
Description	List Price	Discount	Annual
Tyler One			
Identity			
Workforce Direct	\$ 0	\$ 0	\$ 0
Data & Insights			
Open Budget	\$ 3,500	\$ 0	\$ 3,500
Finance Insights	\$ 9,000	\$ 0	\$ 9,000
Content Manager Suite			
Content Manager Core	\$ 6,430	\$ 643	\$ 5,787
TOTAL:			
Term # of Years:		3	
		\$ 63,943	\$ 4,944
			\$ 58,999

Tyler Annual Services		Annual
Description		
ERP Pro		
Other Services		
Tyler University		\$ 1,922
TOTAL:		\$ 1,922

Tyler Fees per Transaction		Net Unit Price
Description		
ERP Pro		
ERP Pro 10 Financial Management Suite		
AP Automation		\$ 0.00

Services		
Description	Hours/Units	Extended Price
ERP Pro 10 Financial Management Suite		
Professional Services	304	\$ 44,080
Project Management	1	\$ 2,000
Data Conversion Services		\$ 4,500
ERP Pro 10 Customer Relationship Management Suite		
Professional Services	20	\$ 2,900
Project Management	1	\$ 1,250
Data & Insights		
Professional Services	42	\$ 6,090
Content Manager Suite		
Professional Services	40	\$ 5,800
TOTAL:		\$ 66,620

Summary	One Time Fees	Recurring Fees
Total SaaS		\$ 58,999
Total Tyler Services	\$ 66,620	\$ 1,922
Summary Total	\$ 66,620	\$ 60,921
Contract Total	\$ 127,541	

Comments

Work will be delivered remotely unless otherwise noted in this agreement.
SaaS is considered a term of one year unless otherwise indicated.

Workforce Direct	The use of certain Tyler application(s) requires Client to engage and use an identity provider that meets Open ID Connect (OIDC) or Security Assertion Markup Language (SAML) standards (each, an “IdP”), such as Microsoft Entra ID, Okta, Google Cloud Identity or RapidIdentity. Client will permit these applications to directly federate with such IdP. Client is responsible for (a) keeping Client and its representatives’ passwords secure and confidential, (b) any account activity or access that occurs pursuant to Client and its representatives’ passwords, its account or IdPs, and (c) notifying Tyler of any unauthorized access to its account. Failure to provide Tyler with the ability to federate to a supported IdP may result in disrupted deployment and implementation schedules and additional costs. If you do not have an IdP in place, please contact us for additional information.
Cashiering	Cashiering supports credit/debit cards, is PCI Compliant, and includes a cash collection interface and a cashiering receipt import.
Core Financials	Core Financials includes general ledger, budget prep, bank recon, AP, CellSense, a standard forms pkg, output director, positive pay, secure signatures.
Invoice Approvals	Invoice Approvals, included with AP Automation, automates invoice workflows by routing them to the appropriate departments for completion and approval.
Financial Management Data Conversion	Financial Management conversion includes Chart of Accounts, General Ledger, and Accounts Payable. Prior fiscal year balances, current fiscal year balanced transactions, and unlimited unbalanced transaction history are also included.
Content Manager Core	Core includes Onboarding
AP Automation	AP Automation pricing quoted reflects processing via check or Virtual Card. Processing checks will incur a fee and an invoice will be provided annually based on actual usage. Please refer to the Terms of Use for Fee Structure and to agree to terms: https://www.tylertech.com/client-terms/ap-automation-payment-terms-of-use



Exhibit B

Invoicing and Payment Policy

We will provide you with the software and services set forth in the Investment Summary of the Agreement. Capitalized terms not otherwise defined will have the meaning assigned to such terms in the Agreement.

Invoicing: We will invoice you for the applicable software and services in the Investment Summary as set forth below. Your rights to dispute any invoice are set forth in the Agreement.

1. SaaS Fees. SaaS Fees are invoiced on an annual basis, beginning on the commencement of the initial term as set forth in Section F (1) of this Agreement. Your annual SaaS fees for the initial term are set forth in the Investment Summary. Upon expiration of the initial term, your annual SaaS fees will be at our then-current rates.
2. Other Tyler Software and Services.
 - 2.1 *Implementation and Other Professional Services (including training):* Implementation and other professional services (including training) are billed and invoiced as delivered, at the rates set forth in the Investment Summary.
 - 2.2 *Consulting Services:* If you have purchased any Business Process Consulting services, if they have been quoted as fixed-fee services, they will be invoiced 50% upon your acceptance of the Best Practice Recommendations, by module, and 50% upon your acceptance of custom desktop procedures, by module. If you have purchased any Business Process Consulting services and they are quoted as an estimate, then we will bill you the actual services delivered on a time and materials basis.
 - 2.3 *Conversions:* Fixed-fee conversions are invoiced 50% upon initial delivery of the converted Data, by conversion option, and 50% upon Client acceptance to load the converted Data into Live/Production environment, by conversion option. Where conversions are quoted as estimated, we will bill you the actual services delivered on a time and materials basis.
 - 2.4 *Requested Modifications to the Tyler Software:* Requested modifications to the Tyler Software are invoiced 50% upon delivery of specifications and 50% upon delivery of the applicable modification. You must report any failure of the modification to conform to the specifications within thirty (30) days of delivery; otherwise, the modification will be deemed to be in compliance with the specifications after the 30-day window has passed. You may still report Defects to us as set forth in this Agreement.
 - 2.5 *Other Fixed Price Services:* Other fixed price services are invoiced as delivered, at the rates set forth in the Investment Summary. For the avoidance of doubt, where "Project Planning Services" are provided, payment will be due upon delivery of the Implementation Planning document. Dedicated Project Management services, if any, will be billed monthly in arrears, beginning on the first day of the month immediately following initiation of project planning.
 - 2.6 *Web Services:* Annual fees for web services are payable in advance, commencing upon the availability of the service. Your annual fees for the initial term are set forth in the

Investment Summary. Upon expiration of the initial term, your annual fees will be at our then-current rates.

2.7 *Annual Services*: Unless otherwise indicated in this Exhibit B, fees for annual services are due annually, in advance, commencing on the availability of the service. Your annual fees for the initial term are set forth in the Investment Summary. Upon expiration of the initial term, your annual fees will be at our then-current rates.

3. Third Party Products and Hardware.

3.1 *Third Party Software License Fees*: License fees for Third Party Software, if any, are invoiced when we make it available to you for downloading.

3.2 *Third Party Software Maintenance*: The first year maintenance fee for the Third Party Software is invoiced when we make it available to you for downloading. Subsequent annual maintenance fees for Third Party Software are invoiced annually, in advance, at then-current rates, upon each anniversary thereof.

3.3 *Hardware*: Third Party Hardware costs, if any, are invoiced upon delivery.

3.4 *Hardware Maintenance*: The first year maintenance fee for Hardware is invoiced upon delivery of the hardware. Subsequent annual maintenance fees for hardware are invoiced annually, in advance, at then-current rates, upon each anniversary thereof.

3.5 *Third Party Services*: Fees for Third Party Services, if any, are invoiced as delivered, along with applicable expenses, at the rates set forth in the Investment Summary.

3.6 *Third Party SaaS*: Third Party SaaS Services fees, if any, are invoiced annually, in advance, commencing with availability of the respective Third Party SaaS Services. Pricing for the first year of Third Party SaaS Services is indicated in the Investment Summary. Pricing for subsequent years will be at the respective third party's then-current rates.

4. Transaction Fees. Unless paid directly by an end user at the time of transaction, per transaction (call, message, etc.) fees are invoiced on a quarterly basis. Fees are indicated in the Investment Summary and may be increased by Tyler upon notice of no less than thirty (30) days.

5. Expenses. The service rates in the Investment Summary do not include travel expenses. Expenses for Tyler delivered services will be billed as incurred and only in accordance with our then-current Business Travel Policy, plus a 10% travel agency processing fee. Our current Business Travel Policy is attached to this Exhibit B as Schedule 1. Copies of receipts will be provided upon request; we reserve the right to charge you an administrative fee depending on the extent of your requests. Receipts for miscellaneous items less than twenty-five dollars and mileage logs are not available.

Payment. Payment for undisputed invoices is due within forty-five (45) days of the invoice date. We prefer to receive payments electronically. Our electronic payment information is available by contacting AR@tylertech.com.



Exhibit B
Schedule 1
Business Travel Policy

1. Air Travel

A. Reservations & Tickets

The Travel Management Company (TMC) used by Tyler will provide an employee with a direct flight within two hours before or after the requested departure time, assuming that flight does not add more than three hours to the employee's total trip duration and the fare is within \$100 (each way) of the lowest logical fare. If a net savings of \$200 or more (each way) is possible through a connecting flight that is within two hours before or after the requested departure time and that does not add more than three hours to the employee's total trip duration, the connecting flight should be accepted.

Employees are encouraged to make advanced reservations to take full advantage of discount opportunities. Employees should use all reasonable efforts to make travel arrangements at least two (2) weeks in advance of commitments. A seven (7) day advance booking requirement is mandatory. When booking less than seven (7) days in advance, management approval will be required.

Except in the case of international travel where a segment of continuous air travel is six (6) or more consecutive hours in length, only economy or coach class seating is reimbursable. Employees shall not be reimbursed for "Basic Economy Fares" because these fares are non-refundable and have many restrictions that outweigh the cost-savings.

B. Baggage Fees

Reimbursement of personal baggage charges are based on trip duration as follows:

- Up to five (5) days = one (1) checked bag
- Six (6) or more days = two (2) checked bags

Baggage fees for sports equipment are not reimbursable.

2. Ground Transportation

A. Private Automobile

Mileage Allowance – Business use of an employee's private automobile will be reimbursed at the current IRS allowable rate, plus out of pocket costs for tolls and parking. Mileage will be calculated by using the employee's office as the starting and ending point, in compliance with IRS regulations. Employees who have been designated a home office should calculate miles from their home.

B. Rental Car

Employees are authorized to rent cars only in conjunction with air travel when cost, convenience, and the specific situation reasonably require their use. When renting a car for Tyler business, employees should select a "mid-size" or "intermediate" car. "Full" size cars may be rented when three or more employees are traveling together. Tyler carries leased vehicle coverage for business car rentals; except for employees traveling to Alaska and internationally (excluding Canada), additional insurance on the rental agreement should be declined.

C. Public Transportation

Taxi or airport limousine services may be considered when traveling in and around cities or to and from airports when less expensive means of transportation are unavailable or impractical. The actual fare plus a reasonable tip (15-18%) are reimbursable. In the case of a free hotel shuttle to the airport, tips are included in the per diem rates and will not be reimbursed separately.

D. Parking & Tolls

When parking at the airport, employees must use longer term parking areas that are measured in days as opposed to hours. Park and fly options located near some airports may also be used. For extended trips that would result in excessive parking charges, public transportation to/from the airport should be considered. Tolls will be reimbursed when receipts are presented.

3. Lodging

Tyler's TMC will select hotel chains that are well established, reasonable in price, and conveniently located in relation to the traveler's work assignment. Typical hotel chains include Courtyard, Fairfield Inn, Hampton Inn, and Holiday Inn Express. If the employee has a discount rate with a local hotel, the hotel reservation should note that discount and the employee should confirm the lower rate with the hotel upon arrival. Employee memberships in travel clubs such as AAA should be noted in their travel profiles so that the employee can take advantage of any lower club rates.

"No shows" or cancellation fees are not reimbursable if the employee does not comply with the hotel's cancellation policy.

Tips for maids and other hotel staff are included in the per diem rate and are not reimbursed separately.

Employees are not authorized to reserve non-traditional short-term lodging, such as Airbnb, VRBO, and HomeAway. Employees who elect to make such reservations shall not be reimbursed.

4. Meals and Incidental Expenses

Employee meals and incidental expenses while on travel status within the continental U.S. are in accordance with the federal per diem rates published by the General Services Administration. Incidental expenses include tips to maids, hotel staff, and shuttle drivers and other minor travel expenses. Per diem rates are available at www.gsa.gov/perdiem.

Per diem for Alaska, Hawaii, U.S. protectorates and international destinations are provided separately by the Department of State and will be determined as required.

A. Overnight Travel

For each full day of travel, all three meals are reimbursable. Per diems on the first and last day of a trip are governed as set forth below.

Departure Day

Depart before 12:00 noon	Lunch and dinner
Depart after 12:00 noon	Dinner

Return Day

Return before 12:00 noon	Breakfast
Return between 12:00 noon & 7:00 p.m.	Breakfast and lunch
Return after 7:00 p.m.*	Breakfast, lunch and dinner

*7:00 p.m. is defined as direct travel time and does not include time taken to stop for dinner.

The reimbursement rates for individual meals are calculated as a percentage of the full day per diem as follows:

Breakfast	15%
Lunch	25%
Dinner	60%

B. Same Day Travel

Employees traveling at least 100 miles to a site and returning in the same day are eligible to claim lunch on an expense report. Employees on same day travel status are eligible to claim dinner in the event they return home after 7:00 p.m.*

*7:00 p.m. is defined as direct travel time and does not include time taken to stop for dinner.

5. Internet Access – Hotels and Airports

Employees who travel may need to access their e-mail at night. Many hotels provide free high speed internet access and Tyler employees are encouraged to use such hotels whenever possible. If an employee's hotel charges for internet access it is reimbursable up to \$10.00 per day. Charges for internet access at airports are not reimbursable.

6. International Travel

All international flights with the exception of flights between the U.S. and Canada should be reserved through TMC using the "lowest practical coach fare" with the exception of flights that are six (6) or more consecutive hours in length. In such event, the next available seating class above coach shall be reimbursed.

When required to travel internationally for business, employees shall be reimbursed for photo fees, application fees, and execution fees when obtaining a new passport book, but fees related to passport renewals are not reimbursable. Visa application and legal fees, entry taxes and departure taxes are reimbursable.

The cost of vaccinations that are either required for travel to specific countries or suggested by the U.S. Department of Health & Human Services for travel to specific countries, is reimbursable.

Section 4, Meals & Incidental Expenses, and Section 2.b., Rental Car, shall apply to this section.



Exhibit C

SERVICE LEVEL AGREEMENT

I. Agreement Overview

This SLA operates in conjunction with, and does not supersede or replace any part of, the Agreement. It outlines the information technology service levels that we will provide to you to ensure the availability of the application services that you have requested us to provide. All other support services are documented in the Support Call Process. This SLA does not apply to any Third Party SaaS Services. All other support services are documented in the Support Call Process.

II. Definitions. Except as defined below, all defined terms have the meaning set forth in the Agreement.

Actual Attainment: The percentage of time the Tyler Software is available during a calendar month, calculated as follows: $(\text{Service Availability} - \text{Downtime}) \div \text{Service Availability}$.

Client Error Incident: Any service unavailability resulting from your applications, content or equipment, or the acts or omissions of any of your service users or third-party providers over whom we exercise no control.

Downtime: Those minutes during Service Availability, as defined below, when all users cannot launch, login, search or save primary data in the Tyler Software. Downtime does not include those instances in which only a Defect is present.

Emergency Maintenance Window: (1) maintenance that is required to patch a critical security vulnerability; (2) maintenance that is required to prevent an imminent outage of Service Availability; or (3) maintenance that is mutually agreed upon in writing by Tyler and the Client.

Planned Downtime: Downtime that occurs during a Standard or Emergency Maintenance window.

Service Availability: The total number of minutes in a calendar month that the Tyler Software is capable of receiving, processing, and responding to requests, excluding Planned Downtime, Client Error Incidents, denial of service attacks and Force Majeure. Service Availability only applies to Tyler Software being used in the live production environment.

Standard Maintenance: Routine maintenance to the Tyler Software and infrastructure. Standard Maintenance is limited to five (5) hours per week.

III. Service Availability

a. Your Responsibilities

Whenever you experience Downtime, you must make a support call according to the procedures outlined in the Support Call Process. You will receive a support case number.

b. Our Responsibilities

When our support team receives a call from you that Downtime has occurred or is occurring, we will work with you to identify the cause of the Downtime (including whether it may be the result of Planned Downtime, a Client Error Incident, denial of service attack or Force Majeure). We will also work with you to resume normal operations.

c. Client Relief

Our targeted Attainment Goal is 100%. You may be entitled to credits as indicated in the Client Relief Schedule found below. Your relief credit is calculated as a percentage of the SaaS Fees paid for the calendar month.

In order to receive relief credits, you must submit a request through one of the channels listed in our Support Call Process within fifteen (15) days of the end of the applicable month. We will respond to your relief request within thirty (30) days of receipt.

The total credits confirmed by us will be applied to the SaaS Fee for the next billing cycle. Issuing of such credit does not relieve us of our obligations under the Agreement to correct the problem which created the service interruption.

Credits are only payable when Actual Attainment results in eligibility for credits in consecutive months and only for such consecutive months.

Client Relief Schedule	
Actual Attainment	Client Relief
99.99% - 99.70%	Remedial action will be taken
99.69% - 98.50%	2% of SaaS Fees paid for applicable month
98.49% - 97.50%	4% of SaaS Fees paid for applicable month
97.49% - 96.50%	6% of SaaS Fees paid for applicable month
96.49% - 95.50%	8% of SaaS Fees paid for applicable month
Below 95.50%	10% of SaaS Fees paid for applicable month

* Notwithstanding language in the Agreement to the contrary, Recovery Point Objective is one (1) hour.

IV. **Maintenance Notifications**

We perform Standard Maintenance during limited windows that are historically known to be reliably low-traffic times. If and when maintenance is predicted to occur during periods of higher traffic, we will provide advance notice of those windows and will coordinate to the greatest extent possible with you.

Not all maintenance activities will cause application unavailability. However, if Tyler anticipates that activities during a Standard or Emergency Maintenance window may make the Tyler Software unavailable, we will provide advance notice, as reasonably practicable, that the Tyler Software will be unavailable during the maintenance window.



Exhibit C Schedule 1 Support Call Process

Support Channels

Tyler Technologies, Inc. provides the following channels of software support for authorized users*:

- (1) On-line submission (portal) – for less urgent and functionality-based questions, users may create support incidents through the Tyler Customer Portal available at the Tyler Technologies website. A built-in Answer Panel provides users with resolutions to most “how-to” and configuration-based questions through a simplified search interface with machine learning, potentially eliminating the need to submit the support case.
- (2) Email – for less urgent situations, users may submit emails directly to the software support group.
- (3) Telephone – for urgent or complex questions, users receive toll-free, telephone software support.

** Channel availability may be limited for certain applications.*

Support Resources

A number of additional resources are available to provide a comprehensive and complete support experience:

- (1) Tyler Website – www.tylertech.com – for accessing client tools, documentation, and other information including support contact information.
- (2) Tyler Search -a knowledge based search engine that lets you search multiple sources simultaneously to find the answers you need, 24x7.
- (3) Tyler Community –provides a venue for all Tyler clients with current maintenance agreements to collaborate with one another, share best practices and resources, and access documentation.
- (4) Tyler University – online training courses on Tyler products.

Support Availability

Tyler Technologies support is available during the local business hours of 8 AM to 5 PM (Monday – Friday) across four US time zones (Pacific, Mountain, Central and Eastern). Tyler’s holiday schedule is outlined below. There will be no support coverage on these days.

New Year’s Day	Labor Day
Martin Luther King, Jr. Day	Thanksgiving Day
Memorial Day	Day after Thanksgiving
Independence Day	Christmas Day

For support teams that provide after-hours service, we will provide you with procedures for contacting support staff after normal business hours for reporting Priority Level 1 Defects only. Upon receipt of

such a Defect notification, we will use commercially reasonable efforts to meet the resolution targets set forth below.

We will also make commercially reasonable efforts to be available for one pre-scheduled Saturday of each month to assist your IT staff with applying patches and release upgrades, as well as consulting with them on server maintenance and configuration of the Tyler Software environment.

Incident Handling

Incident Tracking

Every support incident is logged into Tyler’s Customer Relationship Management System and given a unique case number. This system tracks the history of each incident. The case number is used to track and reference open issues when clients contact support. Clients may track incidents, using the case number, through Tyler’s Customer Portal or by calling software support directly.

Incident Priority

Each incident is assigned a priority level, which corresponds to the Client’s needs. Tyler and the Client will reasonably set the priority of the incident per the chart below. This chart is not intended to address every type of support incident, and certain “characteristics” may or may not apply depending on whether the Tyler software has been deployed on customer infrastructure or the Tyler cloud. The goal is to help guide the Client towards clearly understanding and communicating the importance of the issue and to describe generally expected response and resolution targets in the production environment only.

References to a “confirmed support incident” mean that Tyler and the Client have successfully validated the reported Defect/support incident.

Priority Level	Characteristics of Support Incident	Resolution Targets*
1 Critical	Support incident that causes (a) complete application failure or application unavailability; (b) application failure or unavailability in one or more of the client’s remote location; or (c) systemic loss of multiple essential system functions.	Tyler shall provide an initial response to Priority Level 1 incidents within one (1) business hour of receipt of the incident. Once the incident has been confirmed, Tyler shall use commercially reasonable efforts to resolve such support incidents or provide a circumvention procedure within one (1) business day. For non-hosted customers, Tyler’s responsibility for lost or corrupted data is limited to assisting the Client in restoring its last available database.

Priority Level	Characteristics of Support Incident	Resolution Targets*
2 High	Support incident that causes (a) repeated, consistent failure of essential functionality affecting more than one user or (b) loss or corruption of data.	Tyler shall provide an initial response to Priority Level 2 incidents within four (4) business hours of receipt of the incident. Once the incident has been confirmed, Tyler shall use commercially reasonable efforts to resolve such support incidents or provide a circumvention procedure within ten (10) business days. For non-hosted customers, Tyler's responsibility for loss or corrupted data is limited to assisting the Client in restoring its last available database.
3 Medium	Priority Level 1 incident with an existing circumvention procedure, or a Priority Level 2 incident that affects only one user or for which there is an existing circumvention procedure.	Tyler shall provide an initial response to Priority Level 3 incidents within one (1) business day of receipt of the incident. Once the incident has been confirmed, Tyler shall use commercially reasonable efforts to resolve such support incidents without the need for a circumvention procedure with the next published maintenance update or service pack, which shall occur at least quarterly. For non-hosted customers, Tyler's responsibility for lost or corrupted data is limited to assisting the Client in restoring its last available database.
4 Non-critical	Support incident that causes failure of non-essential functionality or a cosmetic or other issue that does not qualify as any other Priority Level.	Tyler shall provide an initial response to Priority Level 4 incidents within two (2) business days of receipt of the incident. Once the incident has been confirmed, Tyler shall use commercially reasonable efforts to resolve such support incidents, as well as cosmetic issues, with a future version release.

**Response and Resolution Targets may differ by product or business need*

Incident Escalation

If Tyler is unable to resolve any priority level 1 or 2 defect as listed above or the priority of an issue has elevated since initiation, you may escalate the incident to the appropriate resource, as outlined by each product support team. The corresponding resource will meet with you and any Tyler staff to establish a mutually agreeable plan for addressing the defect.

Remote Support Tool

Some support calls may require further analysis of the Client's database, processes or setup to diagnose a problem or to assist with a question. Tyler will, at its discretion, use an industry-standard remote support tool. Tyler's support team must have the ability to quickly connect to the Client's system and view the site's setup, diagnose problems, or assist with screen navigation. More information about the remote support tool Tyler uses is available upon request.



Exhibit D
Statement of Work

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Town of Fort Myers Beach

SOW from Tyler Technologies, Inc.

10/25/2024

Presented to:
Joe Onzick
2731 Oak St.
Fort Myers Beach, FL 33931

Contact:
Jacob Kendell
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5519 53rd St., Lubbock, TX 79414

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Part 1: Executive Summary

1. Project Overview

1.1 Introduction

Tyler Technologies (“Tyler”) is the largest and most established provider of integrated software and technology services focused solely on the public sector. Tyler’s end-to-end solutions empower public sector entities including local, state, provincial and federal government, to operate more efficiently and connect more transparently with their constituents and with each other. By connecting data and processes across disparate systems, Tyler’s solutions transform how clients gain actionable insights that solve problems in their communities.

1.2 Project Goals

This Statement of Work (“SOW”) documents the methodology, implementation stages, activities, and roles and responsibilities, and project scope listed in the Investment Summary of the Agreement between Tyler and the Fort Myers Beach (collectively the “Project”).

The overall goals of the project are to:

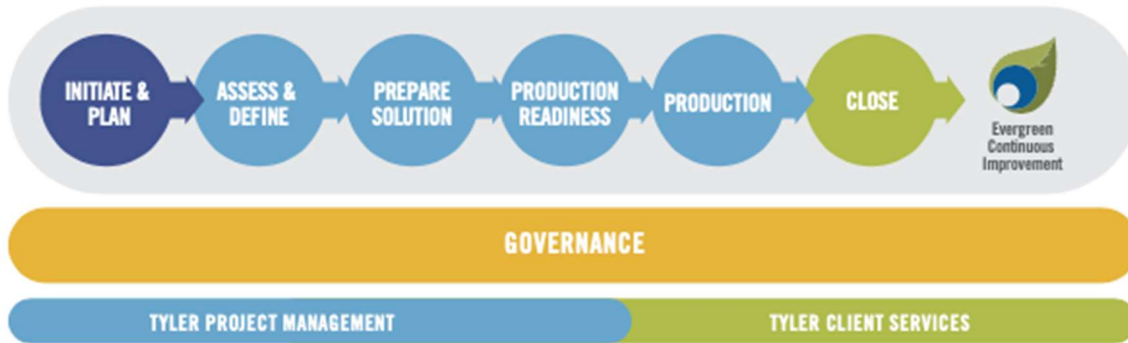
- Successfully implement the contracted scope on time and on budget
- Increase operational efficiencies and empower users to be more productive
- Improve accessibility and responsiveness to external and internal customer needs
- Overcome current challenges and meet future goals
- Providing a single, comprehensive, and integrated solution to manage business functions
- Streamline business processes through automation, integration, and workflows
- Provide a user-friendly user interface to promote system use and productivity
- Eliminate redundant data entry

1.3 Methodology

This is accomplished by the Fort Myers Beach and Tyler working as a partnership and Tyler utilizing its depth of implementation experience. While each Project is unique, all will follow Tyler’s six-stage methodology. Each of the six stages is comprised of multiple work packages, and each work package includes a narrative description, objectives, tasks, inputs, outputs/deliverables, assumptions, and a responsibility matrix.

Tailored specifically for Tyler’s public sector clients, the project methodology contains Stage Acceptance Control Points throughout each Phase to ensure adherence to scope, budget, timeline controls, effective communications, and quality standards. Clearly defined, the project methodology repeats consistently across Phases, and is scaled to meet the Fort Myers Beach’s complexity and organizational needs.

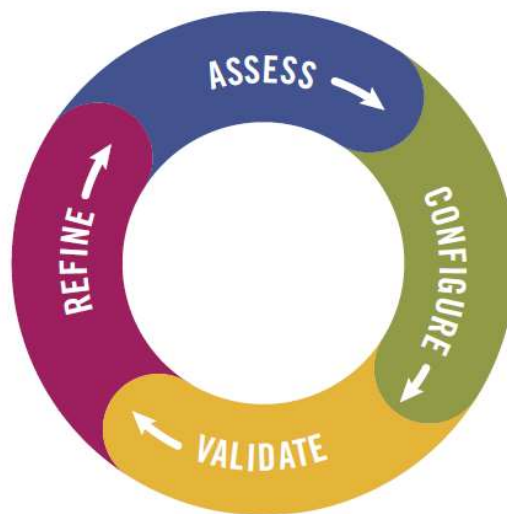
Tyler's Six Stage Project Methodology



The methodology adapts to both single-phase and multiple-phase projects.

To achieve Project success, it is imperative that both the Fort Myers Beach and Tyler commit to including the necessary leadership and governance. During each stage of the Project, it is expected that the Fort Myers Beach and Tyler Project teams work collaboratively to complete tasks. An underlying principle of Tyler's Implementation process is to employ an iterative model where the Fort Myers Beach's business processes are assessed, configured, validated, and refined cyclically in line with the project budget. This approach is used in multiple stages and work packages as illustrated in the graphic below.

Iterative Project Model



The delivery approach is systematic, which reduces variability and mitigates risks to ensure Project success. As illustrated, some stages, along with work packages and tasks, are intended to be overlapping by nature to complete the Project efficiently and effectively.

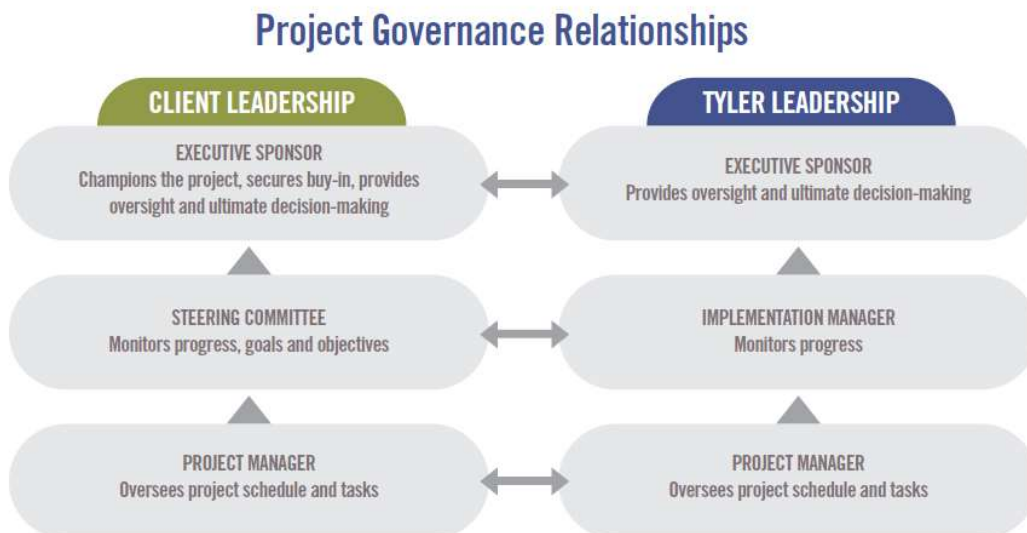
Part 2: Project Foundation

2. Project Governance

Project governance is the management framework within which Project decisions are made. The role of Project governance is to provide a decision-making approach that is logical, robust, and repeatable. This allows organizations to have a structured approach for conducting its daily business in addition to project related activities.

This section outlines the resources required to meet the business needs, objectives, and priorities for the Project, communicate the goals to other Project participants, and provide support and guidance to accomplish these goals. Project governance defines the structure for escalation of issues and risks, Change Control review and authority, and Organizational Change Management activities. Throughout the Statement of Work Tyler has provided RACI Matrices for activities to be completed throughout the implementation which will further outline responsibilities of different roles in each stage. Further refinement of the governance structure, related processes, and specific roles and responsibilities occurs during the Initiate & Plan Stage.

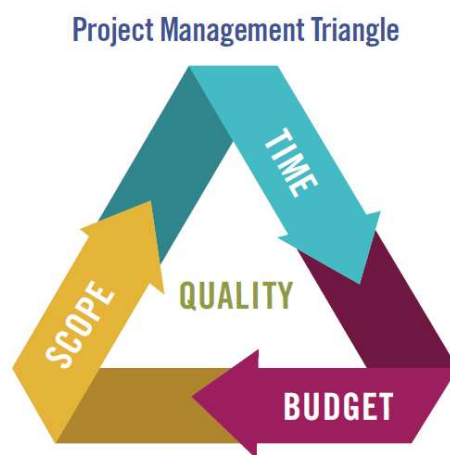
The chart below illustrates an overall team perspective where Tyler and the Fort Myers Beach collaborate to resolve Project challenges according to defined escalation paths. If project managers do not possess authority to determine a solution, resolve an issue, or mitigate a risk, Tyler implementation management and the Fort Myers Beach Steering Committee become the escalation points to triage responses prior to escalation to the Fort Myers Beach and Tyler executive sponsors. As part of the escalation process, each Project governance tier presents recommendations and supporting information to facilitate knowledge transfer and issue resolution. The Fort Myers Beach and Tyler executive sponsors serve as the final escalation point.



3. Project Scope Control

3.1 Managing Scope and Project Change

Project Management governance principles contend that there are three connected constraints on a Project: budget, timeline, and scope. These constraints, known as the “triple constraints” or project management triangle, define budget in terms of financial cost, labor costs, and other resource costs. Scope is defined as the work performed to deliver a product, service or result with the specified features and functions, while time is simply defined as the schedule. The Triple Constraint theory states that if you change one side of the triangle, the other two sides must be correspondingly adjusted. For example, if the scope of the Project is increased, cost and time to complete will also need to increase. The Project and executive teams will need to remain cognizant of these constraints when making impactful decisions to the Project. A simple illustration of this triangle is included here, showing the connection of each item and their relational impact to the overall Scope.



A pillar of any successful project is the ability to properly manage scope while allowing the appropriate level of flexibility to incorporate approved changes. Scope and changes within the project will be managed using the change control process outlined in the following section.

3.2 Change Control

It may become necessary to change the scope of this Project due to unforeseeable circumstances (e.g., new constraints or opportunities are discovered). This Project is being undertaken with the understanding that Project scope, schedule, and/or cost may need to change to produce optimal results for stakeholders. Changes to contractual requirements will follow the change control process specified in the final contract, and as described below.

3.3 Change Request Management

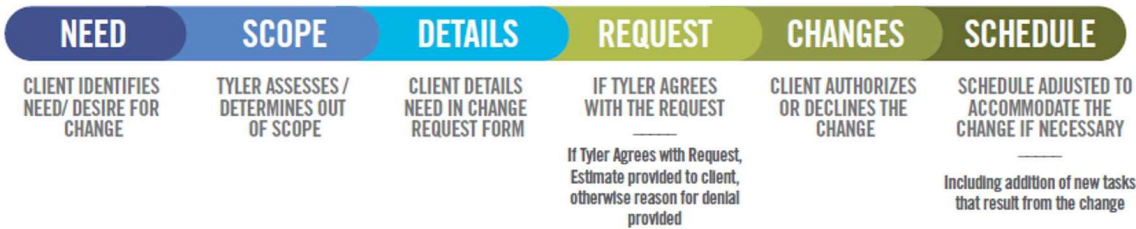
Should the need for a change to Project scope, schedule, and/or cost be identified during the Project, the change will be brought to the attention of the Steering Committee and an assessment of the change will occur. While such changes may result in additional costs and delays relative to the schedule, some changes may result in less cost to the Fort Myers Beach; for example, the Fort Myers Beach may decide it no longer

needs a deliverable originally defined in the Project. The Change Request will include the following information:

- The nature of the change.
- A good faith estimate of the additional cost or associated savings to the Fort Myers Beach, if any.
- The timetable for implementing the change.
- The effect on and/or risk to the schedule, resource needs or resource responsibilities.

The Fort Myers Beach will use its good faith efforts to either approve or disapprove any Change Request within ten (10) Business Days (or other period as mutually agreeable between Tyler and the Fort Myers Beach). Any changes to the Project scope, budget, or timeline must be documented and approved in writing using a Change Request form. These changes constitute a formal amendment to the Statement of Work and will supersede any conflicting term in the Statement of Work.

Change Request Process



4. Acceptance Process

The implementation of a Project involves many decisions to be made throughout its lifecycle. Decisions will vary from higher level strategy decisions to smaller, detailed Project level decisions. It is critical to the success of the Project that each Fort Myers Beach office or department designates specific individuals for making decisions on behalf of their offices or departments.

Both Tyler and the Fort Myers Beach will identify representative project managers. These individuals will represent the interests of all stakeholders and serve as the primary contacts between the two organizations.

The coordination of gaining Fort Myers Beach feedback and approval on Project deliverables will be critical to the success of the Project. The Fort Myers Beach project manager will strive to gain deliverable and decision approvals from all authorized Fort Myers Beach representatives. Given that the designated decision-maker for each department may not always be available, there must be a designated proxy for each decision point in the Project. Assignment of each proxy will be the responsibility of the leadership from each Fort Myers Beach department. The proxies will be named individuals that have the authorization to make decisions on behalf of their department.

The following process will be used for accepting Deliverables and Control Points:

- The Fort Myers Beach shall have five (5) business days from the date of delivery, or as otherwise mutually agreed upon by the parties in writing, to accept each Deliverable or Control Point. If the Fort Myers Beach does not provide acceptance or acknowledgement within five (5) business days, or the otherwise agreed upon timeframe, not to be unreasonably withheld, Tyler deems the Deliverable or Control Point as accepted.
- If the Fort Myers Beach does not agree the Deliverable or Control Point meets requirements, the Fort Myers Beach shall notify Tyler project manager(s), in writing, with reasoning within five (5) business days, or the otherwise agreed-upon timeframe, not to be unreasonably withheld, of receipt of the Deliverable.
- Tyler shall address any deficiencies and redeliver the Deliverable or Control Point. The Fort Myers Beach shall then have two (2) business days from receipt of the redelivered Deliverable or Control Point to accept or again submit written notification of reasons for rejecting the milestone. If the Fort Myers Beach does not provide acceptance within two (2) business days, or the otherwise agreed upon timeframe, not to be unreasonably withheld, Tyler deems the Deliverable or Control Point as accepted.

5. Roles and Responsibilities

The following defines the roles and responsibilities of each Project resource for the Fort Myers Beach and Tyler. Roles and responsibilities may not follow the organizational chart or position descriptions at the Fort Myers Beach, but are roles defined within the Project. It is common for individual resources on both the Tyler and Fort Myers Beach project teams to fill multiple roles. Similarly, it is common for some roles to be filled by multiple people.

5.1 Tyler Roles & Responsibilities

Tyler assigns a project manager prior to the start of each Phase of the Project (some Projects may only be one Phase in duration). Additional Tyler resources are assigned as the schedule develops and as needs arise.

5.1.1 Tyler Executive Manager

Tyler executive management has indirect involvement with the Project and is part of the Tyler escalation process. This team member offers additional support to the Project team and collaborates with other Tyler department managers as needed to escalate and facilitate implementation Project tasks and decisions.

- Provides clear direction for Tyler staff on executing on the Project Deliverables to align with satisfying the Fort Myers Beach 's overall organizational strategy.
- Authorizes required Project resources.
- Resolves all decisions and/or issues not resolved at the implementation management level as part of the escalation process.
- Acts as the counterpart to the Fort Myers Beach 's executive sponsor.

5.1.2 Tyler Implementation Manager

- Tyler implementation management has indirect involvement with the Project and is part of the Tyler escalation process. The Tyler project managers consult implementation management on issues and outstanding decisions critical to the Project. Implementation management works toward a solution with the Tyler Project Manager or with Fort Myers Beach management as appropriate. Tyler executive management is the escalation point for any issues not resolved at this level.
- Assigns Tyler Project personnel.
- Provides support for the Project team.
- Provides management support for the Project to ensure it is staffed appropriately and staff have necessary resources.
- Monitors Project progress including progress towards agreed upon goals and objectives.

5.1.3 Tyler Project Manager

- The Tyler project manager(s) provides oversight of the Project, coordination of Tyler resources between departments, management of the Project budget and schedule, effective risk, and issue management, and is the primary point of contact for all Project related items. As requested by the Fort Myers Beach, the Tyler Project Manager provides regular updates to the Fort Myers Beach Steering Committee and other Tyler governance members. Tyler Project Manager's role includes responsibilities in the following areas:

5.1.3.1 Contract Management

- Validates contract compliance throughout the Project.
- Ensures Deliverables meet contract requirements.
- Acts as primary point of contact for all contract and invoicing questions.
- Prepares and presents contract milestone sign-offs for acceptance by the Fort Myers Beach project manager(s).
- Coordinates Change Requests, if needed, to ensure proper Scope and budgetary compliance.

5.1.3.2 Planning

- Delivers project planning documents.
- Defines Project tasks and resource requirements.
- Develops initial Project schedule and Project Management Plan.

- Collaborates with the Fort Myers Beach project manager(s) to plan and schedule Project timelines to achieve on-time implementation.

5.1.3.3 Implementation Management

- Tightly manages Scope and budget of Project to ensure Scope changes and budget planned versus actual are transparent and handled effectively and efficiently.
- Establishes and manages a schedule and Tyler resources that properly support the Project Schedule and are also in balance with Scope/budget.
- Establishes risk/issue tracking/reporting process between the Fort Myers Beach and Tyler and takes all necessary steps to proactively mitigate these items or communicate with transparency to the Fort Myers Beach any items that may impact the outcomes of the Project.
- Collaborates with the Fort Myers Beach 's project manager(s) to establish key business drivers and success indicators that will help to govern Project activities and key decisions to ensure a quality outcome of the project.
- Collaborates with the Fort Myers Beach 's project manager(s) to set a routine communication plan that will aide all Project team members, of both the Fort Myers Beach and Tyler, in understanding the goals, objectives, status, and health of the Project.

5.1.3.4 Resource Management

- Acts as liaison between Project team and Tyler manager(s).
- Identifies and coordinates all Tyler resources across all applications, Phases, and activities including development, forms, installation, reports, implementation, and billing.
- Provides direction and support to Project team.
- Manages the appropriate assignment and timely completion of tasks as defined in the Project Schedule, task list, and Go-Live Checklist.
- Assesses team performance and adjusts as necessary.
- Consulted on in Scope 3rd party providers to align activities with ongoing Project tasks.

5.1.4 Tyler Implementation Consultant

- Completes tasks as assigned by the Tyler project manager(s).
- Documents activities for services performed by Tyler.
- Guides the Fort Myers Beach through software validation process following configuration.
- Assists during Go-Live process and provides support until the Fort Myers Beach transitions to Client Services.
- Facilitates training sessions and discussions with the Fort Myers Beach and Tyler staff to ensure adequate discussion of the appropriate agenda topics during the allotted time.

5.1.5 Tyler Sales

- Supports Sales to Implementation knowledge transfer during Initiate & Plan.
- Provides historical information, as needed, throughout implementation.
- Participates in pricing activities if additional licensing and/or services are needed.

5.1.6 Tyler Technical Services

- Maintains Tyler infrastructure requirements and design document(s).
- Involved in system infrastructure planning/review(s).
- Provides first installation of licensed software with initial database on servers.



- Supports and assists the project team with technical/environmental issues/needs.
- Deploys Tyler products.

5.2 Fort Myers Beach Roles & Responsibilities

Fort Myers Beach resources will be assigned prior to the start of each Phase of the Project. One person may be assigned to multiple Project roles.

5.2.1 Fort Myers Beach Executive Sponsor

The Fort Myers Beach executive sponsor provides support to the Project by providing strategic direction and communicating key issues about the Project and its overall importance to the organization. When called upon, the executive sponsor also acts as the final authority on all escalated Project issues. The executive sponsor engages in the Project, as needed, to provide necessary support, oversight, guidance, and escalation, but does not participate in day-to-day Project activities. The executive sponsor empowers the Fort Myers Beach steering committee, project manager(s), and functional leads to make critical business decisions for the Fort Myers Beach.

- Champions the project at the executive level to secure buy-in.
- Authorizes required project resources.
- Actively participates in organizational change communications.

5.2.2 Fort Myers Beach Steering Committee

The Fort Myers Beach steering committee understands and supports the cultural change necessary for the Project and fosters an appreciation for the Project's value throughout the organization. The steering committee oversees the Fort Myers Beach project manager and Project through participation in regular internal meetings. The Fort Myers Beach steering committee remains updated on all Project progress, Project decisions, and achievement of Project milestones. The Fort Myers Beach steering committee also serves as primary level of issue resolution for the Project.

- Works to resolve all decisions and/or issues not resolved at the project manager level as part of the escalation process.
- Attends all scheduled steering committee meetings.
- Provides support for the project team.
- Assists with communicating key project messages throughout the organization.
- Prioritizes the project within the organization.
- Ensures the project staffed appropriately and that staff have necessary resources.
- Monitors project progress including progress towards agreed upon goals and objectives.
- Has the authority to approve or deny changes impacting the following areas:
 - Cost
 - Scope
 - Schedule
 - Project Goals
 - Fort Myers Beach Policies
 - Needs of other client projects

5.2.3 Fort Myers Beach Project Manager

The Fort Myers Beach shall assign project manager(s) prior to the start of this project with overall responsibility and authority to make decisions related to Project Scope, scheduling, and task assignment. The Fort Myers Beach Project Manager should communicate decisions and commitments to the Tyler project manager(s) in a timely and efficient manner. When the Fort Myers Beach project manager(s) do not have the knowledge or authority to make decisions, he or she engages the necessary resources to participate in discussions and make decisions in a timely fashion to avoid Project delays. The Fort Myers Beach project manager(s) are responsible for reporting to the Fort Myers Beach steering committee and determining appropriate escalation points.

5.2.3.1 Contract Management

- Validates contract compliance throughout the project.
- Ensures that invoicing and Deliverables meet contract requirements.
- Acts as primary point of contact for all contract and invoicing questions. Collaborates on and approves Change Requests, if needed, to ensure proper scope and budgetary compliance.

5.2.3.2 Planning

- Reviews and accepts project planning documents.
- Defines project tasks and resource requirements for the Fort Myers Beach project team.
- Collaborates in the development and approval of the project schedule.
- Collaborates with Tyler project manager(s) to plan and schedule project timelines to achieve on-time implementation.

5.2.3.3 Implementation Management

- Tightly manages project budget and scope.
- Collaborates with Tyler project manager(s) to establish a process and approval matrix to ensure that scope changes and budget (planned versus actual) are transparent and handled effectively and efficiently.
- Collaborates with Tyler project manager to establish and manage a schedule and resource plan that properly supports the project schedule as a whole and is also in balance with scope and budget.
- Collaborates with Tyler project manager(s) to establish risk and issue tracking and reporting process between the Fort Myers Beach and Tyler and takes all necessary steps to proactively mitigate these items or communicate with transparency to Tyler any items that may impact the outcomes of the project.
- Collaborates with Tyler project manager(s) to establish key business drivers and success indicators that will help to govern project activities and key decisions to ensure a quality outcome of the project.
- Routinely communicates with both the Fort Myers Beach staff and Tyler, aiding in the understanding of goals, objectives, current status, and health of the project by all team members.
- Manages the requirements gathering process and ensure timely and quality business requirements are being provided to Tyler.

5.2.3.4 Resource Management

- Acts as liaison between project team and stakeholders.
- Identifies and coordinates all Fort Myers Beach resources across all modules, phases, and activities including data conversions, forms design, hardware and software installation, reports building, and satisfying invoices.

- Provides direction and support to project team.
- Builds partnerships among the various stakeholders, negotiating authority to move the project forward.
- Manages the appropriate assignment and timely completion of tasks as defined.
- Assesses team performance and takes corrective action, if needed.
- Provides guidance to Fort Myers Beach technical teams to ensure appropriate response and collaboration with Tyler Technical Support Teams to ensure timely response and appropriate resolution.
- Owns the relationship with in-Scope 3rd party providers and aligns activities with ongoing project tasks.
- Ensures that users have appropriate access to Tyler project toolsets as required.
- Conducts training on proper use of toolsets.
- Validates completion of required assignments using toolsets.

5.2.4 Fort Myers Beach Functional Leads

- Makes business process change decisions under time sensitive conditions.
- Communicates existing business processes and procedures to Tyler consultants.
- Assists in identifying business process changes that may require escalation.
- Contributes business process expertise for Current & Future State Analysis.
- Identifies and includes additional subject matter experts to participate in Current & Future State Analysis.
- Validates that necessary skills have been retained by end users.
- Provides End Users with dedicated time to complete required homework tasks.
- Acts as an ambassador/champion of change for the new process and provide business process change support.
- Identifies and communicates any additional training needs or scheduling conflicts to the Fort Myers Beach project manager.
- Actively participates in all aspects of the implementation, including, but not limited to, the following key activities:
 - Task completion
 - Stakeholder Meeting
 - Project Management Plan development
 - Schedule development
 - Maintenance and monitoring of risk register
 - Escalation of issues
 - Communication with Tyler project team
 - Coordination of Fort Myers Beach resources
 - Attendance at scheduled sessions
 - Change management activities
 - Modification specification, demonstrations, testing and approval assistance
 - Data analysis assistance
 - Decentralized end user training
 - Process testing
 - Solution Validation

5.2.5 Fort Myers Beach Power Users

- Participate in project activities as required by the project team and project manager(s).
- Provide subject matter expertise on the Fort Myers Beach business processes and requirements.



- Act as subject matter experts and attend Current & Future State Analysis sessions as needed.
- Attend all scheduled training sessions.
- Participate in all required post-training processes as needed throughout project.
- Test all application configuration to ensure it satisfies business process requirements.
- Become application experts.
- Participate in Solution Validation.
- Adopt and support changed procedures.
- Complete all deliverables by the due dates defined in the project schedule.
- Demonstrate competency with Tyler products processing prior to Go-live.
- Provide knowledge transfer to the Fort Myers Beach staff during and after implementation.

5.2.6 Fort Myers Beach End Users

- Attend all scheduled training sessions.
- Become proficient in application functions related to job duties.
- Adopt and utilize changed procedures.
- Complete all deliverables by the due dates defined in the project schedule.
- Utilize software to perform job functions at and beyond Go-live.

5.2.7 Fort Myers Beach Technical Lead

- Coordinates updates and releases with Tyler as needed.
- Coordinates the copying of source databases to training/testing databases as needed for training days.
- Coordinates and adds new users, printers and other peripherals as needed.
- Validates that all users understand log-on process and have necessary permission for all training sessions.
- Coordinates interface development for Fort Myers Beach third party interfaces.
- Develops or assists in creating reports as needed.
- Ensures on-site system meets specifications provided by Tyler.
- Assists with software installation as needed.

5.2.7.1 Fort Myers Beach Upgrade Coordination

- Becomes familiar with the software upgrade process and required steps.
- Becomes familiar with Tyler's releases and updates.
- Utilizes Tyler resources to stay abreast of the latest Tyler releases and updates, as well as the latest helpful tools to manage the Fort Myers Beach's software upgrade process.
- Assists with the software upgrade process during implementation.
- Manages software upgrade activities post-implementation.
- Manages software upgrade plan activities.
- Coordinates software upgrade plan activities with Fort Myers Beach and Tyler resources.
- Communicates changes affecting users and department stakeholders.
- Obtains department stakeholder acceptance to upgrade production environment.

5.2.8 Fort Myers Beach Change Management Lead

- Validates that users receive timely and thorough communication regarding process changes.
- Provides coaching to supervisors to prepare them to support users through the project changes.



- Identifies the impact areas resulting from project activities and develops a plan to address them proactively.
- Identifies areas of resistance and develops a plan to reinforce the change.
- Monitors post-production performance and new process adherence.



Part 3: Project Plan

6. Project Stages

Work Breakdown Structure

The Work Breakdown Structure (WBS) is a hierarchical representation of a Project or Phase broken down into smaller, more manageable components. The top-level components are called “Stages” and the second level components are called “Work Packages”. The work packages, shown below each stage, contain the high-level work to be done. The detailed Project Schedule, developed during Project/Phase Planning and finalized during subsequent stages, lists the tasks to be completed within each work package. Each stage ends with a “Control Point”, confirming the work performed during that stage of the Project has been accepted by the Fort Myers Beach.

Work Breakdown Structure (WBS)

1. Initiate & Plan	2. Assess & Define	3. Prepare Solution	4. Production Readiness	5. Production	6. Close
1.1 Initial Coordination	2.1 Solution Orientation	3.1 Initial System Deployment	4.1 Solution Validation	5.1 Go Live	6.1 Phase Close Out
1.2 Project/Phase Planning	2.2 Current & Future State Analysis	3.2 Configuration	4.2 Go Live Readiness	5.2 Transition to Client Services	6.2 Project Close Out
1.3 Infrastructure Planning	2.3 Modification Analysis	3.3 Process Refinement	4.3 End User Training	5.3 Post Go Live Activities	
1.4 Stakeholder Meeting	2.4 Conversion Assessment	3.4 Conversion Delivery			
1.5 GIS Planning*	2.5 Data Assessment	3.5 Data Delivery			
		3.6 Modifications*			

**Items noted with an asterisk in the graphic above relate to specific products and services. If those products and services are not included in the scope of the contract, these specific work packages will be noted as “This work package is not applicable” in Section 6 of the Statement of Work.*

6.1 Initiate and Plan

The Initiate and Plan stage involves Project initiation, infrastructure, and planning. This stage creates a foundation for the Project by identifying and establishing sequence and timing for each Phase as well as verifying scope for the Project. This stage will be conducted at the onset of the Project, with a few unique items being repeated for the additional Phases as needed.

6.1.1 Initial Coordination

Prior to Project commencement, Tyler management assigns project manager(s). Additional Project resources will be assigned later in the Project as a Project schedule is developed. Tyler provides the Fort Myers Beach with initial Project documents used to gather names of key personnel, their functional role as it pertains to the Project, as well as any blackout dates to consider for future planning. the Fort Myers Beach gathers the information requested by the provided deadline ensuring preliminary planning and scheduling can be conducted moving the Project forward in a timely fashion. Internally, the Tyler Project Manager(s) coordinate with sales to ensure transfer of vital information from the sales process prior to scheduling a Project Planning Meeting with the Fort Myers Beach's team. During this step, Tyler will work with the Fort Myers Beach to establish the date(s) for the Project and Phase Planning session.

Objectives:

- Formally launch the project.
- Establish project governance.
- Define and communicate governance for Tyler.
- Identify Fort Myers Beach project team.

STAGE 1	Initial Coordination																
	Tyler								Fort Myers Beach								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Tyler project team is assigned	A	R	C	I	I	I	I		I		I						
Fort Myers Beach project team is assigned									A	I	R	I	I	I			
Provide initial project documents to the Fort Myers Beach		A	R	C			C		I		I						
Gather preliminary information requested			I						A		R	C		C		C	C
Sales to implementation knowledge transfer		A	R	I	I	I	I				I						

RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power Users)	Department Heads	End Users	Technical Leads
Schedule and conduct planning session(s)		A	R						I		C	C	I				
Develop Project Management Plan		A	R						I		C	C	I				
Develop initial project schedule		A	R	I	I	I	I		I	I	C	C	I	I	C		I

Inputs	Contract documents
	Statement of Work
	Guide to Starting Your Project

Outputs / Deliverables	Acceptance Criteria [only] for Deliverables	
	Project Management Plan	Delivery of document
	Project Operational Plan	Delivery of document
	Initial Project Schedule	Fort Myers Beach provides acceptance of schedule based on resource availability, project budget, and goals.

Work package assumptions:

- Fort Myers Beach has reviewed and completed the Guide to Starting Your Project document.

6.1.3 Infrastructure Planning

Procuring required hardware and setting it up properly is a critical part of a successful implementation. Tyler will be responsible for building the environments for a hosted/SaaS deployment, unless otherwise identified in the Agreement. . The Fort Myers Beach is responsible for the installation, setup and maintenance of all peripheral devices.

Objectives:

- Ensure the Fort Myers Beach's infrastructure meets Tyler's application requirements.
- Ensure the Fort Myers Beach's infrastructure is scheduled to be in place and available for use on time.

STAGE 1	Infrastructure Planning	
	Tyler	Fort Myers Beach

RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts	Department Heads	End Users	Technical Leads
Initial Infrastructure Communication		A	R		C		C				C						C
Schedule Environment Availability		A	R				C				I						

Inputs	Initial Infrastructure Requirements
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Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Completed Infrastructure Requirements	Delivery of Requirements

6.1.4 Stakeholder Meeting

Communication of the Project planning outcomes to the Fort Myers Beach Project team, executives and other key stakeholders is vital to Project success. The Stakeholder meeting is a strategic activity to inform, engage, gain commitment, and instill confidence in the Fort Myers Beach team. During the meeting, the goals and objectives of the Project will be reviewed along with detail on Project scope, implementation methodology, roles and responsibilities, Project timeline and schedule, and keys to Project success.

Objectives:

- Formally present and communicate the project activities and timeline.
- Communicate project expectations.

STAGE 1	Stakeholder Meeting																
	Tyler								Fort Myers Beach								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power)	Department Heads	End Users	Technical Leads
Create Stakeholder Meeting Presentation	I	A	R	I	I				I	I	C		I				
Review Stakeholder Meeting Presentation		I	C						A		R		C				

Perform Stakeholder Meeting Presentation	I	A	R	I	I					I	I	C	I	I	I	I	I
--	---	---	---	---	---	--	--	--	--	---	---	---	---	---	---	---	---

Inputs	Agreement
	SOW
	Project Management Plan

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Stakeholder Meeting Presentation	

Work package assumptions:

- None

6.1.5 This work package is not applicable.

6.1.6 Control Point 1: Initiate & Plan Stage Acceptance

Acceptance criteria for this stage includes completion of all criteria listed below.

Note: Advancement to the Assess & Define stage is not dependent upon Tyler's receipt of this stage acceptance.

Initiate & Plan Stage Deliverables:

- Project Management Plan
- Initial Project Schedule

Initiate & Plan stage acceptance criteria:

- All stage deliverables accepted based on acceptance criteria previously defined
- Project governance defined
- Project portal made available to the Fort Myers Beach
- Stakeholder meeting complete

6.2 Assess & Define

The Assess & Define stage will provide an opportunity to gather information related to current Fort Myers Beach business processes. This information will be used to identify and define business processes utilized with Tyler software. The Fort Myers Beach collaborates with Tyler providing complete and accurate information to Tyler staff and assisting in analysis, understanding current workflows and business processes.

6.2.1 Solution Orientation

The Solution Orientation provides the Project stakeholders a high-level understanding of the solution functionality prior to beginning the current and future state analysis. The primary goal is to establish a foundation for upcoming conversations regarding the design and configuration of the solution.

Tyler utilizes a variety of tools for the Solution Orientation, focusing on Fort Myers Beach team knowledge transfer such as: eLearning, documentation, or walkthroughs. The Fort Myers Beach team will gain a better understanding of the major processes and focus on data flow, the connection between configuration options and outcome, integration, and terminology that may be unique to Tyler's solution.

Objectives:

- Provide a basic understanding of system functionality.
- Prepare the Fort Myers Beach for current and future state analysis.

STAGE 2	Solution Orientation																
	Tyler								Fort Myers Beach								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Provide pre-requisites			A	R							I	I		I	I		I
Complete pre-requisites											A	R		C			C
Conduct orientation			A	R							I	I		I	I		I

Inputs	Solution orientation materials
	Training Plan

6.2.2 Current & Future State Analysis

The Current & Future State Analysis provides the Project stakeholders and Tyler an understanding of process changes that will be achieved with the new system.

The Fort Myers Beach and Tyler will evaluate current state processes, options within the new software, pros and cons of each based on current or desired state and make decisions about the future state configuration and processing. This may occur before or within the same timeframe as the configuration work package. The options within the new software will be limited to the scope of this implementation and will make use of standard Tyler functionality.

The Fort Myers Beach will adopt the existing Tyler solution wherever possible to avoid project schedule and quality risk from over customization of Tyler products. It is the Fort Myers Beach's responsibility to verify that in-scope requirements are being met throughout the implementation if functional requirements are defined as part of the contract. The following guidelines will be followed when evaluating if a modification to the product is required:

- A reasonable business process change is available.
- Functionality exists which satisfies the requirement.
- Configuration of the application satisfies the requirement.
- An in-scope modification satisfies the requirement.

Requirements that are not met will follow the agreed upon change control process and can have impacts on the project schedule, scope, budget, and resource availability.

STAGE 2	Current & Future State Analysis																
	Tyler							Fort Myers Beach									
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Current State process review			A	R	I	I	I				C	C	C	C			C
Discuss future-state options			A	R	C	C	C				C	C	C	C			C
Make future-state decisions (non-COTS)			C	C	C	C	C				A	R	I	C			C
Document anticipated configuration options required to support future state			A	R	C	C	C				I	I	I	I			I

Inputs	Fort Myers Beach current state documentation
	Solution Orientation completion

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Documentation that describes future-state decisions and configuration options to support future-state decisions.	Delivery of document

Work package assumptions:

- Fort Myers Beach attendees possess sufficient knowledge and authority to make future state decisions.
- The Fort Myers Beach is responsible for any documentation of current state business processes.
- The Fort Myers Beach can effectively communicate current state processes.

6.2.3 This work package is not applicable.

6.2.4 This work package is not applicable.

6.2.5 This work package is not applicable.

6.2.6 Control Point 2: Assess & Define Stage Acceptance

Acceptance criteria for this Stage includes completion of all criteria listed below.

Note: Advancement to the Prepare Solution Stage is dependent upon Tyler's receipt of the Stage Acceptance.

Assess & Define Stage Deliverables:

- Documentation of future state decisions and configuration options to support future state decisions.
- Modification specification document.
- Assess & Define Stage Acceptance Criteria:
- All stage deliverables accepted based on criteria previously defined.
- Solution Orientation is delivered.

6.3 Prepare Solution

During the Prepare Solution stage, information gathered during the Initiate & Plan and Assess & Define stages will be used to install and configure the Tyler software solution. Software configuration will be validated by the Fort Myers Beach against future state decisions defined in previous stages and processes refined as needed to ensure business requirements are met.

6.3.1 Initial System Deployment

The timely availability of the Tyler Solution is important to a successful Project implementation. The success and timeliness of subsequent work packages are contingent upon the initial system deployment of Tyler Licensed Software on an approved network and infrastructure. Delays in executing this work package can affect the project schedule.

Objectives:

- All licensed software is installed and operational.
- The Fort Myers Beach can access the software.

STAGE 3	Initial System Deployment (Hosted/SaaS)*	
	Tyler	Fort Myers Beach

RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power Users)	Department Heads	End Users	Technical Leads
Prepare hosted environment			A				R				I						C
Install Licensed Software for Included Environments			A				R				I						C
Install Licensed Software on Fort Myers Beach Devices (if applicable)			I				C				A						R
Tyler System Administration Training (if applicable)			A				R				I						C

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Licensed Software is Installed on the Server(s)	Software is accessible
	Licensed Software is Installed on Fort Myers Beach Devices (if applicable)	Software is accessible
	Installation Checklist/System Document	

Work package assumptions:

- The most current available version of the Tyler Licensed Software will be installed.
- The Fort Myers Beach will provide network access for Tyler modules, printers, and Internet access to all applicable Fort Myers Beach and Tyler Project staff.

6.3.2 Configuration

The purpose of Configuration is to prepare the software product for validation.

Tyler staff collaborates with the Fort Myers Beach to complete software configuration based on the outputs of the future state analysis performed during the Assess and Define Stage. The Fort Myers Beach collaborates with Tyler staff iteratively to validate software configuration.

Objectives:

- Software is ready for validation.

- Educate the Fort Myers Beach Power User how to configure and maintain software.
- Prepare standard interfaces for process validation (if applicable).

STAGE 3	Configuration																
	Tyler							Fort Myers Beach									
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Conduct configuration training			A	R							I	C		C			
Complete Tyler configuration tasks (where applicable)			A	R							I	I		I			
Complete Fort Myers Beach configuration tasks (where applicable)			I	C							A	R		C			
Standard interfaces configuration and training (if applicable)			A	R			C				I	C		C			C
Updates to Solution Validation testing plan			C	C							A	R		C			C

Inputs	Documentation that describes future state decisions and configuration options to support future state decisions.
--------	--

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Configured System	

Work package assumptions:

- Tyler provides guidance for configuration options available within the Tyler software. The Fort Myers Beach is responsible for making decisions when multiple options are available.

6.3.3 Process Refinement

Tyler will educate the Fort Myers Beach users on how to execute processes in the system to prepare them for the validation of the software. The Fort Myers Beach collaborates with Tyler staff iteratively to validate software configuration options to support future state.

Objectives:

- Ensure that the Fort Myers Beach understands future state processes and how to execute the processes in the software.
- Refine each process to meet the business requirements.
- Validate standard interfaces, where applicable.
- Validate forms and reports, where applicable.

STAGE 3	Process Refinement																
	Tyler								Fort Myers Beach								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power Users)	Department Heads	End Users	Technical Leads
Conduct process training			A	R							I	C	I	C			
Confirm process decisions			I	C						A	R	C	I	C			
Test configuration			I	C							A	R		C			
Refine configuration (Fort Myers Beach Responsible)			I	C							A	R		C			
Refine configuration (Tyler Responsible)			A	R							I	I		I			
Validate interface process and results			I	C			C				A	R		C			C
Update Fort Myers Beach-specific process documentation (if applicable)			I	C							A	R		C			
Updates to Solution Validation testing plan			C	C							A	R		C			C

Inputs	Initial Configuration
	Documentation that describes future state decisions and configuration options to support future state decisions.
	Solution validation test plan

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Updated solution validation test plan	

	Completed Fort Myers Beach-specific process documentation (completed by Fort Myers Beach)	
--	---	--

Work package assumptions:

- None

6.3.4 This work package is not applicable.

6.3.5 This work package is not applicable.

6.3.6 This work package is not applicable.

6.3.7 Control Point 3: Prepare Solution Stage Acceptance

Acceptance criteria for this Stage includes all criteria listed below in each Work Package.

Note: Advancement to the Production Readiness Stage is dependent upon Tyler’s receipt of the Stage Acceptance.

Prepare Solution Stage Deliverables:

- Licensed software is installed.
- Installation checklist/system document.
- Updated solution design document (Data & Insights only).
- Prioritized data sets for review in Tyler system (Data & Insights only).

Prepare Solution Stage Acceptance Criteria:

- All stage deliverables accepted based on criteria previously defined.
- Software is configured.
- Solution validation test plan has been reviewed and updated if needed.

6.4 Production Readiness

Activities in the Production Readiness stage will prepare the Fort Myers Beach team for go-live through solution validation, the development of a detailed go-live plan and end user training. A readiness assessment will be conducted with the Fort Myers Beach to review the status of the project and the organizations readiness for go-live.

6.4.1 Solution Validation

Solution Validation is the end-to-end software testing activity to ensure that the Fort Myers Beach verifies all aspects of the Project (hardware, configuration, business processes, etc.) are functioning properly, and validates that all features and functions per the contract have been deployed for system use.

Objectives:

- Validate that the solution performs as indicated in the solution validation plan.

- Ensure the Fort Myers Beach organization is ready to move forward with go-live and training (if applicable).

STAGE 4	Solution Validation																
	Tyler								Fort Myers Beach								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Update Solution Validation plan			A	R	C						C	C		C			
Update test scripts (as applicable)			C	C	C						A	R		C			
Perform testing			C	C	C						A	R		C			
Document issues from testing			C	C	C						A	R		C			
Perform required follow-up on issues			A	R	C						C	C		C			

Inputs	Solution Validation plan
	Completed work product from prior stages (configuration, business process, etc.)

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Solution Validation Report	Fort Myers Beach updates report with testing results

Work package assumptions:

- Designated testing environment has been established.
- Testing includes current phase activities or deliverables only.

6.4.2 Go-Live Readiness

Tyler and the Fort Myers Beach will ensure that all requirements defined in Project planning have been completed and the Go-Live event can occur, as planned. A go-live readiness assessment will be completed identifying risks or actions items to be addressed to ensure the Fort Myers Beach has considered its ability to successfully Go-Live. Issues and concerns will be discussed, and mitigation options documented. Tyler and the Fort Myers Beach will jointly agree to move forward with transition to production. Expectations for final preparation and critical dates for the weeks leading into and during the Go-Live week will be planned in detail and communicated to Project teams.

Objectives:

- Action plan for go-live established.
- Assess go-live readiness.
- Stakeholders informed of go-live activities.

STAGE 4	Go-Live Readiness																
	Tyler								Fort Myers Beach								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Perform Readiness Assessment	I	A	R	C	C	I	C	I	I	I	I		I				I
Conduct Go-Live planning session		A	R	C							C	C	C	C	C		C
Order peripheral hardware (if applicable)			I							A	R						C
Confirm procedures for Go-Live issue reporting & resolution		A	R	I	I	I	I				C	C	I	I	I	I	I
Develop Go-Live checklist		A	R	C	C						C	C	I	C			C
Final system infrastructure review (where applicable)			A				R				C						C

Inputs	Future state decisions
	Go-live checklist

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Updated go-live checklist	Updated Action plan and Checklist for go-live delivered to the Fort Myers Beach

Work package assumptions:

- None

6.4.3 End User Training

End User Training is a critical part of any successful software implementation. Using a training plan previously reviewed and approved, the Project team will organize and initiate the training activities.

Tyler Led: Tyler provides training for all applicable users. One or multiple occurrences of each scheduled training or implementation topic will be covered.

Tyler will provide standard application documentation for the general use of the software. It is not Tyler's responsibility to develop Fort Myers Beach specific business process documentation. Fort Myers Beach-led

training labs using Fort Myers Beach specific business process documentation if created by the Fort Myers Beach can be added to the regular training curriculum, enhancing the training experiences of the end users.

Objectives:

- End users are trained on how to use the software prior to go-live.
- The Fort Myers Beach is prepared for on-going training and support of the application.

STAGE 4	End User Training																
	Tyler								Fort Myers Beach								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Update training plan		A	R	C							C		I		C		
End User training (Tyler-led)		A	R	C							C	C	I	C	C	C	
Train-the-trainer		A	R	C							C	C	I	C			
End User training (Fort Myers Beach-led)			C	C							A	R	I	C	C	C	

Inputs	Training Plan
	List of End Users and their Roles / Job Duties
	Configured Tyler System

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	End User Training	Fort Myers Beach signoff that training was delivered

Work package assumptions:

- The Fort Myers Beach project team will work with Tyler to jointly develop a training curriculum that identifies the size, makeup, and subject-area of each of the training classes.
- Tyler will work with the Fort Myers Beach as much as possible to provide end-user training in a manner that minimizes the impact to the daily operations of Fort Myers Beach departments.
- The Fort Myers Beach will be responsible for training new users after go-live (exception—previously planned or regular training offerings by Tyler).

6.4.4 Control Point 4: Production Readiness Stage Acceptance

Acceptance criteria for this stage includes all criteria listed below. Advancement to the Production stage is dependent upon Tyler's receipt of the stage acceptance.

Production Readiness stage deliverables:

- Solution Validation Report.
- Update go-live action plan and/or checklist.
- End user training.

Production Readiness stage acceptance criteria:

- All stage deliverables accepted based on criteria previously defined.
- Go-Live planning session conducted.

6.5 Production

Following end user training the production system will be fully enabled and made ready for daily operational use as of the scheduled date. Tyler and the Fort Myers Beach will follow the comprehensive action plan laid out during Go-Live Readiness to support go-live activities and minimize risk to the Project during go-live. Following go-live, Tyler will work with the Fort Myers Beach to verify that implementation work is concluded, post go-live activities are scheduled, and the transition to Client Services is complete for long-term operations and maintenance of the Tyler software.

6.5.1 Go-Live

Following the action plan for Go-Live, defined in the Production Readiness stage, the Fort Myers Beach and Tyler will complete work assigned to prepare for Go-Live.

Tyler staff collaborates with the Fort Myers Beach during Go-Live activities. The Fort Myers Beach transitions to Tyler software for day-to day business processing.

Some training topics are better addressed following Go-Live when additional data is available in the system or based on timing of applicable business processes and will be scheduled following Go-Live per the Project Schedule.

Objectives:

- Execute day to day processing in Tyler software.
- Fort Myers Beach data available in Production environment.

STAGE 5	Go-Live																
	Tyler								Fort Myers Beach								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads

Provide final source data extract, if applicable			C		C						A						R
Final source data pushed into production environment, if applicable			A	C	R						I	C		C			C
Proof final converted data, if applicable			C	C	C						A	R		C			
Complete Go-Live activities as defined in the Go-Live action plan			C	C	C					A	R	C	I	C			
Provide Go-Live assistance			A	R	C	C		I			C	C	I	C		I	C

Inputs	Comprehensive Action Plan for Go-Live																
	Final source data (if applicable)																

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Data is available in production environment	Fort Myers Beach confirms data is available in production environment

Work package assumptions:

- The Fort Myers Beach will complete activities documented in the action plan for Go-Live as scheduled.
- External stakeholders will be available to assist in supporting the interfaces associated with the Go-Live live process.
- The Fort Myers Beach business processes required for Go-Live are fully documented and tested.
- The Fort Myers Beach Project team and subject matter experts are the primary point of contact for the end users when reporting issues during Go-Live.
- The Fort Myers Beach Project Team and Power User's provide business process context to the end users during Go-Live.

6.5.2 Transition to Client Services

This work package signals the conclusion of implementation activities for the Phase or Project with the exception of agreed-upon post Go-Live activities. The Tyler project manager(s) schedules a formal transition of the Fort Myers Beach onto the Tyler Client Services team, who provides the Fort Myers Beach with assistance following Go-Live, officially transitioning the Fort Myers Beach to operations and maintenance.

Objectives:

- Ensure no critical issues remain for the project teams to resolve.
- Confirm proper knowledge transfer to the Fort Myers Beach teams for key processes and subject areas.

STAGE 5	Transition to Client Services	
	Tyler	Fort Myers Beach



RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power Users)	Department Heads	End Users	Technical Leads
Transfer Fort Myers Beach to Client Services and review issue reporting and resolution processes	I	I	A	I	I			R	I	I	C	C		C			
Review long term maintenance and continuous improvement			A					R			C	C		C			

Inputs	Open item/issues List
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Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Client Services Support Document	

Work package assumptions:

- No material project issues remain without assignment and plan.

6.5.3 Post Go-Live Activities

Some implementation activities are provided post-production due to the timing of business processes, the requirement of actual production data to complete the activities, or the requirement of the system being used in a live production state.

Objectives:

- Schedule activities that are planned for after Go-Live.
- Ensure issues have been resolved or are planned for resolution before phase or project close.

STAGE 5	Post Go-Live Activities	
	Tyler	Fort Myers Beach

RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power Users)	Department Heads	End Users	Technical Leads
Schedule contracted activities that are planned for delivery after go-live		A	R	C	C	C	C	I			C	C	I	C			C
Determine resolution plan in preparation for phase or project close out		A	R	C	C	C		I			C	C	I	C			

Inputs	List of post Go-Live activities
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Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Updated issues log	

Work package assumptions:

- System is being used in a live production state.

6.5.4 Control Point 5: Production Stage Acceptance

Acceptance criteria for this Stage includes completion of all criteria listed below:

- Advancement to the Close stage is not dependent upon Tyler's receipt of this Stage Acceptance.
- Converted data is available in production environment.

Production Stage Acceptance Criteria:

- All stage deliverables accepted based on criteria previously defined.
- Go-Live activities defined in the Go-Live action plan completed.
- Client services support document is provided.

6.6 Close

The Close stage signifies full implementation of all products purchased and encompassed in the Phase or Project. The Fort Myers Beach transitions to the next cycle of their relationship with Tyler (next Phase of implementation or long-term relationship with Tyler Client Services).

6.6.1 Phase Closeout

This work package represents Phase completion and signals the conclusion of implementation activities for the Phase. The Tyler Client Services team will assume ongoing support of the Fort Myers Beach for systems implemented in the Phase.

Objectives:

- Agreement from Tyler and the Fort Myers Beach teams that activities within this phase are complete.

STAGE 6	Phase Close Out																
	Tyler								Fort Myers Beach								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Reconcile project budget and status of contract Deliverables	I	A	R						I	I	C						
Hold post phase review meeting		A	R	C	C	C	C				C	C	C	C			C
Release phase-dependent Tyler project resources	A	R	I								I						

Participants	Tyler	Fort Myers Beach
	Project Leadership	Project Manager
	Project Manager	Project Sponsor(s)
	Implementation Consultants	Functional Leads, Power Users, Technical Leads
	Technical Consultants (Conversion, Deployment, Development)	
	Client Services	

Inputs	Contract
	Statement of Work
	Project artifacts

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Final action plan (for outstanding items)	
	Reconciliation Report	
	Post Phase Review	

Work package assumptions:

- Tyler deliverables for the phase have been completed.

6.6.2 Project Closeout

Completion of this work package signifies final acceptance and formal closing of the Project.

At this time the Fort Myers Beach may choose to begin working with Client Services to look at continuous improvement Projects, building on the completed solution.

Objectives:

- Confirm no critical issues remain for the project teams to resolve.
- Determine proper knowledge transfer to the Fort Myers Beach teams for key processes and subject areas has occurred.
- Verify all deliverables included in the Agreement are delivered.

STAGE 6	Project Close Out																
	Tyler								Fort Myers Beach								
RACI MATRIX KEY: R = Responsible A = Accountable C = Consulted I = Informed	Executive Manager	Implementation Manager	Project Manager	Implementation Consultant	Data Experts	Modification Services	Technical Services	Client Services	Executive Sponsor	Steering Committee	Project Manager	Functional Leads	Change Management Leads	Subject Matter Experts (Power	Department Heads	End Users	Technical Leads
Conduct post project review		A	R	C	C	C	C				C	C	C	C			C
Deliver post project report to Fort Myers Beach and Tyler leadership	I	A	R						I	I	C						
Release Tyler project resources	A	R	I								I						

Inputs	Contract
	Statement of Work

Outputs / Deliverables		Acceptance Criteria [only] for Deliverables
	Post Project Report	Fort Myers Beach acceptance; Completed report indicating all project Deliverables and milestones have been completed

Work package assumptions:

- All project implementation activities have been completed and approved.
- No critical project issues remain that have not been documented and assigned.
- Final project budget has been reconciled and invoiced.
- All Tyler deliverables have been completed.

6.6.3 Control Point 6: Close Stage Acceptance

Acceptance criteria for this Stage includes completion of all criteria listed below.

Close Stage Deliverables:

- Post Project Report.

Close Stage Acceptance Criteria:

- Completed report indicating all Project deliverables and milestones have been completed.

7. General Assumptions

Tyler and the Fort Myers Beach will use this SOW as a guide for managing the implementation of the Tyler Project as provided and described in the Agreement. There are a few assumptions which, when acknowledged and adhered to, will support a successful implementation. Assumptions related to specific work packages are documented throughout the SOW. Included here are general assumptions which should be considered throughout the overall implementation process.

7.1 Project

- Project activities will begin after the Agreement has been fully executed.
- The Fort Myers Beach Project Team will complete their necessary assignments in a mutually agreed upon timeframe to meet the scheduled go-live date, as outlined in the Project Schedule.
- Sessions will be scheduled and conducted at a mutually agreeable time.
- Additional services, software modules and modifications not described in the SOW or Agreement will be considered a change to this Project and will require a Change Request Form as previously referenced in the definition of the Change Control Process.
- Tyler will provide a written agenda and notice of any prerequisites to the Fort Myers Beach project manager(s) ten (10) business days or as otherwise mutually agreed upon time frame prior to any scheduled on-site or remote sessions, as applicable.
- Tyler will provide guidance for configuration and processing options available within the Tyler software. If multiple options are presented by Tyler, the Fort Myers Beach is responsible for making decisions based on the options available.
- Implementation of new software may require changes to existing processes, both business and technical, requiring the Fort Myers Beach to make process changes.
- The Fort Myers Beach is responsible for defining, documenting, and implementing their policies that result from any business process changes.

7.2 Organizational Change Management

Unless otherwise contracted by Tyler, Fort Myers Beach is responsible for managing Organizational Change. Impacted Fort Myers Beach resources will need consistent coaching and reassurance from their leadership team to embrace and accept the changes being imposed by the move to new software. An important part of

change is ensuring that impacted Fort Myers Beach resources understand the value of the change, and why they are being asked to change.

7.3 Resources and Scheduling

- Fort Myers Beach resources will participate in scheduled activities as assigned in the Project Schedule.
- The Fort Myers Beach team will complete prerequisites prior to applicable scheduled activities. Failure to do so may affect the schedule.
- Tyler and the Fort Myers Beach will provide resources to support the efforts to complete the Project as scheduled and within the constraints of the Project budget.
- Abbreviated timelines and overlapped Phases require sufficient resources to complete all required work as scheduled.
- Changes to the Project Schedule, availability of resources or changes in Scope will be requested through a Change Request. Impacts to the triple constraints (scope, budget, and schedule) will be assessed and documented as part of the change control process.
- The Fort Myers Beach will ensure assigned resources will follow the change control process and possess the required business knowledge to complete their assigned tasks successfully. Should there be a change in resources, the replacement resource should have a comparable level of availability, change control process buy-in, and knowledge.
- The Fort Myers Beach makes timely Project related decisions to achieve scheduled due dates on tasks and prepare for subsequent training sessions. Failure to do so may affect the schedule, as each analysis and implementation session is dependent on the decisions made in prior sessions.
- The Fort Myers Beach will respond to information requests in a comprehensive and timely manner, in accordance with the Project Schedule.
- The Fort Myers Beach will provide adequate meeting space or facilities, including appropriate system connectivity, to the project teams including Tyler team members.
- For on-site visits, Tyler will identify a travel schedule that balances the needs of the project and the employee.

7.4 This work package is not applicable.

7.5 Facilities

- The Fort Myers Beach will provide dedicated space for Tyler staff to work with Fort Myers Beach resources for both on-site and remote sessions. If Phases overlap, Fort Myers Beach will provide multiple training facilities to allow for independent sessions scheduling without conflict.
- The Fort Myers Beach will provide staff with a location to practice what they have learned without distraction.

8. Glossary

Word or Term	Definition
Acceptance	Confirming that the output or deliverable is suitable and conforms to the agreed upon criteria.
Accountable	The one who ultimately ensures a task or deliverable is completed; the one who ensures the prerequisites of the task are met and who delegates the work to those responsible. [Also see RACI]
Application	A computer program designed to perform a group of coordinated functions, tasks, or activities for the benefit of the user.
Application Programming Interface (API)	A defined set of tools/methods to pass data to and received data from Tyler software products
Agreement	This executed legal contract that defines the products and services to be implemented or performed.
Business Process	The practices, policy, procedure, guidelines, or functionality that the client uses to complete a specific job function.
Business Requirements Document	A specification document used to describe Client requirements for contracted software modifications.
Change Request	A form used as part of the Change Control process whereby changes in the scope of work, timeline, resources, and/or budget are documented and agreed upon by participating parties.
Change Management	Guides how we prepare, equip and support individuals to successfully adopt change in order to drive organizational success & outcomes
Code Mapping [where applicable]	An activity that occurs during the data conversion process whereby users equate data (field level) values from the old system to the values available in the new system. These may be one to one or many to one. Example: Old System [Field = eye color] [values = BL, Blu, Blue] maps to New Tyler System [Field = Eye Color] [value = Blue].
Consulted	Those whose opinions are sought, typically subject matter experts, and with whom there is two-way communication. [Also see RACI]
Control Point	This activity occurs at the end of each stage and serves as a formal and intentional opportunity to review stage deliverables and required acceptance criteria for the stage have been met.
Data Mapping [where applicable]	The activity determining and documenting where data from the legacy system will be placed in the new system; this typically involves prior data analysis to understand how the data is currently used in the legacy system and how it will be used in the new system.
Deliverable	A verifiable document or service produced as part of the Project, as defined in the work packages.
Go-Live	The point in time when the Client is using the Tyler software to conduct daily operations in Production.
Informed	Those who are kept up-to-date on progress, often only on completion of the task or deliverable, and with whom there is just one-way communication. [Also see RACI]

Infrastructure	The composite hardware, network resources and services required for the existence, operation, and management of the Tyler software.
Interface	A connection to and potential exchange of data with an external system or application. Interfaces may be one way, with data leaving the Tyler system to another system or data entering Tyler from another system, or they may be bi-directional with data both leaving and entering Tyler and another system.
Integration	A standard exchange or sharing of common data within the Tyler system or between Tyler applications
Legacy System	The software from which a client is converting.
Modification	Custom enhancement of Tyler's existing software to provide features or functions to meet individual client requirements documented within the scope of the Agreement.
On-site	Indicates the work location is at one or more of the client's physical office or work environments.
Organizational Change	The process of changing an organization's strategies, processes, procedures, technologies, and culture, as well as the effect of such changes on the organization.
Output	A product, result or service generated by a process.
Peripheral devices	An auxiliary device that connects to and works with the computer in some way. Some examples: scanner, digital camera, printer.
Phase	A portion of the Project in which specific set of related applications are typically implemented. Phases each have an independent start, Go-Live and closure dates but use the same Implementation Plans as other Phases of the Project. Phases may overlap or be sequential and may have different Tyler resources assigned.
Project	The delivery of the software and services per the agreement and the Statement of Work. A Project may be broken down into multiple Phases.
RACI	A matrix describing the level of participation by various roles in completing tasks or Deliverables for a Project or process. Individuals or groups are assigned one and only one of the following roles for a given task: Responsible (R), Accountable (A), Consulted (C), or Informed (I).
Remote	Indicates the work location is at one or more of Tyler's physical offices or work environments.
Responsible	Those who ensure a task is completed, either by themselves or delegating to another resource. [Also see RACI]
Scope	Products and services that are included in the Agreement.

Solution	The implementation of the contracted software product(s) resulting in the connected system allowing users to meet Project goals and gain anticipated efficiencies.
Stage	The top-level components of the WBS. Each Stage is repeated for individual Phases of the Project.
Standard	Software functionality that is included in the base software (off-the-shelf) package; is not customized or modified.
Statement of Work (SOW)	Document which will provide supporting detail to the Agreement defining Project-specific activities, services, and Deliverables.
System	The collective group of software and hardware that is used by the organization to conduct business.
Test Scripts	The steps or sequence of steps that will be used to validate or confirm a piece of functionality, configuration, enhancement, or Use Case Scenario.
Training Plan	Document(s) that indicate how and when users of the system will be trained relevant to their role in the implementation or use of the system.
Validation (or to validate)	The process of testing and approving that a specific Deliverable, process, program, or product is working as expected.
Work Breakdown Structure (WBS)	A hierarchical representation of a Project or Phase broken down into smaller, more manageable components.
Work Package	A group of related tasks within a project.

Part 4: Appendices

9. No Conversion - This work package is not applicable.



10. Additional Appendices

10.1 This work package is not applicable.

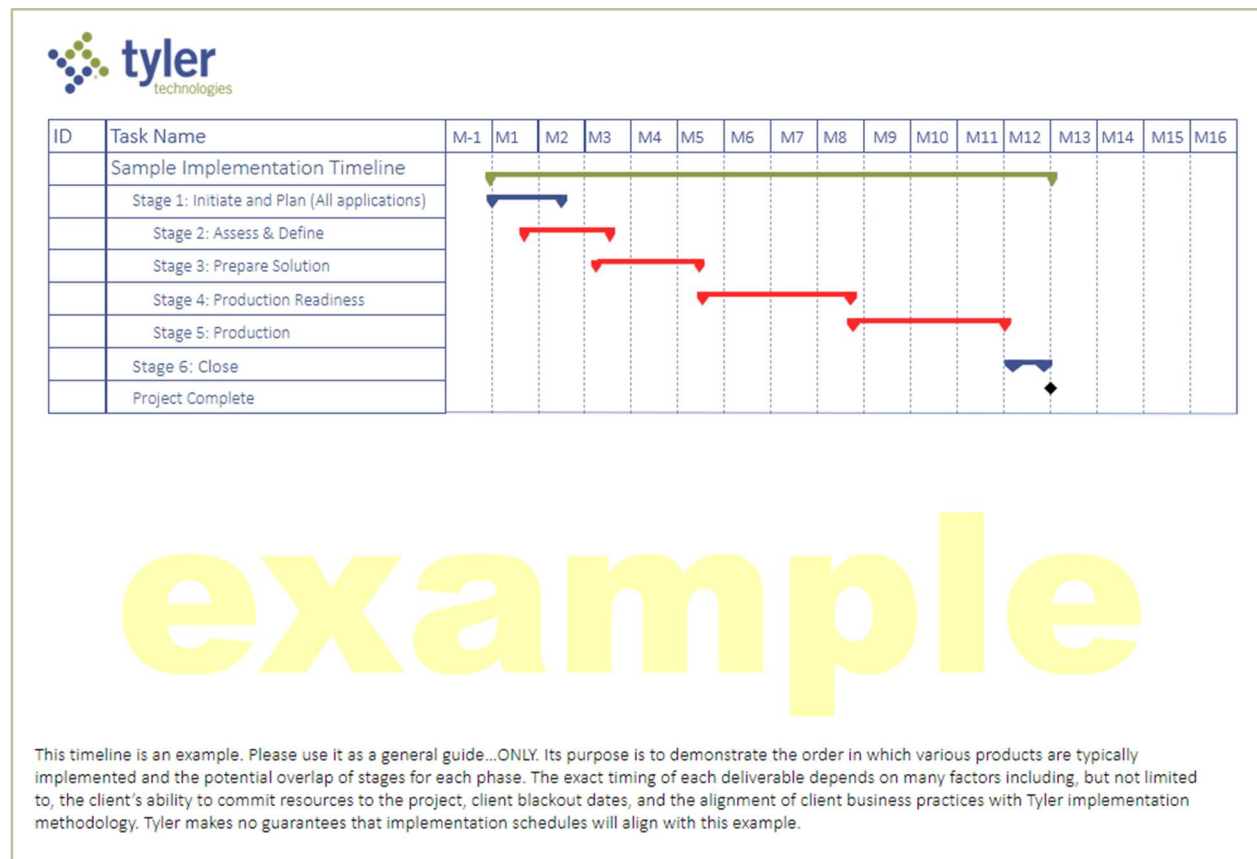


11. Project Timeline

11.1 Data & Insights Project Plan

Data & Insights Project Plan												
	Week											
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>	<u>11</u>	<u>12</u>
Initiate and Plan												
Assess and Define												
Prepare Solution												
Production Readiness												
Production												
Close												

11.2 ERP Pro Financial Management Timeline



11.3 This work package is not applicable.

Data & Insights SaaS Services Terms of Service

Updated 04/21/2022

This Data & Insights SaaS Services Terms of Services governs your use of the following solutions:

Property & Recording

- Assessment Connect
- Open Assessment

Enterprise Permitting & Licensing

- Enterprise Permitting & Licensing Business Management Feeds
- Enterprise Permitting & Licensing Community Development Feeds
- Community Development Executive Insights
- Enterprise Permitting & Licensing Advanced Automation with Executive Insights
- Enterprise Analytics and Reporting with Executive Insights
- Business Management Executive Insights
- Enterprise ERP Revenue Insights
- Citizen Connect
- Economic Intelligence

Enterprise ERP

- Enterprise ERP Analytics & Reporting w Executive Insights
- Enterprise ERP Financial Insights - Bundled
- Enterprise ERP Payroll & HR Insights
- Capital Project Explorer
- Citizen Connect
- Data & Insights Open Data
- Open Finance
- Economic Intelligence
- Executive Insights, ERP

Courts & Justice

- Court Analytics
- eFile Analytics
- Probation Analytics/Supervision Analytics
- Pre-trial Analytics

Public Safety

- Public Safety Analytics
- Law Enforcement Explorer
- Citizen Connect
- Law Enforcement Analytics
- Performance Dashboards

WHEREAS, Tyler has designed, developed, purchased or configured certain computer software systems which Tyler has designated as Data & Insights SaaS Services and has used such software in support of commercial and government programs; and

WHEREAS, Client desires to acquire from Tyler and Tyler wishes to grant to Client a non-exclusive license to use the Data & Insights SaaS Services as further defined, permitted, conditioned, and restricted below.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, and in consideration of covenants and obligations hereinafter set forth, the Parties agree to be bound by the terms and conditions as follows:

These Data & Insights SaaS Services Terms of Service govern the use and license rights associated with the Data & Insights SaaS Services. The parties are referred to herein individually as Party or collectively as Parties. Capitalized terms used in these Data & Insights SaaS Services Terms of Service but not defined herein are defined in the Base Agreement or other agreement with us governing your use of the Tyler software and services.

Section A – Definitions

- **“Base Agreement”** means the agreement executed by you and Tyler to which you are adding Data & Insights SaaS Services through signature upon an Order Form. For the avoidance of doubt, a Base Agreement is not an agreement signed by an entity Tyler acquired.
- **“API”** means application-programming interface.
- **“Client Data”** means data, datasets, files, information, content and links uploaded or provided by Client through the use of the Data & Insights SaaS Services but excluding Third-Party Services.
- **“Confidential Information”** means nonpublic information that a reasonable person would believe to be confidential and includes, without limitation, personal identifying information (e.g., Social Security numbers) and trade secrets, each as defined by applicable state law.
- **“Data & Insights Agreement”** means this Data & Insights SaaS Services Terms of Service and any special conditions agreed to by the Parties and included in the Order Form.
- **“Data & Insights SaaS Services”** means the Data & Insights off the shelf, cloud-based software service and related services, including support services, as specified under this Data & Insights SaaS Services Terms of Service. Data & Insights SaaS Services do not include support of an operating system or hardware, support outside of our normal business hours, or training, consulting, or other professional services.
- **“Data Storage”** means the contracted amount of storage capacity for your Client Data.
- **“Dataset”** means physical collection of information, typically modeled as a table of rows and columns of data.
- **“Effective Date”** means the date subscription start date identified in the Order Form or Purchase Order.
- **“External API Calls”** means any request made by a user that is not logged in against a SaaS Service.
- **“Monthly Active Users”** or **“Users”** used interchangeably, means a user that is logged in and accesses the Data & Insights SaaS Services.
- **“Order Form”** or **“Purchase Order”** means an ordering document, referencing or including a Quote or Investment Summary, specifying the Data & Insights SaaS Services and any Professional Services to be provided hereunder that is entered into between Client and Tyler, including any addenda and supplements thereto.
- **“Quote”** or **“Investment Summary”** means an estimate provided by Tyler for the SaaS Services or Professional Services.
- **“Third-Party Data”** means an aggregated dataset solution by a third-party data provider and shall be treated as Confidential Information.
- **“Third-Party Data Purpose”** means to use the Third-Party Data alone or in conjunction with other intelligence, data, or logic for internal modeling, targeting, measurement, and internal reporting solely for the benefit of the Client.
- **“Third-Party Services”** means if any, third-party web-based services, content, or platforms, including but not limited to third party stock photos and third-party map location services, which are available at no additional charge to you through the Data & Insights SaaS Services.
- **“Updates”** means any enhancements, additions, new releases, bug fixes, patches, modifications or other error corrections of or to the SaaS Software or Third-Party Data licensed to Client that Tyler generally makes available free of charge to licensees of the solutions.
- **“we”, “us”, “our”** and similar terms mean Tyler.
- **“you”** and similar terms mean Client.

Section B – Data & Insights SaaS Services

1. Rights Granted. As of the Effective Date, Tyler grants to Client the non-exclusive, non-assignable limited right to use the SaaS Services on a subscription basis according to the terms of the Base Agreement and this Data & Insights Agreement. The SaaS Services will be made available to Client according to the terms of the applicable Service Level Agreement. Client may use the SaaS Services to access Updates and enhancements to the SaaS Services, as described in herein. Unless otherwise terminated, Client’s right to access or use the SaaS Services will terminate at the end of the subscription period defined in the Order Form or Base Agreement, as applicable.
2. SaaS Fees and Usage Limits. Client agrees to pay the fees identified in the Order Form in accordance with Tyler’s Invoicing and Payment Policy. Client acknowledges that continued access to the Data & Insights SaaS Services is contingent upon your timely payment of SaaS Fees. If you fail to timely pay the SaaS Fees, we may discontinue your access to the Data & Insights SaaS Services. We may also terminate this Data & Insights Agreement if you don’t cure such failure to pay within forty-five (45) days of receiving written notice of our intent to terminate. During the subscription period, Tyler reserves the right to exercise the usage limits set forth in the Order Form. If Client exceeds the contractual usage limits, Tyler may work with Client to seek to reduce Client’s usage so that it conforms to that limit. If Client is unable or unwilling to abide by a contractual usage limit, or if Client

wishes to increase usage limits, it will require a written contract amendment, modification, or Client will execute an Order Form for increased usage limits.

3. Ownership and Reservation of Rights.

- a. This Data & Insights Agreement does not provide Client with title or ownership of the Data & Insights SaaS Services, or Third-Party Data, but only a right of limited use as further delineated herein. The SaaS Services, other services, workflow processes, user interface, designs, and other technologies provided by Tyler pursuant to this Data & Insights Agreement are the proprietary property of Tyler and its licensors. All right, title and interest in and to such items, including all associated intellectual property rights, remain only with Tyler. Tyler reserves all rights unless otherwise expressly granted in this Data & Insights Agreement. Client may not remove or modify any proprietary marking or restrictive legends from items or services provided under this Agreement. Third-Party Data vendors also retain ownership, title and all rights and interest, including, without limitation, Intellectual Property Rights in and to their own respective software, data, and documentation.
- b. When Client uploads or provides Client Data through the use of the Data & Insights SaaS Services, Client grants to Tyler a non-exclusive, worldwide, royalty-free, sub-licensable, and transferable license during the subscription period to use, reproduce, publicly display, distribute, modify, create derivative works of, index, and translate the Client Data as needed in response to, and as directed by, a User's use of the Data & Insights SaaS Services and as needed for the compliance of this Data & Insights Agreement and for the purpose of providing analytics to a User.
- c. Tyler may access and develop derivative data assets and insights based on combined, aggregated, anonymized views of Client Data, that Client has not made publicly available, for the purposes of providing new features and functionality, and performing aggregated statistical analysis by providing benchmarks and models.
- d. Client retains all ownership and intellectual property rights to the Client Data. Client expressly recognizes that except to the extent necessary to carry out our obligations contained in this Data & Insights Agreement, Tyler does not create or endorse any data used in connection with the Data & Insights SaaS Services.
- e. If Client provides feedback, information, and/or or suggestions about the Data & Insights SaaS Services, or any other services provided hereunder, then Tyler (and those it allows to use its technology) may use such feedback, information, and/or suggestions under a royalty-free, paid-up, and irrevocable license without obligation to Client.

4. Restrictions.

- a. You may not: (a) except as explicitly provided for herein, make the Data & Insights SaaS Services or Documentation resulting from the Data & Insights SaaS Services available in any manner to any third party for use in the third party's business operations; (b) modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Data & Insights SaaS Services; (c) access or use the Data & Insights SaaS Services in order to build or support, and/or assist a third party in building or supporting, products or services competitive to us; (d) license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the Data & Insights SaaS Services or Documentation available to any third party other than as expressly permitted by this Data & Insights Agreement; (e) use the Data & Insights SaaS Services to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise objectionable, unlawful or tortious material, or to store or transmit material in violation of third party rights; (f) interfere with or disrupt the integrity or performance of the Data & Insights SaaS Services (including without limitation, vulnerability scanning, penetration testing or other manual or automated simulations of adversarial actions, without Tyler's prior written consent); or (g) attempt to gain unauthorized access to the Data & Insights SaaS Services or its related systems or networks.
- b. Client acknowledges and understands that the Data & Insights SaaS Services are not designed to serve as the system of record and shall not be used in a manner where the interruption of the Data & Insights SaaS Services could cause personal injury (including death) or property damage. The Data & Insights SaaS Services are not designed to process or store data protected under the Family Education Rights and Privacy Act ("FERPA"), data from Criminal Justice Information Services ("CJIS"), or other sensitive data, and by using the Data & Insights SaaS Services, Client acknowledges and agrees that Client is using the Data & Insights SaaS Services at Client's own risk and that Client is solely responsible for use of data with the Data & Insights SaaS Services in any manner that is contrary to the uses for which the Data & Insights SaaS Services are designed and offered for use in this Agreement. If Client intends to use the Data & Insights SaaS Services to store or transmit Protected Health Information (PHI), then the Parties will scope the additional usage and it will require a written contract amendment and will include a mutually agreeable Business Associate Agreement.
- c. Although we have no obligation to screen, edit or monitor the Client Data or Public User content posted on Data & Insights SaaS Services, if, in our reasonable judgment, we discover your use of the Data & Insights SaaS Services threatens the security, integrity, stability, or availability of the Data & Insights SaaS Services, or is otherwise in violation of this Data & Insights Agreement, we may temporarily suspend the Data & Insights SaaS Services, or User access thereto. Unless Client has conducted penetration testing or unscheduled performance testing, Tyler will use commercially reasonable efforts to provide Client with notice and an opportunity to remedy such violation or threat prior to such suspension. Any penetration testing or unscheduled performance testing conducted by Client will result in immediate suspension of the Data & Insights SaaS Services.

5. Access and Usage by Internal Client Users and Contractors. You may allow your internal users and third party contractors to access the Data & Insights SaaS Services and any technical or policy controls, in compliance with the terms of this Data & Insights Agreement, which access must be for your sole benefit. You are responsible for the compliance with this Data & Insights Agreement by your internal users and contractors.
6. Your Responsibilities. Client (a) must keep its passwords secure and confidential; (b) is solely responsible for all activity occurring under its account; (c) must use commercially reasonable efforts to prevent unauthorized access to its account and notify Tyler promptly of any such unauthorized access; (d) may use the Data & Insights SaaS Services only in accordance with the Documentation; and (e) shall comply with all federal, state and local laws, regulations and policies of Client, as to its use of the Data & Insights SaaS Services, Client Data, and instructions to Tyler regarding the same.
7. Client Data Backup. The data on the Data & Insights Platform is a copy of Client Data. Any laws and regulations governing Client for retention of Client Data remains Client's responsibility. CLIENT IS SOLELY RESPONSIBLE FOR BACKING UP CLIENT DATA unless otherwise specially agreed in writing between Tyler and Client in the Tyler hosting Agreement.
8. Return of Client Data. Upon request, Tyler will make the Data & Insights SaaS Services available to Client to export Client Data for a period of sixty (60) days following the termination of this Data & Insights Agreement. After such sixty (60) day period has expired, we have no obligation to maintain Client Data and may destroy the Client Data.
9. Data Security Measures. In order to protect your Confidential Information, we will: (a) implement and maintain all reasonable security measures appropriate to the nature of the Confidential Information including without limitation, technical, physical, administrative and organizational controls, and will maintain the confidentiality, security and integrity of such Confidential Information; (b) implement and maintain industry standard systems and procedures for detecting, mitigating, and responding to attacks, intrusions, or other systems failures and regularly test or otherwise monitor the effectiveness of the safeguards' key controls, systems, and procedures; (c) designate an employee or employees to coordinate implementation and maintenance of its Security Measures (as defined below); and (d) identify reasonably foreseeable internal and external risks to the security, availability, confidentiality, and integrity of Confidential Information that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks (collectively, Security Measures). Client acknowledges and agrees that Tyler's obligations with respect to Security Measures is subject to Client Restrictions herein.
10. Notice of Data Breach. If Tyler knows that Confidential Information has been accessed, disclosed, or acquired without proper authorization and contrary to the terms of this Data & Insights Agreement, we will alert Client of any such data breach in accordance with applicable law, and take such actions as may be necessary to preserve forensic evidence and return the Data & Insights SaaS Services to standard operability. If so required, Tyler will provide notice in accordance with applicable federal or State data breach notification laws.
11. Confidentiality. In the absence of a corresponding provision in the Base Agreement, the following provision shall apply:

Each party agrees that it will not disclose any Confidential Information of the other party and further agrees to take all reasonable and appropriate action to prevent such disclosure by its employees or agents. The confidentiality covenants contained herein will survive the termination or cancellation of this Data & Insights Agreement. This obligation of confidentiality will not apply to information that:

- a. is in the public domain, either at the time of disclosure or afterwards, except by breach of this Data & Insights Agreement by a party or its employees or agents;
- b. a party can establish by reasonable proof was in that party's possession at the time of initial disclosure;
- c. a party receives from a third party who has a right to disclose it to the receiving party; or
- d. is the subject of a legitimate disclosure request under the open records laws or similar applicable public disclosure laws governing this Data & Insights Agreement; provided, however, that in the event you receive an open records or other similar applicable request, you will give us prompt notice and otherwise perform the functions required by applicable law.

Section C – Warranty

1. SaaS Services Warranty. Tyler warrants to Client that the functionality or features of the Data & Insights SaaS Services will substantially perform as communicated to Client in writing, or their functional equivalent, but Tyler has the right to update functionality. The support policies may change but will not materially degrade during the term. Tyler may deprecate features upon at least 30 days' notice to Client, but Tyler will use commercially reasonable efforts to support the previous features for at least 6 months following the deprecation notice. The deprecation notice will be posted at <https://support.socrata.com>.

Section D – Third-Party Services

1. **Third -Party Services.** Client may be provided with access and usage of Third-Party Services through use of the Data & Insights SaaS Services. Client may use the Third-Party Services at Client's election, but Client must agree to such Third-Party Service contracts if Client chooses to use those Third-Party Services. Third-Party Services will be solely governed by such Third-Party Service contracts and use may include separate fees and charges. Client will have access to the following Third-party Services for use within the software, however, the availability of any of these services is subject to change:
 - Getty Images: Within the platform's perspective story tool, customers have access to a library of images available for use in their story pages, terms and conditions located at <http://www.gettyimages.com/connectterms>.
 - Mapbox: Within the platform's visualization suite, the current mapping visualizations are powered by Mapbox, terms and conditions located at <https://www.mapbox.com/legal/tos>.
 - Mapquest: Geocoding provider that matches user-provided addresses with geographic coordinates for display on map visualizations terms and conditions located at <http://hello.mapquest.com/terms-of-use/>.
2. **Disclaimer.** You acknowledge that we are not the provider of any Third-Party Services. We do not warrant or guarantee the performance of the Third-Party Services.

Section E – Term

1. **Term.** Unless the Data & Insights SaaS Services are acquired through a Base Agreement with a defined term for SaaS Services (in which case that term shall apply), the initial term of the Data & Insights Agreement is forth in the Order Form. Unless expressly indicated otherwise in the Order Form, this Data & Insights Agreement and the subscription to the Data & Insights SaaS Services will renew automatically for additional one (1) year renewal terms unless terminated in writing by either party at least sixty (60) days prior to the end of the then-current renewal term. Your right to access or use the Data & Insights SaaS Services or Third-Party Data will terminate at the end of this Data & Insights Agreement.

Section F – Limitation of Liability

1. **DISCLAIMER.** EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN THIS DATA & INSIGHTS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE HEREBY DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES, DUTIES, OR CONDITIONS OF MERCHANTABILITY, TITLE OR FITNESS FOR A PARTICULAR PURPOSE. WHILE TYLER TAKES REASONABLE PHYSICAL, TECHNICAL AND ADMINISTRATIVE MEASURES TO SECURE THE DATA & INSIGHTS SAAS SERVICES, TYLER DOES NOT GUARANTEE THAT THE DATA & INSIGHTS SAAS SERVICES CANNOT BE COMPROMISED. YOU UNDERSTAND THAT THE DATA & INSIGHTS SAAS SERVICES MAY NOT BE ERROR FREE, AND USE MAY BE INTERRUPTED.
2. **LIMITATION OF LIABILITY.** Unless the Data & Insights SaaS Services are acquired through a Base Agreement with a Limitation of Liability clause (in which case that term shall apply), OUR LIABILITY FOR DAMAGES ARISING OUT OF THIS DATA & INSIGHTS AGREEMENT, WHETHER BASED ON A THEORY OF CONTRACT OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, SHALL BE LIMITED TO YOUR ACTUAL DIRECT DAMAGES, NOT TO EXCEED THE THEN-CURRENT ANNUAL DATA & INSIGHTS SAAS FEES PAYABLE BY YOU. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE PRICES SET FORTH IN THIS DATA & INSIGHTS AGREEMENT ARE SET IN RELIANCE UPON THIS LIMITATION OF LIABILITY AND TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW, THE EXCLUSION OF CERTAIN DAMAGES, AND EACH SHALL APPLY REGARDLESS OF THE FAILURE OF AN ESSENTIAL PURPOSE OF ANY REMEDY. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO THE INDEMNIFICATION OBLIGATIONS UNDER THE AGREEMENT.
3. **EXCLUSION OF CERTAIN DAMAGES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL WE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Section G – Additional Terms and Conditions for Data & Insights SaaS Services With Open Data Functionality

1. Tyler may make certain other Tyler Applications available to Client. The use of Open Assessment, Data & Insights Citizen Connect, Data & Insights Capital Project Explorer, Data & Insights Citizen Connect, Data & Insights Open Data, Data & Insights Open Finance, Open Finance, and/or X-Connect Applications, either alone or in connection with the Data & Insights SaaS Services, is governed by this Data & Insights Agreement and the Agreement. Client must also comply with the following terms and conditions when using the above named Applications.
2. The Data & Insights SaaS Services may provide you with functionality to make all or part of Client Data available to the general public through one or more public facing websites. If the functionality is provided, then Client determines which Client Data is shared publicly, and Client is solely responsible for determining the online terms of use and licenses relative to the use by public users ("Public User") of Client Data, and the enforcement thereof. Client is responsible to ensure all Users comply with the terms

and conditions of this Amendment. Once an internal user makes Client Data publicly available using the Data & Insights SaaS Services, Tyler has no control over a Public User's use, distribution, or misuse of Client Data. Tyler has no liability or obligation to indemnify for such usage. If the Data & Insights SaaS Services provide you with this functionality, then Users have the ability within the Data & Insights SaaS Services to remove the public permissions applied to Client Data.

3. Tyler reserves the right to develop derivative data assets based on Client Data that exists in the public domain. Tyler may use, index, disclose, commercialize, and transfer the derivative data assets for any lawful purpose, including but not limited to: aggregating and summarizing data; normalizing, standardizing and concatenating data to create new regional or national data assets; and developing key performance indicators and benchmarks.
4. **APIs.** The Data & Insights SaaS Services may provide access to the applicable application-programming interface ("API") as part of the Data & Insights SaaS Services under the terms of this Data & Insights Agreement. Subject to the other terms of this Data & Insights Agreement and if the Data & Insights SaaS Services provides access to the APIs, Tyler grants Client a non-exclusive, nontransferable, terminable license to interact only with the SaaS Services as allowed by the current APIs.
 - a. Client may not use the APIs in a manner--as reasonably determined by Tyler--that exceeds the purposes defined in the Amendment Investment Summary, constitutes excessive or abusive usage, or fails to comply with any part of the APIs. If any of these occur, Tyler can suspend or terminate Client's access to the APIs on a temporary or permanent basis.
 - b. Tyler may change or remove existing endpoints or fields in API results upon at least 30 days' notice to Client, but Tyler will use commercially reasonable efforts to support the previous version of the APIs for at least 6 months from deprecation notice. Tyler may add new endpoints or fields in API results without prior notice to Client.
 - c. The APIs may be used to connect the SaaS Services to certain hosted or on premise software applications not provided by Tyler ("Non-Tyler Applications"). Client is solely responsible for development, license, access to and support of Non-Tyler Applications, and Client's obligations under this Data & Insights Agreement are not contingent on access to or availability of any Non-Tyler Application.
 - d. Any open source code provided is provided as a convenience to you. Such open source code is provided AS IS and is governed by the applicable open source license that applies to such code; provided, however, that any such open source licenses will not materially interfere or prohibit Client's limited right to use the SaaS Services for its internal business purposes.

Section H – Additional Terms and Conditions for Third-Party Data Vendor Solutions/Applications

1. Tyler may make certain Third-Party Data Vendor Applications available to Client. The use of Tyler Recovery Insights, Economic Intelligence, Small Business Revenue Metrics, Mobility Metrics, Consumer Spending Metrics, and/or Small Business Revenue Metrics either alone or in connection with the Data & Insights SaaS Services is governed by this Data & Insights Agreement and the Agreement. Client must also comply with the following terms and conditions when using the above mentioned Applications.
2. **License Grant for Third-Party Data.** Any use of Third-Party Data shall be limited to the Third-Party Data Purpose. Third-Party Data vendors also retain ownership, title and all rights and interest, including, without limitation, Intellectual Property Rights in and to their own respective software, data, and documentation.
3. **Restrictions for Third-Party Data.**
 - a. Client shall not at any time, directly or indirectly: (i) copy, modify, or create derivative works of the Third-Party Data, in whole or in part; (ii) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Third-Party Data; (iii) re-identify, reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Third-Party Data, in whole or in part; (iv) remove any proprietary notices from the Third-Party Data; (v) use the Third-Party Data in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable Law; or (vi) make Third-Party Data available to for use or access to anyone other than Client.
 - b. Client shall not publicly publish the dashboards that contain the Third-Party Data, but Client may publicly publish visualizations from the aggregate summary data.
 - c. Client shall not remove any copyright or other proprietary notice or legend contained or included in Third-Party Data.
 - d. Client expressly permits Tyler to share with the Third-Party Data providers Client's name, subscription term dates, applicable costs and fees for the Third-Party Data SKU(s) that Client subscribes to.
 - e. Upon termination of the Agreement, or of a subscription that contains Third-Party Data, Client shall remove and destroy all copies of Third-Party Data.
 - f. If any Third-Party Data is the subject of a legitimate disclosure request under the open records laws or similar applicable public disclosure laws governing the Agreement; Client will give Tyler prompt notice and otherwise perform the functions required by applicable law.
 - g. Client shall not use the Third-Party Data to attempt to identify behavior of a known individual for any reason.

h. Client acknowledges and agrees that if the Third-Party Data includes SafeGraph data, up to .05% of the data will be salted data or seeds used to fingerprint the data provided to Client.

4. Updates. Tyler may in its sole discretion provide Updates to the Third-Party Data or replace with functionally equivalent.
5. Third-Party Data Warranty. TYLER DOES NOT WARRANT THE CORRECTNESS, COMPLETENESS, OR CURRENTNESS OF THE THIRD-PARTY DATA OR THAT THE FUNCTIONS PERFORMED BY THE THIRD-PARTY DATA WILL MEET CLIENT’S REQUIREMENTS, THAT THE THIRD-PARTY DATA WILL BE ERROR FREE, OR THAT ALL THIRD-PARTY DATA DEFECTS ARE CORRECTABLE. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, THE THIRD-PARTY DATA IS PROVIDED “AS IS”.

Agree to Terms

By providing information in the required fields below, you confirm the following:

- You are authorized to bind the Client listed.
- You have read, understand, and agree to these terms and conditions.

Client Name

Email Address

Submit

Terms of Use Contents

- [Section A: Definitions](#)
- [Section B: Data & Insights SaaS Services](#)
- [Section C: Warranty](#)
- [Section D: Third-Party Services](#)
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Appraisal & Tax

Appraisal Services
CAMA
Tax Billing & Collection

Civic Services

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Business Management
Community Development
Correspondence Management
Environmental Health
Fire Prevention
Motor Vehicle

Data & Insights

Economic Intelligence
Enterprise Data Platform
Finance Insights
Open Data Platform
Performance Insights

Disability & Benefits

Disability Benefits Management
Home & Community Based Services
Veterans' Benefits
Vocational Rehabilitation
Workers' Compensation Case Management

Parks & Recreation

Corrections

Jail Management

Courts & Justice

Civil Process

Court Case Management

Dispute Resolution

Document Automation

Electronic Filing

Investigations & Audits

Jury Management

Justice Insights

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Remote Hearings

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Advisory Services

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School ERP

Facility Management

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ERP

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Human Resources Management

Revenue Management

Utilities

Land & Official Records

Public Access & Transparency

Records Management

Outdoor Recreation

Campground & Park Reservations

Hunting & Fishing Licensing

Parks & Recreation

Payments

Corrections and Jail Disbursements

Digital Disbursements and Payouts

Jury and Court Disbursements

Payment Processing

Point-of-Sale Cashiering

Corporate Headquarters

5101 Tennyson Parkway

Plano, Texas 75024

972-713-3700

info@tylertech.com

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**FIRST ADDENDUM TO SERVICE AGREEMENT BETWEEN THE TOWN
OF FORT MYERS BEACH AND TYLER TECHNOLOGIES, INC.**

THIS FIRST ADDENDUM (the “Addendum”) is entered into by and between the TOWN OF FORT MYERS BEACH, a Florida municipal corporation (the “Town”), and TYLER TECHNOLOGIES, INC., a foreign profit corporation (the “Contractor”), concerning the Service Agreement between the Town and Contractor for access to Contractor’s proprietary software products and services (the “Agreement”), which was approved at the November 18, 2024, Town Council meeting. The Town and the Contractor may collectively hereinafter be referred to as the “Parties.”

WITNESSETH:

WHEREAS, in the Fall of 2024, the Town selected the Contractor to provide certain products and services; and

WHEREAS, the Town is a member of Sourcewell (formerly known as National Joint Powers Alliance), under member number #136730; and

WHEREAS, the Contractor participated in the competitive bid process in response to Sourcewell RFP #090320 by submitting a proposal, on which Sourcewell awarded Tyler a Sourcewell contract, numbered 090320-TTI (the “Sourcewell Contract”); and

WHEREAS, the Town used Sourcewell Contract to procure certain software functionality from the Contractor; and

WHEREAS, on November 18, 2024, the Town Council of Fort Myers Beach approved the Agreement between the Town and the Contractor, as permitted under Section 2-480 of the Town Code of Ordinances; and

WHEREAS, the Agreement authorizes the Town Manager to execute any and all documents pertaining to the Agreement; and

WHEREAS, Section 119.0701, Florida Statutes, requires that certain public agency contracts must include certain statutorily required provisions concerning the Contractor’s compliance for Florida’s Public Records Act; and

WHEREAS, Section 768.28, Fla. Stat., sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

WHEREAS, Florida law requires that public agency contracts be subject to non-appropriation and thereby contingent upon appropriation during the public agency’s statutorily mandated annual budget approval process; and

WHEREAS, Section 448.095, Fla. Stat., imposes certain obligations on public agencies with regard to the use of the E-Verify system by their contractors and subcontractors; and

WHEREAS, Section 287.133 and 287.135, Fla. Stat., provides restrictions on local governments contracting with companies that are on certain Scrutinized Companies lists or convicted vendor list; and

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

WHEREAS, Section 286.101, Florida Statutes contains a list of “foreign countries of concern” including, the People’s Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such “foreign country of concern.” Any entity that does business with a state agency or political subdivision must disclose certain of their dealings with those “foreign countries of concern” to the Florida Department of Financial Services; and

WHEREAS, Section 787.06(13), Florida Statutes provides that when a contract is executed, renewed, or extended between a nongovernmental entity and a governmental entity, the nongovernmental entity must provide the governmental entity with an affidavit signed by an officer or a representative of the nongovernmental entity under penalty of perjury attesting that the nongovernmental entity does not use coercion for labor or services as defined in such statute.

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

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

2. Public Records Compliance. Contractor agrees that, to the extent that it may "act on behalf" of the Town within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under the parties’ Agreement, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency’s custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the contractor does not transfer the records to the public agency.
- (d) Upon completion of the Agreement, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records

required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the Agreement, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the Agreement, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.

- (e) Pursuant to Section 119.0701(2)(a), Fla. Stat., **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, THE CONTRACTOR MAY CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**TOWN HALL
2731 OAK STREET
FORT MYERS BEACH, FL. 33931
(239)765-0202
AMY@FMBGOV.COM**

3. Public Records Compliance Indemnification. Contractor agrees to indemnify and hold the Town harmless against any and all claims, damage awards, and causes of action arising from the Contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by Contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.

4. Compliance/Consistency with Section 768.28, Fla. Stat. Any indemnification or agreement to defend or hold harmless by Town specified in the Agreement shall not be construed as a waiver of Town's sovereign immunity and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Fla. Stat. and subject to the procedural requirements set forth therein. Any other purported indemnification by Town under the Agreement in derogation hereof shall be void and of no force or effect.

5. Non-appropriation. Town's performance and obligation to pay under the Agreement is contingent upon an appropriation during the Town's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by memorandum from the Town Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the

fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year-end shall be without penalty or expense to the Town subject to the Town paying all invoices for services rendered during the period the Agreement was funded by appropriations.

6. E-Verify Compliance. By executing this Addendum, the Contractor is obligated to comply with the provisions of Section 448.095, Florida Statutes "Employment Eligibility," as amended from time to time. This includes but is not limited to register with and use the E-Verify System to verify the work authorization status of all newly hired employees and requiring all subcontractors to provide an affidavit to Contractor attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Contractor agrees to maintain a copy of such affidavit for the duration of the Agreement. Failure to comply with this paragraph will result in the termination of the Agreement as provided in Section 448.095, Florida Statutes, as amended and Contractor will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Contractor will also be liable for any additional costs to the Town as a result of the termination of the Agreement in accordance with this paragraph. Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Florida Statutes, Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Florida Statutes.

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

Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

8. Disclosure Requirements for “Foreign Countries of Concern.” Contractor shall comply with the disclosure requirements set forth in Section 286.101(3)(a), Florida Statutes, which requires “Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a “foreign country of concern” if such interest, contract, grant or gift received from a “foreign country of concern” if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable “foreign country of concern” and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services”. Pursuant to section 268.101(7), Florida Statutes: “In addition to any fine assessed under [section 286.101(7)(a), Florida Statutes], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause.”

9. Venue and Jurisdiction. Notwithstanding any of other provision to the contrary, the Agreement, this Addendum, and the parties’ actions under the same shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of the parties’ Agreement, each party hereby irrevocably and unconditionally consents to submit and does submit to the jurisdiction of the Circuit Court in and for Lee County, Florida for any actions, suits or proceedings arising out of or relating to the Agreement or this Addendum.

10. Attorneys’ Fees and Costs. Notwithstanding any of other provision to the contrary, if litigation ensues regarding the Agreement or this Addendum, each party hereto shall bear its own attorneys’ fees and costs.

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

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

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

14. Taxes. The Town shall not be liable for any taxes and assessments imposed by a federal, state or local governmental agency to the extent that the Town is exempt from same by Florida law, including but not limited to any sales or use tax.

15. No coercion for labor or services. The Contractor swears under penalty of perjury that the Contractor does not use coercion for labor or services as defined as follows:

"Coercion" means:

1. Using or threatening to use physical force against any person;
2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
5. Causing or threatening to cause financial harm to any person;
6. Enticing or luring any person by fraud or deceit; or
7. Providing a controlled substance as outlined in Schedule I or Schedule II of Sec. 893.03, Fla. Stat. to any person for the purpose of exploitation of that person.

16. Other. Notwithstanding any other provisions herein to the contrary, the Parties agree that the terms of services set forth in the Agreement shall govern.

(This Space Intentionally Left Blank)

IN WITNESS WHEREOF, the parties hereto have executed and delivered this instrument on the month and day last signed below and the signatories below to bind the parties set forth herein.

Under penalties of perjury, and pursuant to Sec. 92.525, Fla. Stat., Contractor declares that Contractor has read the foregoing Section 15 above and that the facts stated in it are true.

ATTEST:

CONTRACTOR:

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

ATTEST:

TOWN OF FORT MYERS BEACH

Amy Baker, Town Clerk

Andrew Hyatt, Town Manager

**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

1. **Request:**

Meeting Date: November 18, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, APPROVING YEAR-END BUDGET ADJUSTMENT #8 FOR FISCAL YEAR 2024; AND PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

This action is technically not necessary since the Town Charter allows the Town Manager to make such budget adjustments within the same fund without Town Council approval. However, staff is choosing to voluntarily present this recommended budget adjustment to the Town Council for approval for the sake of transparency, and out of respect for the Town's Council adoption of the budget.

What the action accomplishes:

This action approves the budget adjustment that reflects the operational decisions that were made during the year.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Andy Hyatt, Town Manager

5. **Background:**

General Fund Budget Adjustment

- During the course of Fiscal Year 2024, it was determined that a grant/payroll coordinator position should be added to support the financial operation of the Town, and that it would be funded through overall operational savings.
- Also, during the course of Fiscal Year 2024, necessary, unanticipated, unbudgeted expenditures were incurred for Newton Park, Times Square, and Mound House for which funding was available through overall operational savings.
- Additional audit expenses were incurred due to the volume of emergency expenditures that were required to be audited for Fiscal Year 2023 as a result of Hurricane Ian.
- Therefore, it is recommended that a budget adjustment be made to fund these unbudgeted expenditures from the General Fund contingency account.

FDEM Hurricane Recovery Loan

- The Town received a \$5 million loan from FDEM to provide cash up front to fund FEMA projects. Expenditures related to the Temporary Town Hall and certain Water projects were the only unbudgeted expenditures incurred in Fiscal Year 2024 that were eligible to be funded by the FDEM Loan.
- Therefore, it is recommended that a budget adjustment be made to provide a budget for these expenditures funded by the FDEM loan.

Capital Fund

- The Volunteer Florida grant for the restoration of Bayside Park was received in Fiscal Year 2023, but the restoration was not fully completed until Fiscal Year 2024.
- Therefore, it is recommended that a budget adjustment be made to provide a budget for

these expenditures that were incurred to complete the Bayside Park restoration funded out of the unexpended balance of the Fiscal Year 2023 Volunteer Florida grant carried forward to Fiscal Year 2024.

Attachments:

1. 24-253, Budget Amendment #8 - Fiscal Year 2024 Year End Adjustments
2. 24-253, FY24 Sep Gen Fund Bud vs Act by Dept

Financial Impact:

10.16.513.52000	Finance: New Grant Coordinator Position - Wages	25,000.00
10.16.513.52300	Finance: New Grant Coordinator Position - Benefits	15,000.00
10.16.513.54500	Finance: New Grant Coordinator Position - Liab Ins	3,000.00
10.16.513.53200	Finance: Additional Audit Expenses Related to FEMA	12,000.00
10.19.519.58100	Finance: Contingency	(55,000.00)
10.70.573.33410	Mound House: Water Quality Guage Grant	26,500.00
10.70.573.55100	Mound House: Water Quality Guage Equipment	26,500.00
10.70.573.54102	Mound House: Shopkeep Software expenses	6,000.00
10.70.573.54600	Mound House: Repairs & Maintenance	6,000.00
10.70.573.54800	Mound House: Promotional Activities	3,500.00
10.19.519.58100	Mound House: Contingency	(15,500.00)
10.32.541.54303	Times Square: Waste Management Recycling	19,000.00
10.19.519.58100	Times Square: Contingency	(19,000.00)
10.71.573.63255	Newton Park: Fencing	500.00
10.19.519.58100	Newton Park: Contingency	(500.00)
36.16.513.38100	FEMA Loan - Prior Year Carryover	305,000.00
36.29.519.53401	FEMA: Temp Town Hall	80,000.00
36.40.533.63250	FEMA: Water Dept-Fencing	25,000.00
40.37.572.63000	Bayside Park Volunteer Florida Grant Expenditures	210,000.00
40.37.572.38100	Bayside Park Volunteer Florida Grant Carryover	210,000.00

6. Alternative Action

The Council may choose to not approve this budget adjustment.

7. Management Recommendations:

Finance Director recommends

8. Recommended Approval:

Joe Onzick, Finance Director
 Joe Onzick, Finance Director
 nancy stuparich, Town Attorney
 Amy Baker, Town Clerk
 Andy Hyatt, Town Manager

Created/Initiated - 11/7/2024
 Approved - 11/7/2024
 Approved - 11/12/2024
 Approved - 11/13/2024
 Final Approval - 11/13/2024

RESOLUTION NUMBER 24-153

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, APPROVING YEAR-END BUDGET ADJUSTMENT #8 FOR FISCAL YEAR 2024; 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 (“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, Florida Statutes s. 200.065 establishes the method for adoption of a budget for all taxing authorities in the State of Florida and Florida Statutes s. 166.241 requires the governing body of each municipality in Florida to adopt a budget via ordinance or resolution before the start of each fiscal year; and

WHEREAS, on September 25, 2023, the Town Council of the Town of Fort Myers Beach, following due public notice, adopted a final operating budget for fiscal year 2023-24, as set forth with greater specificity in Town Resolution 23-117; and

WHEREAS, Section 11.05 (d) of Article XI of the Charter of the Town of Fort Myers Beach provides that at any time during the fiscal year, the town manager may transfer any unencumbered appropriations among programs within a department, office, agency or a program provided by inter local agreement and, upon written request by the town manager, the council may by resolution transfer between funds any unencumbered appropriations from one department, office, agency or a program provided by inter local agreement to another; and

WHEREAS, during the course of Fiscal Year 2024 it was determined that a grant/payroll coordinator position should be added to support the financial operation of the Town that would be funded through overall operational savings as well as contingency; and

WHEREAS, additional audit expenses were incurred due to the volume of emergency expenditures to be audited for Fiscal Year 2023 as a result of Hurricane Ian; and

WHEREAS, during the course of Fiscal Year 2024 necessary, unanticipated, unbudgeted expenditures were incurred for Newton Park, Times Square, and Mound House for which funding was available through overall operational savings as well as contingency; and

WHEREAS, the FEMA Loan to fund the Temporary Town Hall and Water Projects was not included in the Fiscal Year 2024 budget, and therefore should be added to the Fiscal Year 2024 budget; and

WHEREAS, the Volunteer Florida grant for the restoration of Bayside Park was received in Fiscal Year 2023, but the restoration was not fully completed until Fiscal Year 2024 and therefore the unexpended funding from Fiscal Year 2023 should be carried over to Fiscal Year 2024.

IT IS HEREBY RESOLVED by the Town Council of Fort Myers Beach, Florida as follows.

Section 1. The above recitals as set forth in the various “Whereas” clauses are hereby adopted by reference and incorporated into the body of this Resolution.

Section 2. The Town Council further finds that the supplemental appropriation of funds is as provided in this Section consistent with the requirements of Section 11.05 (d) of Article XI of the Town Charter, and hereby approves, adopts and accepts the following budget amendment:

Budget Adjustment #8

Account	Description	Amount
10.16.513.52000	Finance: New Grant Coordinator Position - Wages	25,000.00
10.16.513.52300	Finance: New Grant Coordinator Position - Benefits	15,000.00
10.16.513.54500	Finance: New Grant Coordinator Position - Liab Ins	3,000.00
10.16.513.53200	Finance: Additional Audit Expenses Related to FEMA	12,000.00
10.19.519.58100	Finance: Contingency	(55,000.00)
10.70.573.33410	Mound House: Water Quality Guage Grant	26,500.00
10.70.573.55100	Mound House: Water Quality Guage Equipment	26,500.00
10.70.573.54102	Mound House: Shopkeep Software expenses	6,000.00
10.70.573.54600	Mound House: Repairs & Maintenance	6,000.00
10.70.573.54800	Mound House: Promotional Activities	3,500.00
10.19.519.58100	Mound House: Contingency	(15,500.00)
10.32.541.54303	Times Square: Waste Management Recycling	19,000.00
10.19.519.58100	Times Square: Contingency	(19,000.00)
10.71.573.63255	Newton Park: Fencing	500.00
10.19.519.58100	Newton Park: Contingency	(500.00)
36.16.513.38100	FEMA Loan - Prior Year Carryover	305,000.00
36.29.519.53401	FEMA: Temp Town Hall	280,000.00
36.40.533.63250	FEMA: Water Dept-Fencing	25,000.00
40.37.572.63000	Bayside Park Volunteer Florida Grant Expenditures	210,000.00
40.37.572.38100	Bayside Park Volunteer Florida Grant Carryover	210,000.00

Section 3. This resolution is effective immediately upon adoption.

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	_____
Scott Safford, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this 18th day of November 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:

Vose Law Firm, Town Attorneys

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

Preliminary - Unadjusted, Unaudited
Town of Fort Myers Beach, Florida
General Fund Statement of Revenue & Expenditures Budget vs. Actual
By Department
Period Ending September 30, 2024 (12 Months)
Sorted in Descending Order of Variance

		Budget	FY24 YTD Budget	Actual	Variance
Revenues					
Parking Operations	34	1,200,000	1,200,000	1,834,109	634,109
Community Development	20	271,220	271,220	420,724	149,504
Code Enforcement	21	352,000	352,000	491,284	139,284
Short Term Rental Services	17	100,000	100,000	178,500	78,500
Bay Oaks Recreation Center	50	30,000	30,000	98,696	68,696
Public Works Admin	30	1,500	1,500	58,138	56,638
Mound House	70	71,000	71,000	118,318	47,318
Mooring Operations	36	149,547	149,547	189,907	40,360
Public Works Maintenance	31	-	-	3,000	3,000
Town Hall Maintenance	29	-	-	2,500	2,500
General Government	19	748,602	748,602	750,618	2,016
Bayside Park	37	5,000	5,000	-	(5,000)
Bay Oaks Pool	51	7,000	7,000	-	(7,000)
Marine Operations	33	25,000	25,000	-	(25,000)
Finance	16	9,976,075	9,976,075	9,080,322	(895,753)
Total Revenues		12,936,944	12,936,944	13,226,116	289,172
Expenses					
General Government	19	4,315,552	4,315,552	3,437,068	878,484
Public Works Maintenance	31	1,292,813	1,292,813	882,400	410,413
Bay Oaks Pool	51	556,309	556,309	206,733	349,576
Code Enforcement	21	821,852	821,852	593,466	228,386
Parking Operations	34	680,163	680,163	482,425	197,738
Town Council	10	289,481	289,481	178,076	111,405
Public Works Admin	30	315,489	315,489	207,863	107,626
Marine Operations	33	147,385	147,385	55,303	92,082
Town Manager	12	839,219	839,219	762,546	76,673
Town Hall Maintenance	29	109,090	109,090	44,184	64,906
Community Development	20	1,032,487	1,032,487	980,989	51,498
Bay Oaks Recreation Center	50	882,235	882,235	849,232	33,003
Human Resources	15	268,876	268,876	250,570	18,306
Mooring Operations	36	415,431	415,431	401,409	14,022
Short Term Rental Services	17	53,250	53,250	41,414	11,836
Bayside Park	37	15,000	15,000	3,811	11,189
Beach Management	72	211,206	211,206	208,027	3,179
Town Clerk	14	382,836	382,836	381,591	1,245
Disaster	90	-	-	197	(197)
Newton Park	71	-	-	534	(534)
Legal	18	325,000	325,000	328,225	(3,225)
Times Square	32	45,600	45,600	64,194	(18,594)
Mound House	70	633,441	633,441	675,162	(41,721)
Finance	16	730,627	730,627	785,624	(54,997)
Total Expenses		14,363,342	14,363,342	11,821,042	2,542,300
Change in Fund Balance		(1,426,398)	(1,426,398)	1,405,074	2,831,472

1. **Request:**

Meeting Date: November 18, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, APPROVING BUDGET AMENDMENT #7 TO THE TOWN GENERAL FUND AND EMERGENCY FUND; PROVIDING AUTHORITY; EFFECTIVE DATE.

Why the action is necessary:

The action is necessary to commit a portion of the operational savings achieved in the General Fund for use as an emergency reserve, to be available for unreimbursed emergency expenditures.

What the action accomplishes:

The action commits the operational savings achieved in the General Fund for use as an emergency reserve, so as to be available for unreimbursed emergency expenditures.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Andy Hyatt, Town Manager, Joe Onzick, Finance Director

5. **Background:**

The preliminary, unaudited financial statements indicate a savings of \$2,542,300 in the General Fund at the end of Fiscal Year 2024 resulting from less than budgeted expenditures, primarily the result of vacancies, as well as Bay Oaks Pool not opening as originally expected and budgeted for.

Attachments:

1. Final 24-252, Budget Amendment 7 - Allocation of FY24 Savings to Emergency Reserves
2. 24-252, FY24 Sep Gen Fund Bud vs Act by Dept

Financial Impact:

The preliminary, unaudited financial statements indicate a savings of \$2,542,300 in the General Fund at the end of Fiscal Year 2024 resulting from less than budgeted expenditures. It is in the best interest of the Town to allocate at least \$2,000,000 of these savings to the Emergency Fund to provide funding for future unreimbursed emergency expenditures. (The terms of the Bridge loan prohibit the use of these funds for capital. They may only be used for operations and emergency expenditures.) Once the audit is completed and we have the final operational savings amount, we may submit an additional budget adjustment to allocate any remaining savings to the Emergency Fund.

6. **Alternative Action**

The Town Council may choose not to approve the budget adjustment.

7. **Management Recommendations:**

Finance Director recommends allocation of \$2,000,000 of the operational savings to the Emergency Fund at this time.

8. **Recommended Approval:**

Joe Onzick, Finance Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 11/7/2024
Approved - 11/7/2024
Approved - 11/12/2024
Approved - 11/12/2024
Final Approval - 11/12/2024

RESOLUTION NUMBER 24-252

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF
FORT MYERS BEACH, LEE COUNTY, FLORIDA, APPROVING
BUDGET AMENDMENT #7 TO THE TOWN GENERAL FUND
AND EMERGENCY FUND; PROVIDING AUTHORITY;
EFFECTIVE DATE.**

WHEREAS, Florida Statutes s. 200.065 establishes the method for adoption of a budget for all taxing authorities in the State of Florida and Florida Statutes s. 166.241 requires the governing body of each municipality in Florida to adopt a budget via ordinance or resolution before the start of each fiscal year; and

WHEREAS, on September 25, 2023, the Town Council of the Town of Fort Myers Beach, following due public notice, adopted a final operating budget for fiscal year 2023-24, as set forth with greater specificity in Town Resolution 23-117; and

WHEREAS, Section 11.05(d) of Article XI of the Town Charter provides that the Council upon written request by the town manager, may by resolution transfer between funds any unencumbered appropriations; and

WHEREAS, the preliminary, unaudited financial statements indicate a savings of \$2,542,300 in the General Fund at the end of Fiscal Year 2024 resulting from less than budgeted expenditures; and

WHEREAS, it is in the best interest of the Town to allocate \$2,000,000 of this savings to the Emergency Fund to be available for future emergencies, which in combination with the General Fund reserves, equates to a total of \$6,550,000 that will be available for emergency use, less any unreimbursed ongoing emergency expenditures yet to be determined for current ongoing emergencies.

IT IS HEREBY RESOLVED by the Town Council of Fort Myers Beach, Florida as follows.

Section 1. The above recitals as set forth in the various “Whereas” clauses are hereby adopted by reference and incorporated into the body of this Resolution.

Section 2. The Town Council hereby approves, adopts and accepts Budget Amendment #7 as specified below as a formal amendment to the 2023-24 Town Budgets. The Town Council further finds that Budget Amendment #7 is consistent with the requirements of Section 11.05 (d) of Article XI of the Town Charter.

Budget Amendment #3 Specifics

10.19.519.59106	General Fund: Transfer to Emergency Fund	\$2,000,000
10.19.519.80000	General Fund: Add to Reserve	(\$2,000,000)
13.90.519.38111	Emergency Fund: Transfer in from General Fund	\$2,000,000
13.90.519.80000	Emergency Fund: Add to Reserve	\$2,000,000

Section 3. This resolution is effective immediately upon adoption.

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 , Council Member	_____
Scott Safford, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this 18th day of November 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:

Vose Law Firm, Town Attorneys

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

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Town of Fort Myers Beach, Florida
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Bay Oaks Pool	51	7,000	7,000	-	(7,000)
Marine Operations	33	25,000	25,000	-	(25,000)
Finance	16	9,976,075	9,976,075	9,080,322	(895,753)
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Town Clerk	14	382,836	382,836	381,591	1,245
Disaster	90	-	-	197	(197)
Newton Park	71	-	-	534	(534)
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Times Square	32	45,600	45,600	64,194	(18,594)
Mound House	70	633,441	633,441	675,162	(41,721)
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Total Expenses		14,363,342	14,363,342	11,821,042	2,542,300
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[REDACTED]