



**Fort Myers Beach Special Magistrate Hearing
Division of Administrative Hearings (DOAH)**

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

Agenda

Tuesday, March 4, 2025

9:00 AM

ORDER OF BUSINESS

I. CALL TO ORDER

II. APPROVAL OF MINUTES

A. DOAH Special Magistrate Hearings - January 7, 2025

III. CODE VIOLATION CASES

A. 8285 Estero Blvd., Kledzik Cary & Laura
DOAH Case #: 25-000385
FMB Case #: 20241106
Property Owner: Cary and Laura Kledzik
Property Address: 8285 Estero Blvd
Violation: Non-Compliant Structure (Storage Container)

IV. NON-COMPLIANT CASES

CERTIFICATION OF LIEN(S) (NON-COMPLIANCE)

A. 1821 Estero Blvd., 1821 Estero Blvd Corp / Steve Larson dba Sun and Fun Rentals
DOAH Case #: 24-004834
FMB Case #: 20240914
Property Owner: 1821 Estero Blvd Corp / Steve Larson dba Sun and Fun Rentals
Property Address: 1821 Estero Blvd
Status: Non-compliant (as of date of agenda distribution)

OTHER

B. 2815 Estero Blvd., Himmelstein Associates LLC
DOAH Case #: [24-004838](#)
FMB Case #: 20240994
Property Owner: Himmelstein Associates LLC
Property Address: 2815 Estero Blvd
Violation: Non-compliant (as of the date of agenda distribution)

- C. 1035 Estero Boulevard, KLC Surf LLC / La Ola
DOAH Case #: 24-004407
FMB Case #: 20240915
Property Owner: KLC Surf LLC / La Ola
Property Address: 1035 Estero Blvd
Status Update: Non-compliant (Appeal filed in Circuit Court)

V. COMPLIANCE CASES (STATUS UPDATE)

- A. 4900 Estero Blvd., Island Towers Condo Association
B. 2450 Estero Blvd., 2450 Estero Blvd LLC
C. 406 Estero Blvd., Windward Passage Resort Condo
D. 81 Miramar St., Smith Patricia O Tr for Patricia O Smith

VI. LIEN FORECLOSURE CASES

VII. APPEALS

VIII. ADJOURNMENT

NOTE: THIS MEETING IS STREAMED LIVE ON YOUTUBE.

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



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

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



Fort Myers Beach Special Magistrate Hearing

Town Hall Council Chambers

2731 Oak Street

Fort Myers Beach, FL 33931

Minutes

Tuesday, January 7, 2025

9:00 AM

ORDER OF BUSINESS

I. CALL TO ORDER

Town Clerk Amy Baker, Town Attorney Nancy Stuparich, Floodplain Manager Carl Thomas and Operations & Compliance Manager Thomas Yozzo were present.

II. NEW CASES TO BE HEARD

Town Attorney Stuparich noted the town would present four cases, with four requesting to be continued. The four cases to be heard today are A, B, C, and G. She indicated copies of exhibits were electronically sent to the judge and representatives were present.

The Special Magistrate introduced himself as John Van Laningham from Tallahassee. Town Attorney Stuparich commented that cases D, E, F and H would be continued to February 4, 2025.

A. 1035 Estero Boulevard, KLC Surf LLC / La Ola

DOAH Case #: [24-004407](#)

Case Number: 20240915

Amy Thibaut from Roetzel & Andress represented respondents Chris Primeau, KLC Surf, LLC and Thomas Houghton, La Ola. Town Attorney Stuparich stated she would display and describe the exhibits. All the information was included in the agenda packet. Exhibit A was a letter from FEMA with the Post Disaster Compliance Status Update Report from FEMA. She read highlighted sections of the report and explained how the town complied with the requests. She read portions of FEMA's November 12, 2024, letter and stated the town worked with owners with non-compliant structures on their property.

Operations & Compliance Manager Thomas Yozzo described his duties with the town. On September 19, 2024, he observed shipping containers on the property, which he determined to be non-compliant based on current floodplain regulations.

According to the Fort Myers Beach Floodplain Manager Carl Thomas, the shipping containers were not elevated, and the structures were non-compliant. A certified copy of the notice of violation was sent to the address on record on September 24, 2024, posted at the property and Town Hall. All copies were included in Exhibit B and information was displayed on the town's website under Public Notices. Photos accurately representing the condition of the shipping containers were included in Exhibit

C. Mr. Primeau was given 30 days to remove the shipping containers or come into compliance with the town code. Officer Danielle Batt inspected the property on November 18, 2024, and the shipping containers were still on the property. She prepared an affidavit of non-compliance, which was included in Exhibit D. The property owner received a letter revoking its permit on December 19, 2024, which was in Exhibit F. Exhibit G contained a notice of violation and a notice of hearing. Manager Yozzo inspected the property on January 6, 2025, and took photos of the shipping containers still on the property. He requested the photographs be added to Exhibit H. Town Attorney Stuparich explained that the exhibits mentioned differed slightly from what was initially filed with DOAH.

Attorney Thibaut indicated that she would present after the town's presentation.

Manager Thomas described his education and experience. He reviewed his conversations on September 24, 2024, with Manager Yozzo concerning the violation. He noted that relevant sections of the Land Development Code (LDC) and an excerpt of the American Society of Civil Engineers (ASCE) standard 24-14 regarding design and construction standards were a part of Exhibit E. He accompanied Manager Yozzo during inspections in December and yesterday. To illustrate the hazards non-compliant structures could cause, he received a photo from Town Manager Andy Hyatt after Hurricane Milton showing that a non-compliant structure was displaced and ended up in the area of North Estero Blvd. He did not know who the structure belonged to, but it posed a hazard to the community. In his opinion, the shipping container on the property was non-compliant with the town's floodplain ordinances. He indicated that he believed Public Works Director Jeff Hauge took the photo.

Town Attorney Stuparich requested a finding of violation as of January 6, 2025, requiring that the property owner come into compliance with the town code or remove the shipping containers within a reasonable period of time, a fine of \$250.00 per day in the event there was no compliance, an administrative fee of \$250.00 and authorize the town to abate the violation by removing the shipping containers if compliance is not obtained by March 1, 2025. The property owner will pay expenses incurred by the town within 30 days and a lien will be imposed if expenses are not paid. A proposed order was included in the information sent to the Special Magistrate.

Attorney Thibaut's presentation included an Overview of Property, History of Case, Trailer Images, Overview of Case, Summary of Argument, Containers Do Not Violate CFR Requirements, FEMA Regulations - 44 CFR 59.1, Configuration of Subject Property, Containers Do Not Violate LDC, Sec. 6-403, LDC Intent (Floodplain Regulations), Sec. 6-501, LDC, Sec. 6-443, LDC, The Structures are Not Exempt From the FBC, Sec. 6-525 LDC - General Requirements for Other Development, ASCE 24-14, The Containers Meet the Requirements of Sec. 6-525, LDC, Cannot Penalize Conduct that not Prohibited, Law Must Provide Fair Warning of Prohibited Conduct, Containers not Prohibited in Current Configuration and Therefore Cannot be Penalized, Equitable Estoppel Applies to Permit Recission, Substantial Hardship will Result and More than Property Owner and Operator. Special Magistrate Van Laningham asked Attorney Thibaut how she labeled the container configuration, but she did not know. She added that it was an innovative concept and suggested they were a mobile bar and restaurant. Town Attorney Stuparich stated there was a dispute concerning whether the containers were sitting on a trailer because the trailers were not visible. The property owner did not disclose that the containers were on the trailers in July. She objected to the inclusion of the photo of the trailers since it was not authenticated. She indicated that Manager Thomas and FEMA considered the containers violations. She did not think the equitable estoppel issue was applicable because the permit was issued after the town was trying to come back from Ian and was issued in error. Manager Yozzo stated that the trailers were not visible because of the skirting, decking and accessory structures built around it. He had no idea the trailers were there.

Attorney Thibaut indicated that the trailer photos were included with the temporary use permit application in November 2022. Thomas Houghton, respondent, testified that his friend owns a trucking company up north and drove the trailers to Florida. The containers were originally on the ground until the town informed him they had to be elevated, so the town was aware the containers were on the trailers. He added that the trailers were clearly visible in the evacuation video footage. Attorney Thibaut stated that a link to the video was included with the town's letter to FEMA dated November 1, 2024, and was in the record. She was not aware that there was a factual dispute regarding the trailers. Mr Houghton described the evacuation video and noted it took about four hours, but it could have been done in an hour if they had just driven over the bridge. He commented that he had approximately 21-25 employees and entertainers.

Town Attorney Stuparich questioned whether Mr. Houghton received his permit before July 19, 2024, and he replied affirmatively. Mr Houghton provided details of the pick-up trucks used to pull the trailers. Town Attorney Stuparich asked why he brought the containers back after evacuating for Milton. Mr Houghton responded that his containers were not non-compliant. He confirmed the containers were removed on Monday, October 7, 2024, starting at 7:00 a.m., two days before the hurricane.

Town Attorney Stuparich requested that Manager Thomas discuss the day-to-day interpretations and applications of some CFR sections. Manager Thomas explained why the containers were in a gray area between a structure, trailer, and RV. He confirmed that the deck and stairs were not attached to the trailers.

Manager Yozzo stated the notice of violation was posted on the property on September 24, and the respondent left on October 7 before the hurricane. They came back after they knew they were in violation. Attorney Thibaut noted that receiving a notice of violation did not mean there was an actual violation and she asked that the statement be stricken from the record. Special Magistrate Van Laningham agreed to strike it from the record. Special Magistrate Van Laningham asked whether both parties wanted to submit their arguments in writing. Both parties agreed. Attorney Thibaut will submit her argument by January 17, 2025, and Town Attorney Stuparich will submit hers by January 24, 2025. Special Magistrate Van Laningham will issue the order before the next hearing.

B. 1821 Estero Blvd., 1821 Estero Blvd Corp / Steve Larson dba Sun and Fun Rentals

DOAH Case #: [24-004834](#)

Case Number: 20240914

Town Attorney Stuparich provided an overview of the case. She noted her comments were tied to the documents in Exhibit A, which included a letter from FEMA dated July 19, 2024, with a summary regarding compliance with codes and a detailed report regarding temporary non-compliant structures. She noted the town was placed under a deadline of November 18 or 19, 2024, to remedy the matter and the town requested an extension to June of 2025. A video was linked to demonstrate how quickly containers could be removed from properties in the event of a hurricane warning. FEMA replied that they were not authorized to grant an extension and she summarized their reasons. She requested that all exhibits in the packet be entered into the record.

Manager Yozzo requested that all exhibits be entered into the record. On September 19, 2024, he observed three shipping containers he determined to be non-compliant based on the current floodplain regulations. He testified that the shipping containers were not elevated to the best of his knowledge and did not have engineered plans to meet the regulations. He consulted with Manager Thomas, who confirmed that the shipping containers were non-compliant structures. A copy of the certified notice of violation was issued on September 24, 2024, and included in Exhibit B. The notice of violation was posted on the property and in the town hall. He requested that the affidavit of mailing and posting be entered into the record. Photos accurately documenting the violation on September 19, 2024, were in Exhibit C. Additional photos showed the posting of the notice of violation on October 2, 2024. The property owner was given 30 days to remove the containers or come into compliance.

Officer Marcio Chavez inspected the property on December 10, 2024, and the containers were still on the property. Officer Chavez prepared an affidavit of non-compliance, which was included in Exhibit D. The owner received a letter revoking his permit on December 1, 2024, included in Exhibit F. Exhibit G contains a notice of today's hearing sent to the property owner. Manager Yozzo was accompanied by Manager Thomas when he inspected the property yesterday. He took photos that verified that the containers were still on the property and were in Exhibit H.

Gordon Stojkoski, the respondent, did not have any questions for Manager Yozzo.

Manager Thomas testified that he had conversations with Manager Yozzo in September 2024 regarding concerns about the shipping containers that were in violation of the floodplain regulations as claimed by FEMA. He explained the criteria to be satisfied for compliance and a copy of the code and an excerpt of ASCE 24-14 are in Exhibit E. He accompanied Manager Yozzo to the property the second week in December and yesterday. He discussed the requirements to meet the floodplain regulations. Public Works Director Jeff Hauge took a picture illustrating the hazard caused by the displacement of non-compliant structures after Hurricane Milton. In his opinion, the shipping containers located on the property were non-compliant with the town's floodplain ordinances.

Town Attorney Stuparich stated she provided a draft order and requested a finding of violation, a period of time for the respondent to come into compliance, a fine of \$250.00 for each day the violation extends beyond the compliance date, an administrative fee of \$250.00, authorizing the town to abate the violation if there is no compliance by March 1, 2025, with expenses to be paid by the respondent within 30 days. If not paid, the town would request certification of the amount owed to be imposed as a lien on the property.

Mr. Stojkoski explained that he had a successful business with about 40 full-time employees before Hurricane Ian. The storm wiped out the building and a family home behind the restaurant. He explained that Steve Larson, a bicycle rental business owner, also lost his structure and approached him about leasing his parking lot space to open his business. Mr. Stojkoski thought it was a wonderful idea, and the town issued permits, but the town came back and said they were issued in error. He explained that Steve took out a loan and bought the trailers to the specifications provided by the town. Pictures of the containers with axles and tires were in Exhibit H and he indicated they could be moved within an hour. He questioned whether the containers would be compliant if FEMA were not involved since the town initially approved them. He added that the town revoked the permit a few weeks ago. He discussed investing a lot of money and hanging by a thread after losing everything. The containers were specifically purchased based on the town's requirements, so why would they issue permits for non-compliant structures?

The containers would not have been purchased if the town had not allowed them. He noted there had to be some solution for the small business owners who invested hundreds of thousands of dollars in loans to purchase the structures and invest in the island's future.

Mr. Larson stated that the town issued a permit after extensive meetings and drawings. He invested hundreds of thousands for the equipment he rented, like golf carts, bicycles, scooters, e-bikes and other items. He noted that going out of business was not an option and described how the containers were constructed. He requested that the containers remain and, if not, that the town clarify what he could do. He needed time to remove the containers, but not during the busy season. He added that he ended up with three 40-foot storage containers.

Town Attorney Stuparich questioned whether the containers were moved before Hurricanes Helene and Milton. Mr. Larson replied negatively because it was a logistics issue, but they opened them up and let them flood, and they did not move. He testified that the containers had not been moved since being delivered to the property. Conditions of the permit were that the containers had to have wheels and the rental equipment had to be inside.

Special Magistrate Van Laningham asked when the temporary permits expired. Town Attorney Stuparich replied that the permit stipulated an extension that could be requested within 180 days. Special Magistrate Van Laningham confirmed that the permit was revoked due to the town's error, not because of non-compliance with the permit. Town Attorney Stuparich did not think the correctness of the revocation letter was the issue because other administrative remedies could address those questions. Mr. Larson stated he would provide a copy of the permit, which had no expiration date. Special Magistrate Van Laningham questioned whether the respondent took any action to challenge the revocation notice. Mr. Larson replied negatively because they decided to come to the hearing. He will submit the temporary permit.

Special Magistrate Van Laningham asked whether either party wanted to submit a proposed order. Mr. Larson declined.

Manager Yozzo requested proof that the wheels worked and the containers could be removed or that a mechanics report be provided. Mr. Stojkoski asked whether the containers would be compliant if they proved they could be moved. Manager Yozzo replied that would be one part of it and Manager Thomas commented that the only requirement was that the containers could be moved. If the proper documentation certifying that the containers were highway-ready, they would not need to meet the flood-resistant requirements. Special Magistrate Van Laningham stated he would review the permit provided by Mr. Larson by January 10, 2025, and rule after that.

C. 2815 Estero Blvd., Himmelstein Associates LLC

DOAH Case #: [24-004838](#)

Case Number: 20240994

Town Attorney Stuparich described the documents in Exhibit A that were included in the agenda packet and requested that they be entered into the record.

Manager Yozzo observed two non-compliant shipping containers on the property on October 17, 2024. The containers were not elevated, had no engineered plan for pilings and did not have visible axles or chassis.

Manager Thomas confirmed the structures were non-compliant. The notice of violation was sent via certified mail to the property owner on October 17, 2024, posted on the property and at the town hall. All documents were in Exhibit B. The respondent was given 30 days to remove the containers or come into compliance with town codes. Manager Yozzo inspected the property again on December 10, 2024, and there was no change. He prepared an affidavit of non-compliance with photos included in Exhibit C. Exhibit E included a letter revoking his permit sent on December 19, 2024.

The property owner was provided with a notice of today's hearing and relevant documents in Exhibit F. Manager Thomas accompanied Manager Yozzo on another inspection yesterday and the containers remained on the property. Photos were included with the documents in Exhibit G.

Manager Thomas noted that Exhibit A included FEMA documents to meet the requirements of the post-disaster compliance report for Hurricane Ian.

Exhibit E included criteria to satisfy compliance with the town's codes. He confirmed meeting with Manager Yozzo to inspect the property in December and yesterday and observed no change. An illustrative photo of what could happen with the displacement of non-compliant structures after hurricanes is included in Exhibit H.

Town Attorney Stuparich requested an order of violations, requiring compliance with the town's codes or removal of the structure in a reasonable time, imposing a fine of \$250.00 per day each day the violation remains in effect past the compliance date, an administrative fee of \$250.00 and authorizing the town to abate the violation by removing the structures if they are still there on March 1, 2025. The property owner will pay any expenses incurred by the town within 30 days and if the town's expenses are not paid, the town will request that a lien be imposed on the property.

Jeff Walker, manager for Himmelstein Associates, LLC Properties, stated that the town permitted the temporary containers and that they have a permit to rebuild their building. He recently submitted a permit to elevate and anchor the containers to become compliant and needed time for the permit to be issued. He anticipated a timeframe of four to six weeks after he received the permit.

Town Attorney Stuparich stated the town would work with the respondent with a compliance plan.

Special Magistrate Van Laningham noted a compliance plan was a positive step. He entered the Exhibits into the record and will review the documentation and issue an order soon.

D. 4900 Estero Blvd., Island Towers Condo Association

DOAH Case #: [24-004841](#)

Case Number: 20240960

Continued to February 4, 2025.

E. 1249 Estero Blvd, 1249 Estero Adventures LLC

DOAH Case #: [24-004842](#)

Case Number: 20240919

Continued to February 4, 2025.

F. 2450 Estero Blvd., 2450 Estero Blvd LLC

DOAH Case #: [24-004843](#)

Case Number: 20240946

Continued to February 4, 2025.

G. 81 Miramar St., Smith Patricia O Tr for Patricia O Smith

DOAH Case #: [24-004844](#)

Case Number: 20240912

Town Attorney Stuparich described the documents in Exhibit A and asked that they be entered into the record.

On September 18, 2024, Manager Yozzo observed two manufactured sheds on the property that were not elevated, did not have engineered plans for pilings and did not have visible chassis or steerable axles. Manager Thomas confirmed that the sheds were not compliant. A notice of violation was sent to the property owner on September 19, 2024, and posted at the property and the town hall. Copies of the notice and supporting documents are in Exhibit B. Exhibit C includes photos taken on September 19, 2024, and accurately represents the sheds on the property. Manager Yozzo inspected the property on December 10, 2024, and the storage units remained there. He filed an affidavit of non-compliance with photos in Exhibit D. Exhibit E consisted of a letter dated December 19, 2024, revoking the permit. The owner was provided with a notice of hearing in Exhibit G. He inspected the property and took photos yesterday and there were no changes. That information is in Exhibit H.

Manager Thomas verified that the sheds were non-compliant and explained the criteria for becoming compliant. Copies of relevant documents are in Exhibit F. He accompanied Manager Yozzo to the inspection yesterday and compliance was discussed. He provided an illustrative photo of what can happen to non-compliant shipping containers after a hurricane.

Attorney Eric Stocks stated that the structures were fixed to the ground on a foundation. He asked if they were at the hearing because they were not elevated. Manager Thomas replied that they were not 13 feet above base flood elevation, they did not appear to be adequately anchored and there were no visible vents or breakaway walls.

Town Attorney Stuparich requested an order of violations requiring compliance or removal of the non-compliant structures within a reasonable timeframe, a fine of \$250.00 per day for each day the violation continues past the compliance date and an administrative fee of \$250.00. She also asked that the town be allowed to abate the violation by removing the non-compliant structure by March 1, 2025, with expenses incurred by the town to be paid by the property owner within 30 days. If the town's expenses remain unpaid, the town will request a lien on the property.

Attorney Stocks objected to imposing fines because he properly secured a permit for the structures. There was no issue with the structures until FEMA stepped in. Since the town granted the permit in error, it should not fall on his client to pay financially for that error. He added that this is the time of the year his client makes money. He noted that one of the structures would be moved in the next couple of weeks and his client was working to remove the second structure. He added that his client had purchased a structure that would be in compliance. Attorney Stocks requested that the Special Magistrate allow his client as much time as possible and waive the administrative fee.

Special Magistrate Van Laningham entered all the exhibits into the record and will review documents before issuing an order.

Attorney Stocks stated that he was standing in a structure not elevated 13 feet and across from the beach.

H. 406 Estero Blvd., Windward Passage Resort Condo

DOA Case #: [24-004845](#)

Case Number: 20240921

Continued to February 4, 2025.

Minutes approved by Judge Van Laningham with/without changes; this 4th day of February 2025.

Amy Baker

Town Clerk and Clerk to Special Magistrate

Hearing Exhibit A

Notice of Hearing Affidavit of Posting

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

**TOWN OF FORT MYERS BEACH,
A Florida Municipal Corporation,**

DOAH Case No. 24-000385

FMB Case No. 20241106

Petitioner,

vs.

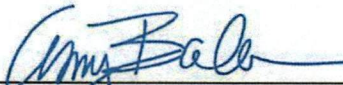
KLEDZIK, CARY AND LAURA

Respondent,

AMENDED NOTICE OF HEARING

The undersigned hereby gives notice that a hearing previously scheduled at 9:00 am Tuesday, February 4, 2025, before the Honorable Judge John G. Van Laningham at the Fort Myers Beach Town Council Chambers located at 2731 Oak Street, Fort Myers Beach, FL 33931 regarding a Notice of Violation has been **rescheduled to 9:00 a.m. Tuesday, March 4, 2025** at the same location before the Honorable Judge John G. Van Laningham.

Signed this 31st day of January 2025.



Amy Baker, Town Clerk



TOWN OF FORT MYERS BEACH,

Petitioner,

vs.

Kledzik Cary & Laura
2006 Stiers Ct
Batavia, IL 60510

Respondent,

FMB Case Number:	20241106
Certified Mail:	
Regular Mail:	
DOAH Case Number:	

Site Address: 8285 Estero Blvd,
Fort Myers Beach, FL 33931
Parcel Strap No.034724W3002440000

AFFIDAVIT OF NOTICE AND POSTING

STATE OF FLORIDA

COUNTY OF LEE

BEFORE ME, the undersigned authority, personally appeared Thomas Yozzo, who is the Code Compliance Manager for the Town of Fort Myers Beach, who was sworn and under oath, deposes and says the following regarding case #20241106 for the keeping and/or maintaining of non-compliant structure(s) and/or shipping containers on property, which are not built to current flood design codes in the Special Hazard Areas as defined in Section 6-494 of the FMB Code of Ordinances.) at the property 1249 Estero Blvd, Fort Myers Beach, FL 33931.

FORT MYERS BEACH ESTERO ISLAND

P. 239-765-0202 | 2731 Oak Street, Fort Myers Beach, FL 33931



1. I personally mailed by certified mail a copy of the Notice of Hearing scheduled 03/04/2025 to the following:

- a. Kledzik Cary & Laura
2006 Stiers Ct
Batavia, IL 60510
Certified Mail No. 9589071052700636641179
(Property Owner)

Copies of the certified mailing receipts are attached as evidence.

- 2. I posted a copy of the Notice at 1249 Estero Blvd, Fort Myers Beach, FL 33931, by which is the subject property. I took a photographs of the Notice I posted on the 7th day of February 2025. A true, accurate and unaltered copy of the photographs are attached.
- 3. I posted a copy of the Notice at the primary municipal government office for the Town of Fort Myers Beach, which is Town Hall and located at 2731 Oak Street, Fort Myers Beach, FL 33931. True, accurate and unaltered copies of photographs I took of the Notice posted on the 7th day of February 2025 are attached.
- 4. In addition, I posted a copy of the Notice on the Town's publicly accessible website at <https://www.fortmyersbeachfl.gov/1294/Public-Notices> on the 7th day of February 2025. A copy of the posted webpage is attached as Evidence



Under penalties of perjury, I declare that I have read the foregoing affidavit and that the facts stated in it are true and to the best of my knowledge and belief comply with Section 2-429 of the Town Land Development Code and Section 162.12, Florida Statutes.

x 
Signature of Affiant

**STATE OF FLORIDA
COUNTY OF LEE**

The foregoing instrument was sworn to, subscribed and acknowledged before me by means of either ☒ personal presence or ☐ online notarization this 18th day of February, 2025, by Thomas Yozzo. She ☒ is personally known to me or ☐ has produced _____ as identification.



[Notary Seal]


Notary Public, State of Florida
Print Name: Danielle Batt
My Commission Expires: July 14 2026

9589 0710 5270 0636 6411 79

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

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

OFFICIAL USE

Certified Mail Fee

\$

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

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

Postage

\$

Total Postage and Fees

\$

Sent To

US

C

Kledzik Cary & Laura
2006 Stiers Ct
Batavia, IL 60510

Postmark
Here

Amended NOH

20241106

8285 Eastern Blvd



Feb 7, 2025 8:09:08 AM



18



Feb 7, 2025 8:08:22 AM

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TOWN OF FORT MYERS BEACH,
A Florida Municipal Corporation,

DOAH Case No. 24-000385

FMB Case No. 20241106

Petitioner,

vs.

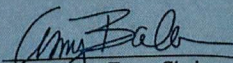
KLEDZIK, CARY AND LAURA

Respondent,

AMENDED NOTICE OF HEARING

The undersigned hereby gives notice that a hearing previously scheduled at 9:00 am Tuesday, February 4, 2025, before the Honorable Judge John G. Van Laningham at the Fort Myers Beach Town Council Chambers located at 2731 Oak Street, Fort Myers Beach, FL 33931 regarding a Notice of Violation has been **rescheduled to 9:00 a.m. Tuesday, March 4, 2025** at the same location before the Honorable Judge John G. Van Laningham.

Signed this 31st day of January 2025,


Amy Baker, Town Clerk



Public Notices | Town of Fort Myers

fortmyersbeachfl.gov/1294/Public-Notices

CIVICPLUS Municipal Websites Central

HOME PAGE DASHBOARD MODULES LIVE EDIT IS ON

SAVE SAVE AS COPY CANCEL ACTIONS

Public Notices

All Public Notices will be taken off the website after 90 days. See below for a current list.

TOWN CLERK

NOTICE OF VIOLATION

NOTICE OF HEARING

NOTICE TO VACATE AND DEMOLITION NOTICE

OTHER NOTICES

FMB PERMITS

CDBG-DR

Notice of Hearings

- 1249 Estero Blvd case #20240919 12/23/2024
- 1035 Estero Blvd case #20240915 12/23/2024
- 406 Estero Blvd case #20240921 12/23/2024
- 4900 Estero Blvd case #20240960 12/23/2024
- 2815 Estero Blvd case #20240994 12/23/2024
- 2450 Estero Blvd case #20240946 12/23/2024
- 1821 Estero Blvd case #20240914 12/23/2024
- 81 Miramar St. case #20240912 12/23/2024
- 2450 Estero Blvd case #20240946 (rescheduled) 12/30/2024
- 201 Delmar Ave case #20240647 01/02/2025 (CANCELED)
- 1 Fairview Blvd case #20240850 01/02/2025 (CANCELED)
- 32 Fairview Blvd case #20240680 01/02/2025
- 3127 Estero Blvd case #20240784 01/02/2025 (CANCELED)
- 104 Washington Ave case #20240522 01/02/2025 (CANCELED)
- 80 Avenue F case #CE140394 01/10/2025
- 7864 Buccaneer Dr. case #20240786 01/27/2025
- 190 Bayview Ave case #20240743 01/27/2025
- 32 Fairview Blvd case #20240680 01/27/2025
- 8285 Estero Blvd case #20241106 01/31/2025
- 406 Estero Blvd case #20240921 Amended 02/03/2025

Public Notices | Town of Fort Myers

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Public Notices

[DRAFT] Public Information

Add Page

Mayor & Council

Special Event Permit

Bay Oaks Park

Careers

Mound House

Matanzas Pass Mooring Field

Utilities

PERMITTING (also Building Services, zoning, code)

FMB Town Hall

Mound House

Bay Oaks Rec Campus

FMB Community Pool

2731 Oak Street

451 Connecticut Street

2731 Oak Street

2600 Oak Street

Property Data

STRAP: 03-47-24-W3-00244.0000 Folio ID: 10234138

Hurricanes Helene/Milton Tax Roll Value Letter Hurricane Ian Tax Roll Value Letter

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Owner Of Record - Tenants by Entirety

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

KLEDZIK CARY & LAURA
2006 STIERS CT
BATAVIA IL 60510

Site Address

Site Address maintained by E911 Program Addressing

8285 ESTERO BLVD
FORT MYERS BEACH FL 33931

Property Description

Do not use for legal documents!

LAGUNA SHORES UNIT 2 PB 9 PG 84 LOT 44

[View Recorded Plat at LeeClerk.org](#) - Use this link to do an Official Records search on the Lee County Clerk of Courts website, using 9 and 84 for the book and page numbers.

Attributes and Location Details

Total Bedrooms / Bathrooms 0
1st Year Building on Tax Roll N/A
Historic Designation No

Township	Range	Section	Block	Lot
47	24E	03	00244	0000
Municipality	Latitude	Longitude		
Town of Fort Myers Beach	26.40472	-81.88746		

[View Parcel on Google Maps](#)

[Tax Map Viewer] [View Comparables]



[Pictometry Aerial Viewer]

Image of Structure



01/10/2024 [View Technology Corporation](#)

◀ Photo Date January of 2024 ▶ ☐ View other photos

Last Inspection Date: 06/03/2024

Property Values / Exemptions / TRIM Notices

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No existing exemptions found for this property.

TRIM Notices	Tax Year	Just	Land	Market Assessed	Capped Assessed	Exemptions	Classified Use	Taxable
2024 / Additional Info	2024 (Final Value)	693,608	682,728	693,608	624,240	0	0	624,240
2023 / Additional Info	2023 (Final Value)	567,491	567,481	567,491	567,491	0	0	567,491
2022 / Additional Info	2022 (Final Value)	827,409	347,800	827,409	623,453	0	0	623,453
2021 / Additional Info	2021 (Final Value)	566,775	331,250	566,775	566,775	0	0	566,775

2020 / Additional Info	2020 (Final Value)	518,418	331,250	518,418	518,418	0	0	518,418
2019 / Additional Info	2019 (Final Value)	504,692	265,000	504,692	504,692	0	0	504,692
2018 / Additional Info	2018 (Final Value)	508,731	265,000	508,731	496,535	0	0	496,535
2017 / Additional Info	2017 (Final Value)	451,395	240,700	451,395	451,395	0	0	451,395
2016	2016 (Final Value)	448,978	240,700	448,978	448,978	0	0	448,978
2015	2015 (Final Value)	486,397	240,700	486,397	486,397	0	0	486,397
2014	2014 (Final Value)	482,504	240,700	482,504	482,504	0	0	482,504
2013	2013 (Final Value)	427,547	175,900	427,547	340,523	0	0	340,523
2012	2012 (Final Value)	309,566	230,000	309,566	309,566	0	0	309,566
2011	2011 (Final Value)	407,122	300,000	407,122	407,122	0	0	407,122
2010	2010 (Final Value)	435,387	320,000	435,387	435,387	0	0	435,387
	2009 (Final Value)	532,920	420,000	532,920	532,920	0	0	532,920
	2008 (Final Value)	685,240	535,580	685,240	685,240	0	0	685,240
	2007 (Final Value)	788,300	636,470	0	788,300	0	0	788,300
	2006 (Final Value)	860,480	662,350	0	860,480	0	0	860,480
	2005 (Final Value)	521,080	382,490	0	521,080	0	0	521,080
	2004 (Final Value)	446,510	311,570	0	446,510	0	0	446,510
	2003 (Final Value)	425,370	271,760	0	425,370	0	0	425,370
	2002 (Final Value)	318,600	158,440	0	318,600	0	0	318,600
	2001 (Final Value)	249,710	125,340	0	249,710	0	0	249,710
	2000 (Final Value)	217,520	86,840	0	217,520	0	0	217,520
	1999 (Final Value)	190,910	70,860	0	190,910	0	0	190,910
	1998 (Final Value)	172,890	68,500	0	172,890	25,000	0	147,890
	1997 (Final Value)	171,080	65,500	0	171,080	25,000	0	146,080
	1996 (Final Value)	171,030	67,860	0	171,030	25,000	0	146,030
	1995 (Final Value)	172,200	67,860	0	172,200	25,000	0	147,200
	1994 (Final Value)	185,880	80,360	0	185,880	25,000	0	160,880
	1993 (Final Value)	195,400	80,360	0	195,400	25,000	0	170,400
	1992 (Final Value)	198,600	67,360	0	198,600	25,000	0	173,600

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

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

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

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

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

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

Property Details (Current as of 1/14/2025) ?

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Land			
Land Tracts			
Use Code	Use Code Description	Number of Units	Unit of Measure
0	Vacant Residential	1.00	Lot
Land Features			
Description		Year Added	Units
BOAT LIFT		1999	1
SEAWALL - CONCRETE		1983	72

Property Details (2024 Tax Roll) 123 456

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Land			
Land Tracts			
Use Code	Use Code Description	Number of Units	Unit of Measure
0	Vacant Residential	1.00	Lot
Land Features			
Description		Year Added	Units
BOAT LIFT		1999	1
SEAWALL - CONCRETE		1983	72

Taxing Authorities

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TOWN OF FT MYERS BEACH / 032

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

GREEN CORRIDOR PACE / 363	Special District	
SFWMD-DISTRICT-WIDE / 110	Water District	SFWMD 3301 GUN CLUB RD WEST PALM BEACH FL 33406
SFWMD-EVERGLADES CONSTRUCTION PROJECT / 084	Water District	SFWMD 3301 GUN CLUB RD WEST PALM BEACH FL 33406
SFWMD-OKEECHOBEE BASIN / 308	Water District	SFWMD 3301 GUN CLUB RD WEST PALM BEACH FL 33406

Sales / Transactions ⓘ

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Sale Price	Date	Clerk File Number	Type	Notes	Vacant/ Improved
1,100,000.00	01/31/2022	2022000037217 Sales Questionnaire Complete	03		I
0.00	05/31/2018	2019000042099	11		I
435,000.00	03/20/2013	2013000067117	38		I
945,000.00	09/08/2006	2006000358030	06		I
205,000.00	05/29/1998	2966/2755	06		I
100.00	01/01/1900	732/74	01		V

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

Use the above link to do a search on the Lee County Clerk of Courts website, using **9** and **84** for the book and page numbers and **Plats Book** for the book type.

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

Building / Construction Permit Data

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Permit Number	Permit Type	Date
236492	Building New Construction	05/09/2024
235436	Boathouse, Dock & Shoreline	09/05/2023
233471	Boathouse, Dock & Shoreline	07/03/2023
234332	Demolition	06/15/2023
220749	Building Window / Door Replacement	05/25/2022
220819	Electric	05/19/2022
MEC15-0259	AC New / Change out	08/20/2015
ROF2005-04763	Roof	09/27/2007
RES2006-11984	Pool & Spa	06/16/2006
RES199904001	Pool & Spa	04/15/1999
DSH199902789	Boathouse, Dock & Shoreline	03/15/1999
DSH199902790	Boathouse, Dock & Shoreline	03/15/1999
POL199902166	Pool & Spa	02/26/1999
90515	Residential	10/11/1982

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

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

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

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

Parcel Numbering History ⓘ

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Prior STRAP	Prior Folio ID	Renumber Reason	Renumber Date
03-47-24-02-00044.0000	N/A	Reserved for Renumber ONLY	01/12/1995

Solid Waste (Garbage) Roll Data

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Solid Waste District	Roll Type	Category	Unit / Area	Tax Amount
001 - Service Area 1	R - Residential Category		0	0.00

Garbage	Collection Days	Recycling	Horticulture
Thursday		Thursday	Thursday

Flood and Storm Information

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Community	Flood Insurance	Find my flood zone	Date	Evacuation Zone
	Panel	Version		
071C	0569	G	11/17/2022	A

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Prepared by and return to:

Leo J. Salvatori, Esq.
Salvatori Law Office, PLLC
5150 Tamiami Trail North,
Suite 304, Naples, FL 34103

Parcel Identification Number: 03-47-24-W3-00244.0000

Consideration: \$1,100,000.00

[Space Above This Line For Recording Data]

Warranty Deed

This Warranty Deed made this 31st day of January, 2022 between Susan Ruth Riordan, formerly known as Susan Fey, a married woman, whose post office address is 936 Adelphi Court, Fort Myers, FL 33919 grantor, and Cary Kledzik and Laura Kledzik, husband and wife and an estate by the entireties, whose post office address is 6660 Estero Blvd., #502, Fort Myers Beach, FL 33932, grantee:

(Whenever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, trusts and trustees)

Witnesseth, that said grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable considerations to said grantor in hand paid by said grantee, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said grantee, and grantee's heirs and assigns forever, the following described land, situate, lying and being in Lee County, Florida to-wit:

Lot 44, UNIT NO. 2 LAGUNA SHORES, as recorded in Plat Book 9, Page 84, of the Public Records of Lee County, Florida, Less state road right of way.

Grantor warrants that at the time of this conveyance, the subject property is not the Grantor's homestead within the meaning set forth in the constitution of the state of Florida, nor is it contiguous to or a part of homestead property. Grantor's residence and homestead address is: 936 Adelphi Court, Fort Myers, FL 33919.

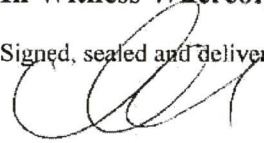
Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

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

And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to **December 31, 2021**.

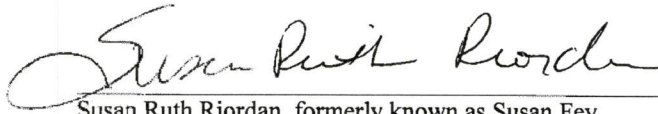
In Witness Whereof, grantor has hereunto set grantor's hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:

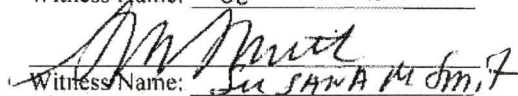


Signature Witness #1

Witness Name: Leo J. Salvatori



Susan Ruth Riordan, formerly known as Susan Fey

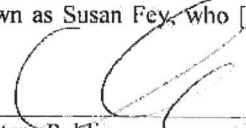


Witness Name: Su SANA M dm, 7

State of Florida
County of Collier

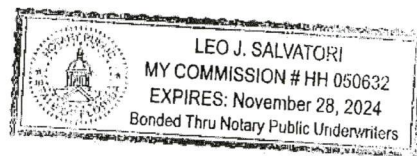
The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 31st day of January, 2022 by Susan Ruth Riordan, formerly known as Susan Fey, who ☐ is personally known or ☒ has produced drivers licence as identification.

[Notary Seal]


Notary Public

Printed Name: Leo J. Salvatori

My Commission Expires: _____



Hearing Exhibit B

FEMA and Related Ordinances



FEMA

July 19, 2024

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Andy Hyatt
Town Manager, Fort Myers Beach
2525 Estero Blvd
Fort Myers Beach, FL 33931

Re: National Flood Insurance Program Participation

Dear Mr. Hyatt:

I'd like to thank you and your staff for the long hours and hard work during the last two months to help correct the Town of Fort Myers Beach's compliance issues regarding the National Flood Insurance Program (NFIP). Our teams have made great progress in helping ensure Fort Myers Beach and their residents are more resilient and prepared for future storms.

Our team has completed its review of the town's compliance with the minimum floodplain management standards and everything that has been done to correct any deficiencies and violations.

We acknowledge the work invested by your community has resulted in some improvements to meet minimum floodplain management standards. However, as the Town of Fort Myers Beach continues to recover from Hurricane Ian, FEMA finds that outstanding compliance issues remain. FEMA will not retrograde the town's class rating at this time.

Although FEMA will not retrograde the Town of Fort Myers Beach's class rating at this time, if the violations are not corrected or remedied by Nov. 18, FEMA's regulations (Title 44 Code of Federal Regulations 59.24(b) Suspension of Community Eligibility) require us to place the town on probation. This letter starts the official notification process. In addition, the town would no longer be eligible for Community Rating System participation and would be retrograded to Class 10 effective on April 1, 2025.

This letter and its attachments include FEMA's findings and our proposed next steps for the Town of Fort Myers Beach to remedy outstanding deficiencies and violations. These deficiencies and violations are described in the attached documents, specifically refer to the Status Report. To avoid probation in 121 days, the Town of Fort Myers Beach must correct deficiencies and remedy all identified violations to the maximum extent possible by Nov. 18.

You have my commitment of support as you work through these issues with your team.

www.fema.gov

A careful review of the data you provided since April shows that the implementation of the floodplain management program has several deficiencies that remain out of compliance. During the 60-day review period, the Town of Fort Myers Beach submitted additional permitting information for 105 structures in the floodplain.

Here is a summary of some of the items that the Town of Fort Myers Beach needs to remedy:

- Lack of permits for development in the Special Flood Hazard Area.
- Lack of maintaining permit records for development, new construction, or substantial improvements.
- Failure to make substantial improvement (SI) and substantial damage (SD) ("SI/SD") determinations.

FEMA staff reviewed each of the submitted permit packages and learned:

- 31% of the permit packages were complete.
- 20% need additional information.
- 2% needed a Community Assistance Visit follow up.
- 15% were ongoing in a Code Enforcement Case.
- 32% will be followed up on during a Future Compliance Engagement.

FEMA also found:

- 51 out of the 105 permit packages submitted did not include permits for structures that sustained documented damage.
- 76 of the 105 were missing itemized/detailed cost information for repair performed.
- 62 of the 105 had individual permits issued without total repair costs.

To avoid probation, the Town of Fort Myers Beach must complete the following items by close of business on Nov.18. We encourage regular communication to share updates on your progress.

The town must remedy the following identified deficiencies:

1. Within 60 days of the date of this correspondence, September 16, 2024, develop and submit a plan that includes timelines and actions to address all identified program deficiencies and violations to the maximum extent possible.
2. Assess all floodplain development from Hurricane Ian in the Special Flood Hazard Area, ensuring that permits for all repairs, construction and development were obtained consistent with local floodplain management regulations:
 - a. From FEMA's April 8, 2024 letter:
 - i. Provide a status update for structures deemed Substantially Damaged on the list provided by the Town of Fort Myers Beach in accordance with the April 11, 2024, letter sent to the FEMA Region 4 Administrator.
 - ii. Provide evidence to support compliance action taken for the structures identified as having damage and FEMA identified as Future Compliance Engagement, Community Assistance Visit follow up, and additional information needed.

- b. In addition to the above, provide an assessment of all floodplain development impacts from Hurricane Ian to structures in the Special Flood Hazard Area and provide a plan for remedying any identified violations.
3. Provide documentation that demonstrates your community is leveraging its code enforcement process to address new and existing code cases for all structures not confirmed as compliant. When a violation is confirmed, remedy to maximum extent possible. This includes:
 - a. In Item 2 above, structures identified during the evaluation as a Code Enforcement Case
 - b. Structures identified when assessing the Special Flood Hazard Area for all Hurricane Ian impacts to structures.
4. Put a process in place to ensure substantial damage compliance for future events.

You have my commitment to continue to support you and your team as you take the necessary compliance measures to avoid probation and possible suspension from the National Flood Insurance Program.

If you have any questions or at any time need technical assistance to address these issues, please contact FEMA Region 4 Office, Jacky Bell, Mitigation Division Director, at jacky.bell@fema.dhs.gov or 404-273-4710.

Sincerely,



Robert D. Samaan
Regional Administrator

Attachments:

- Community Status Report
- Criteria for Avoiding Probation

cc: Kristin Schumacher, Floodplain Administrator
Jason Hunter, Region Floodplain Management & Insurance Branch Chief
Jillian Kraynak, Florida NFIP State Coordinator
Office of Sen. Marco Rubio
Office of Sen. Rick Scott
Office of Rep. Byron Donalds
Office of Rep. Greg Steube



FEMA

Town of Fort Myers Beach Post-Disaster Compliance Status Update Report

FEMA remains committed to helping communities take appropriate remediation actions to remain in good standing with the National Flood Insurance Program (NFIP) and participate in the Community Rating System (CRS).

The Town of Fort Myers Beach was granted 60 days (June 10, 2024), to submit to FEMA any new information related to the deficiencies and substantive violations detailed in FEMA's April 8, 2024 Findings Report. The April 8, 2024 Findings Report supported an initial decision by FEMA to retrograde the Town of Fort Myers Beach to a CRS class 10 community. In the Findings Report, FEMA also found program deficiencies and violations within the Town of Fort Myers Beach, which will serve as a basis for the current enforcement action and needed remediation.

During the 60-day review period, the Town of Fort Myers Beach provided FEMA permit documentation for 105 sites. FEMA reviewed the submitted documentation, for the 105 sites as well as the Town of Fort Myers Beach's Narrative and supporting documentation.

After careful review of Town of Fort Myers Beach's submittal, FEMA finds that program deficiencies and substantive violations remain. Unfortunately, due to the deficiencies, the Town of Fort Myers Beach is being notified that they have until November 18, 2024 to address these deficiencies, or the Town will be placed on probation from the NFIP:

LIST OF PROGRAM DEFICIENCIES

Program Deficiencies are a defect in a community's floodplain management regulations or administrative procedures that impairs effective implementation of floodplain management regulations of the standards in 44 CFR 60.3; 60.4; 60.6; and NFIP Community Compliance Program Guidance, P-1022 (July 2016) in section 3.2.

- Failure of the community's "commitment to recognize and duly evaluate flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards in all official actions in the areas having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards and to take such other official action reasonably necessary to carry out the objectives of the program;" 44 CFR 59.22(8) and LDC CH 6, Art IV, Div 1, Sec 6-403(8).
- Failure to require permits for all proposed construction and development in the SFHA. 44 CFR 60.3(b)(1); 44 CFR 60.3(c)(1); 44 CFR 60.3(e)(1); FBC R101.2.1; FBC EB701.3; FBC 105.1; LDC CH 6, Art IV, Div 3, Sec 6-427; and LDC CH 6, Art IV, Div 6, Sec 6-461.
- Failure to maintain permit records for development, new construction, or substantial improvements in the SFHA. 44 CFR 59.22(a)(9)(iii); 44 CFR 60.3(b)(5)(iii); and 44 CFR 60.3(e)(2)(ii).
- Failure to make substantial improvement (SI) and substantial damage (SD) ("SI/SD") determinations and calculations for all proposed construction and development in the SFHA. 44 CFR 60.3(b)(1); 44 CFR 60.3(c)(1); 44 CFR 60.3(e)(1); LDC CH 6, Art IV, Div 3, Sec 6.428(1); and FEMA Substantial Improvement / Substantial Damage Desk Reference, P-758 (May 2010) ("SI/SD Desk Reference") in section 5.2.

- Failure to maintain SI/SD determination records for all proposed construction and development in the SFHA. 44 CFR 59.22(a)(9)(iii); 44 CFR 60.3(b)(5)(iii); 44 CFR 60.3(e)(2)(ii); and SI/SD Desk Reference in sections 4.2 and 7.7.
- Failure to keep records of permits, certifications, and variance actions. 44 CFR 59.22(a)(9)(iii).
- Failure to establish SI/SD procedures for administering and documenting determinations of SI/SD. LDC CH6, Art IV, Div 3, Sec 6.428(1) and FEMA Substantial Improvement / Substantial Damage Desk Reference, P-758 (May 2010) ("SI/SD Desk Reference") in sections 4.1, 4.3, & 7.1.
- Failure in permitting system, which allowed the use of "temporary" non-compliant structures (including shipping container and trailers/food trucks). LDC CH 6, Art IV, Div, 4, Sec 6.443 (3)&(4), LDC CH 6, Art IV, Div 6, and LDC CH 6, Art IV, Div 6, Sec 6-462, Sec 6.463, and LDC CH 6, Art IV Div 10, Sec 6-501.
- [REDACTED]
- [REDACTED]

1. Program deficiencies

Serious program deficiencies in a community's administrative and enforcement process and procedures are those that have resulted or could result in substantive violations that increase potential flood damages or stages in the community. The following deficiencies represent gaps in the Town's administrative process that restrict the ability to meet the minimum standards for participation.

Permitting of non-compliant structures/shipping containers/

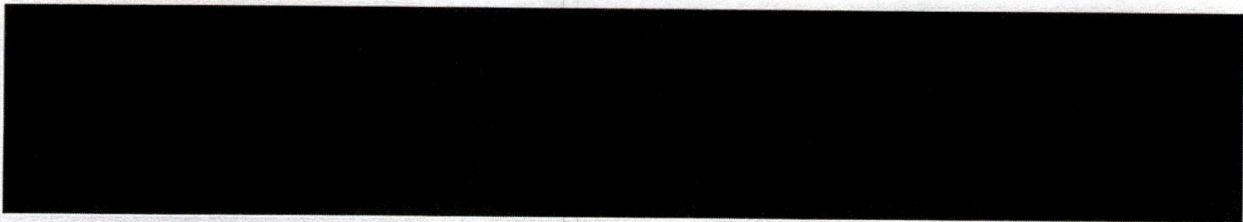
Inconsistent Market Value	Missing Repair Permits (Known Damage (IA/Insurance))	Missing Detailed Cost Info	Low & Inadequate Labor Costs	Permits Issued Without Total Repair Costs	Failed To Capture Complete Scope of Work	After the Fact Permits	After the Fact Notice of Violation
1	51	76	8	62	65	16	25

2. List of properties determined to be substantially damaged:

The Town of Fort Myers Beach has submitted to FEMA a list of properties that Town of Fort Myers Beach deemed substantially damaged since the disaster; there were 356 structures listed. What actions has the Town taken or plan to take to follow-up on those structures? Please provide FEMA with a status of each structure to indicate how substantial damage is being addressed.

3. Non-compliant development

- a. Non-compliant structures (containers) and temporary structures have been placed in the Coastal High Hazard Area (VE zone and coastal A zone). Please provide a plan to remove the structures or bring the non-compliant structures or non-compliant additions into compliance; and confirmation that the town has stopped issuing permits for this type of non-compliant development.
- b. [REDACTED]



4. Data Dictionary (revised) – “Status” Column Meanings:

Additional Information Needed – Permit package needs additional information to be considered complete.

CAV Follow-Up – Not a Hurricane Ian issue but found a need for additional information during the next compliance follow-up with the community.

Code Enforcement Case – Community is currently processing as a code enforcement case and FEMA will accept and review case updates, follow-up permit information, and/or enforcement actions occurring prior to June 10, 2024. Actions occurring beyond that time will require future compliance engagement.

Complete – FEMA needs no further information regarding the specific address.

Future Compliance Engagement – Ian related activity. FEMA will follow-up on this site during the next compliance follow-up with the community.

5. Documentation on the Finding Report and Site list:

Attached to this document is a list of structures within the SFHA with violations, including the type of violation, status, and needed documentation.

Final Status (as of June 28, 2024)	Count
Additional Information Needed	21
CAV Follow-Up	2
Code Enforcement Case	16
Complete	32
Future Compliance Engagement	34
Grand Total	105



National Flood Insurance Program

Privacy Act Notice

RE: Town of Fort Myers Beach, FL, National Flood Insurance Program Data from the Federal Emergency Management Agency (FEMA)

The Town of Fort Myers Beach, FL is receiving data from the Federal Emergency Management Agency's that is maintained in support of the National Flood Insurance Program (NFIP). Specifically, the Town of Fort Myers Beach, FL is receiving property addresses identified by FEMA as possible violations to the local floodplain management laws and regulations. The community shall use the data to verify, monitor, and resolve the possible violation. As an NFIP participating community, this information will assist the community to ensure compliance with the NFIP and maintain the availability of flood insurance. FEMA will send the information to you securely via email on a password-protected spreadsheet or pdf.

FEMA discloses this to you pursuant to the "routine use" provision of the Privacy Act of 1974, 5 U.S.C. § 552a(b)(3), specifically under Routine Uses G, I, M, N, O, R and T of the System of Records Notice (SORN), DHS/FEMA-003 - National Flood Insurance Program Files 79 FR 28747 (May 19, 2014). The SORN may be electronically viewed at <https://www.gpo.gov/fdsys/pkg/FR-2014-05-19/html/2014-11386.htm>.

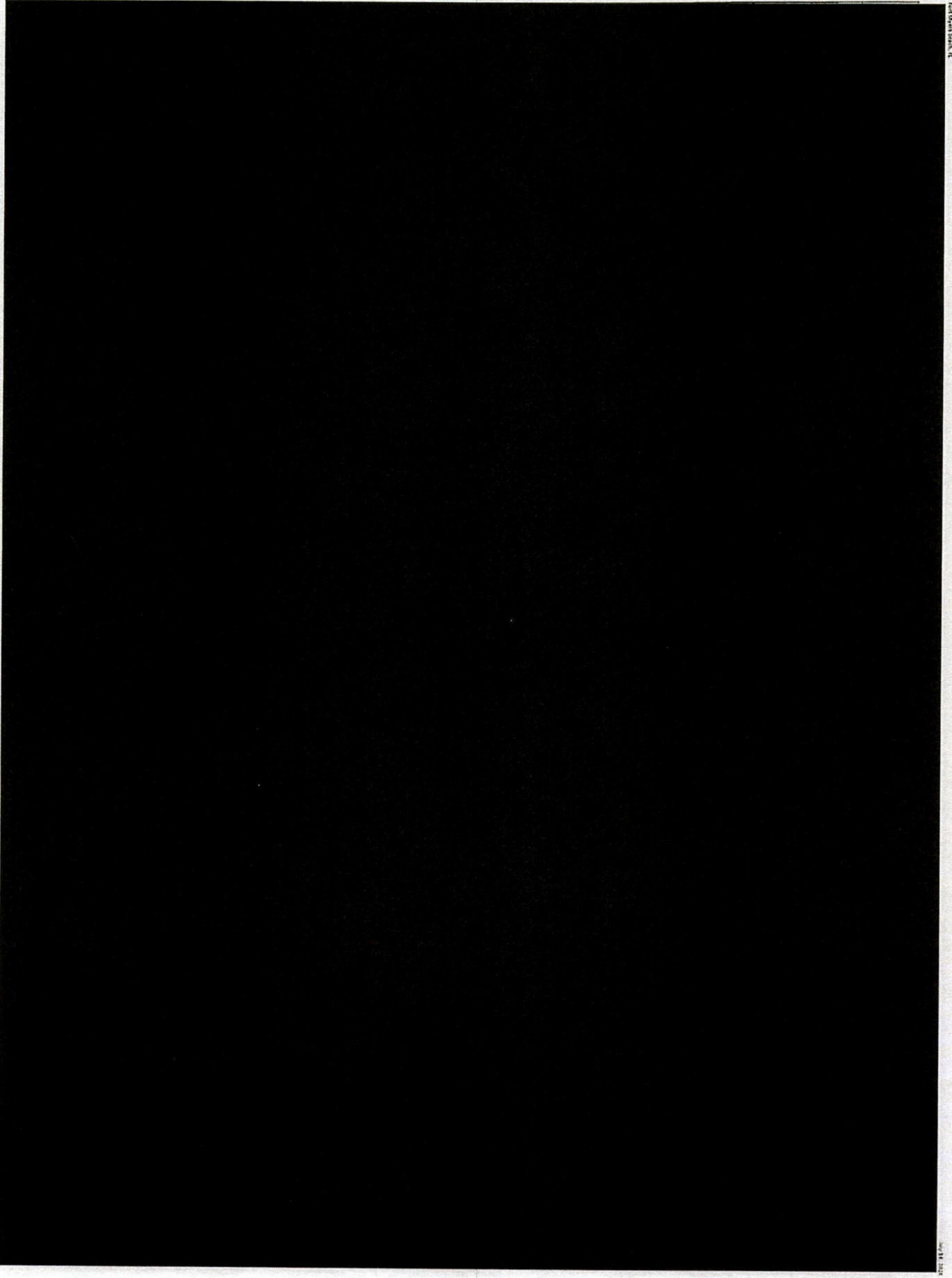
The Town of Fort Myers Beach, FL does not have permission to release the provided information to third parties, including third party contractors and will only use the data for the stated purpose. Unauthorized disclosure of FEMA data will result in an immediate denial of access to the FEMA data. Pursuant to the Privacy Act, 5 U.S.C. § 552a(e)(10), please destroy or return said personally identifiable information (PII) to FEMA once you no longer have use for it. PII is information that can be used to identify, by itself, or in combination, individuals by direct or indirect means.

In the event of a privacy incident resulting from this sharing of FEMA PII, Town of Fort Myers Beach, FL shall immediately, but in no event later than twenty-four (24) hours from suspicion, discovery or notification of the suspected or confirmed privacy incident, notify the FEMA Privacy Officer at (202) 212-5100 or FEMA-Privacy@fema.dhs.gov. FEMA will investigate the incident pursuant to DHS standard procedures and will consult the Town of Fort Myers Beach, FL to diagnose, mitigate and manage the privacy incident.

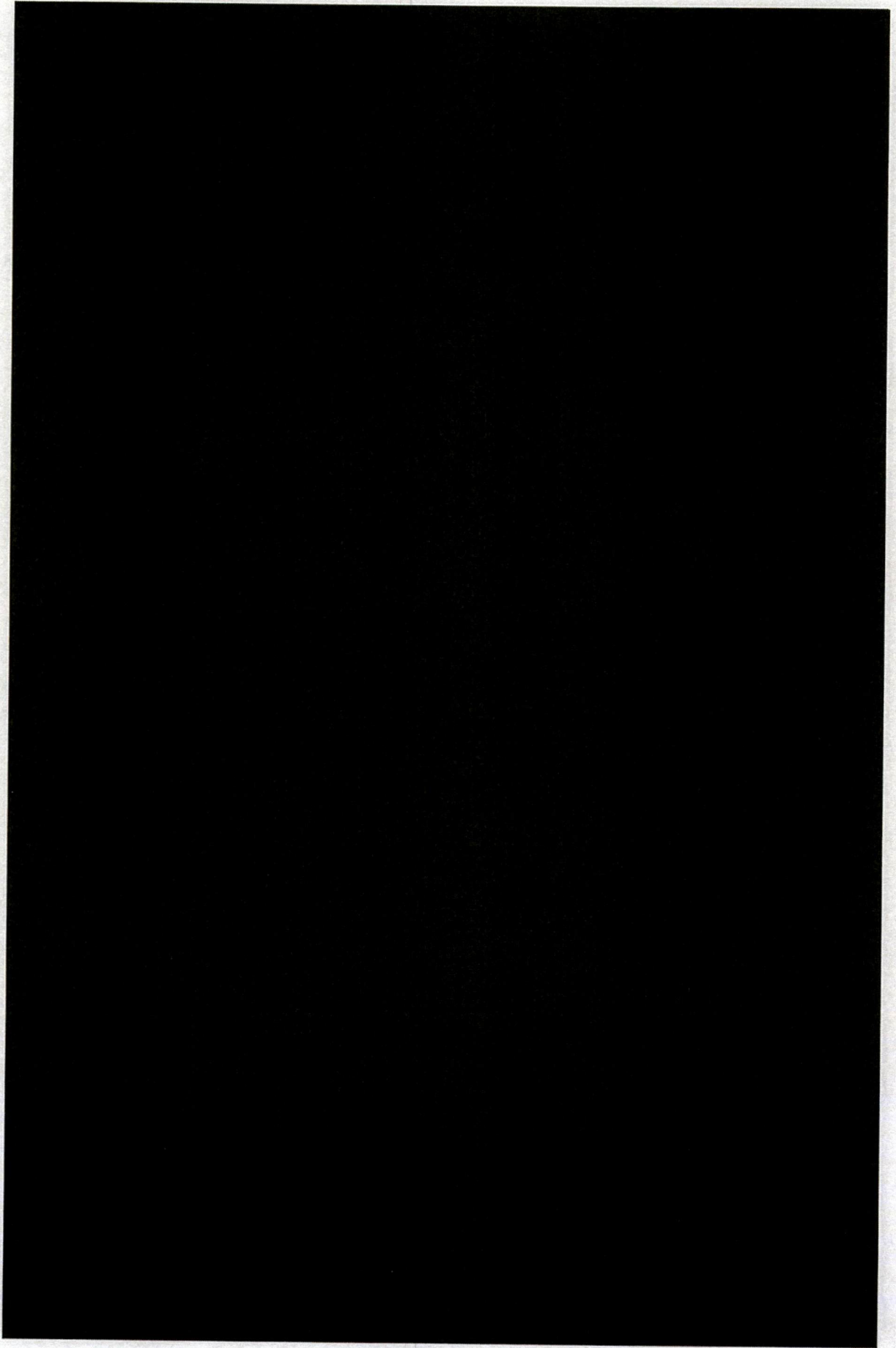
The Town of Fort Myers Beach, FL will be responsible for carrying out all necessary measures to remedy the effects of the privacy incident.

By accepting the FEMA data, the Town of Fort Myers Beach, FL agrees that it shall bear all costs, losses and damages to the extent resulting from the City's breach of FEMA data. The Town of Fort Myers Beach, FL further agrees to release, defend, indemnify, and hold FEMA harmless for claims, losses, penalties and damages, and reasonable attorneys' fees and costs to the extent arising out of the Town of Fort Myers Beach, FL or its contractor's, negligence, unauthorized use or disclosure of FEMA PII and/or the Town of Fort Myers Beach, FL, or its contractor's, breach of its obligations under this sharing.

By accepting, receiving, downloading, or otherwise obtaining the routine use information or data discussed in this document, Town of Fort Myers Beach, FL understands, agrees, and accepts the terms of the use of the data as outlined in this document.



01111111





VIA CERTIFIED U.S. MAIL AND ELECTRONIC MAIL

November 1, 2024

Federal Emergency Management Agency (FEMA)
U.S Department of Homeland Security
Region 4
3005 Chamblee Tucker Road
Atlanta, Georgia 30341

Attn: Robert D. Samaan
Regional Administrator
FEMA Region IV

**RE: Removal of Shipping Containers and Temporary Structures
Town of Fort Myers Beach Post-Disaster Compliance Report**

Dear Mr. Samaan,

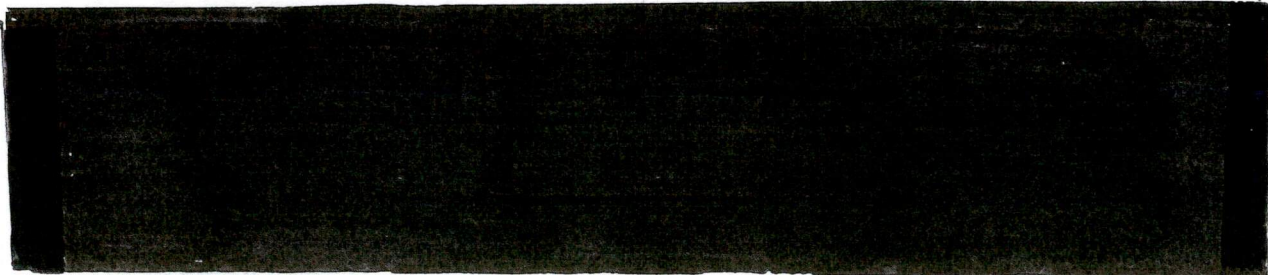
The Town Council of the Town of Fort Myers Beach requested that we send this letter to you regarding the non-compliant structures (containers and temporary structures) in the Coastal High Hazard Area (VE zone and coastal A zone) referenced on page 2 of the Town of Fort Myers Beach Post-Disaster Compliance Status Update Report, dated July 19, 2024 ("Compliance Report"). The Compliance Report requires that the Town "provide a plan to remove the structures or bring the non-compliant structures or non-compliant additions into compliance" by November 18, 2024. The Town has been and continues to work diligently toward satisfying this requirement.

The most recent storms, Hurricanes Helene and Milton, have facilitated the removal of many of these containers and temporary structures. In fact, the recent removal of shipping containers and temporary structures as the impacts of these hurricanes threatened the Town, provided information regarding the ability to quickly disassemble

FORT MYERS BEACH ESTERO ISLAND

P. 239-765-0202 | F. 239-765-0909 | 2731 Oak Street, Fort Myers Beach, FL 33931

and move shipping containers and temporary structures that was previously not available. For this reason, the Town Council gave direction to provide this information to you by letter.



https://drive.google.com/file/d/1vCBHlenwpTdKXBt877OIRInmTin2M8k9/view?usp=sharing_cil&ts=67237f46



businesses that temporarily operate out of shipping containers or other temporary structure, are important to the Fort Myers Beach community's recovery efforts immediately after these storms and since Hurricane Ian by providing a means to fulfill a basic human need: food.

Moreover, as you are aware, the economy of a beach community such as Fort Myers Beach, is highly dependent on tourists, who visit the beach and support local businesses providing food service. In 2023-2024, the Town was awarded over \$1.5 million in tourist development dollars from the Lee County Tourist Development Board. These tourist dollars significantly assisted the Town with its recovery efforts post-Hurricane Ian and the delivery of municipal services to its residents.

In addition to tourists, the Town's economy is also highly dependent on its seasonal residents, who visit the Town from the fall through the end of spring each calendar year. Food service and other local businesses rely on the Town's seasonal residents as well as tourists to maintain operation during the winter season.

In view of the significant hardship on the operations of these businesses and the overall adverse economic impact on the Town, the Town is requesting your consideration to allow shipping containers and temporary structures, which are able to demonstrate that they can disassemble in a short period of time as evidenced in the La Ola Surfside Restaurant's video, to remain in place until June 1, 2025. An extension to June 1, 2025, would allow these local businesses to operate without interruption until the beginning of the next hurricane season.

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We appreciate your consideration of this request and look forward to discussing a limited extension of the November 18, 2024 deadline only for the removal of shipping containers and temporary structures, which can demonstrate the ability to quickly evacuate when a Hurricane Watch or Warning is issued to June 1, 2025. While this request is considered, the Town intends to continue its efforts achieve compliance with the November 18, 2024 deadline and removal of non-compliant shipping containers and temporary structures, such as La Ola Surfside Restaurant. Please do not hesitate to contact Frankie Kropacek, Operations & Compliance Director by phone at 239-955-3612 or by e-mail at fkropacek@fmbgov.com with any questions you may have. The Town looks forward to receiving a response to you regarding this request.

Sincerely,



Dan Allers, Mayor


Jim Atterholt, Vice Mayor
John R. King, Councilor
Karen Woodson, Councilor
Scott Safford, Councilor

Cc: Andrew Hyatt, Town Manager
Becky Vose, Town Attorney
Nancy Stuparich, Town Attorney
Amy Baker, Town Clerk
Frankie Kropacek, Operations & Compliance Director

FORT MYERS BEACH ESTERO ISLAND

P. 239-765-0202 | F. 239-765-0909 | 2731 Oak Street, Fort Myers Beach, FL 33931



FEMA

November 12, 2024

The Honorable Dan Allers
Mayor, Town of Fort Myers Beach
2731 Oak Street
Fort Myers Beach, FL 33931

Re: Removal of Shipping Containers and Temporary Structures Town of Fort Myers Beach Post
Disaster Compliance Report

Dear Mayor Allers:

I received the letter from the Fort Myers Beach Town Council requesting an extension for the removal of non-compliant shipping containers and temporary structures located in the Special Flood Hazard Area and Coastal High Hazard Area.

While I understand and appreciate the importance of these structures to the Town's economy and recovery, the Code of Federal Regulations that governs the National Flood Insurance Program defines the development in question as structures – not recreational vehicles. Because of this, the fact that the structures can be removed pre-event is not relevant as those conditions apply to recreational vehicles only. There are no regulations for temporary structures and occupancy which means all development in the Special Flood Hazard Area must meet the NFIP minimum standards and local floodplain management regulations. **FEMA is not able to issue exemptions to the NFIP minimum standards nor extend the existence of non-compliant development.**

The purpose of these regulations is to protect lives and property in the Special Flood Hazard Area. These non-compliant structures are in the most 'at risk' flood area, VE zone, also known as the Coastal High Hazard Area, which received a 14-foot storm surge during Hurricane Ian. Allowing these structures to remain in place presents a hazard to residents and businesses in the event of another storm as demonstrated by Hurricanes Helene and Milton. For these reasons I am unable to grant the Town's request to allow the structures in question to remain in place beyond the current deadline.

You have my commitment to continue to support you and your team as you manage Hurricane Ian recovery and as you work to take the necessary compliance measures to avoid probation and possible suspension from the NFIP. If you have any questions or at any time need technical assistance to address these issues, please contact FEMA Region 4 Office, Jason Hunter, Floodplain Management and Insurance Branch chief, at Jason.hunter@fema.dhs.gov or 770-220-5471.

Sincerely,

Jacky S. Bell
Mitigation Division Director

cc: Kevin Guthrie, Executive Director, Florida Division of Emergency Management



FEMA

November 21, 2024

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

Re: National Flood Insurance Program Participation

Dear Mr. Hyatt:

Once again, I'd like to thank you and your staff for the long hours and hard work during the last several months to correct the Town of Fort Myers Beach's issues regarding the National Flood Insurance Program (NFIP). Our teams have made great progress in helping ensure the city and their residents are more resilient and prepared for future storms.

On July 19, 2024, the Town received a letter from this office indicating the potential of being placed in probationary status with the NFIP if certain conditions were not met. These conditions consisted of five action items to be completed by November 18, 2024.

These action items were:

1. Develop and submit a plan that includes actions and timelines to address all identified program deficiencies and violations to the maximum extent possible.
2. Assess all floodplain development from Hurricane Ian in the Special Flood Hazard Area, ensuring that permits for all repairs, construction and development were obtained consistent with local floodplain management regulations.
3. Provide documentation that demonstrates your community is leveraging its code enforcement process to address new and existing code cases for all structures not confirmed as compliant.
4. Put a process in place to ensure substantial damage compliance for future events.
5. Remove noncompliant structures that were incorrectly permitted and should not have been placed in the Special Flood Hazard Area.

We appreciate that the Town of Fort Myers Beach accomplished the first and fourth action items by submitting a plan to address deficiencies and establishing a process to ensure substantial damage compliance for future events.

However, our teams have identified additional work that needs to occur for items 2, 3 and 5.

The crosswalk assessment tool created has not been completed by town officials which prevents both items 2 and 3 from being completed. For the 5th item, the town also did not remove non-compliant structures that were incorrectly permitted and should not have been placed in the Special Flood Hazard Area.

We acknowledge the work invested by you and your team has resulted in some improvements to meet minimum floodplain management standards. However, because of the outstanding compliance issues remaining, **the Town will be placed on probation with the National Flood Insurance Program effective November 18, 2024.**

During this probationary period, flood insurance coverage will remain available within the Town of Fort Myers Beach; however, a \$50 surcharge will be added to the premium of each new and renewed flood insurance policy sold within the community. Probation will remain in effect until all remaining program deficiencies and violations have been corrected to the maximum extent possible. Effective April 1, 2025, the town will be retrograded to a Class 10 in the Community Ratings System and policy premium discounts will not be applied to new or renewing policies. The Town is not eligible to reapply to the Community Rating System for a higher-class rating until the Town's probationary period is concluded, the Town is in full compliance with the minimum requirements of the National Flood Insurance Program, and at least two years has passed since the Town was placed in probationary status.

I am committed and I've instructed my staff that we will continue to provide technical assistance to Fort Myers Beach to meet the required program standards and potentially end probation as soon as practicable.

If you have any questions or at any time need technical assistance to address these issues, please contact FEMA Region 4 Office, Jacky Bell, Mitigation Division Director, at jacky.bell@fema.dhs.gov or 404-273-4710.

Sincerely,



Robert D. Samaan
Regional Administrator

cc:

Jason Hunter, Region Floodplain Management & Insurance Branch Chief
Jillian Kraynak, Florida NFIP State Coordinator

RESOLUTION NUMBER 24-182

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

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 September 28, 2022, Hurricane Ian made landfall north of the Town causing historical property damage and loss of life; and

WHEREAS, FEMA has been working in conjunction with the Town for the last two (2) years on recovery efforts from Hurricane Ian, and has, on July 19, 2024, sent the Town a letter outlining requirements for the Town to maintain its class rating in the National Flood Insurance Program; and

WHEREAS, adoption of this Resolution is in the best interest of the residents of the Town and promotes its health, safety and welfare.

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

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

Section 2. The Town Manager is directed and authorized to take any and all actions to implement the requirements contained in the letter from FEMA dated July 19, 2024, a copy of which is attached as Exhibit "A".

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

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

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

APPROVED AND ADOPTED this 9th day of September 2024, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers
Dan Allers (Sep 19, 2024 16:13 EDT)

Dan Allers, Mayor

ATTEST:

Amy Baker

Amy Baker, Town Clerk

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

Nancy Stuparich
Nancy Stuparich (Sep 19, 2024 17:12 EDT)

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 11th day of September 2024.

RESOLUTION NUMBER 24-296

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA ADOPTING A RESOLUTION TO REVOKE AND RESCIND EMERGENCY TEMPORARY PLACEMENT PERMITS AS PROVIDED AND AUTHORIZED IN SECTION 2 OF ORDINANCE 24-4 OF THE TOWN OF FORT MYERS BEACH, WHICH CLARIFIED ORDINANCE 23-05 RELATED TO TEMPORARY PLACEMENT PERMITS, IN FURTHERANCE AND IN SATISFACTION OF DIRECTION CONTAINED IN A LETTER DATED NOVEMBER 21, 2024 FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY ("FEMA") MANDATING REMOVAL OF NONCOMPLIANT STRUCTURES THAT WERE INCORRECTLY PERMITTED IN THE SPECIAL FLOOD HAZARD AREA, IN ORDER TO COMPLY WITH MINIMUM FLOODPLAIN STANDARDS AND THE REQUIREMENTS OF THE NATIONAL FLOOD INSURANCE PROGRAM; 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 September 28, 2022, Hurricane Ian made landfall north of the Town causing historical property damage and loss of life; and

WHEREAS, the Town Council recognized that recovery from a devastating natural disaster such as Hurricane Ian, created an immediate need for temporary housing, governmental services, and commercial uses for the Town's residents and adopted Ordinance 23-05 on May 15, 2023 to provide a temporary relief and the placement of certain structures in the Special Flood Hazard Area; and

WHEREAS, on May 6, 2024 the Town Council adopted Ordinance 24-04 amending and restating Ordinance 23-05 to clarify its intent at the time of adoption and to continue to provide temporary assistance to residents and to aid in the Town's redevelopment efforts by the emergency temporary placement of structures governmental, residential (manufactured homes, mobile homes, motor homes, recreational vehicles, or other temporary residential dwellings) or moveable commercial use; and

WHEREAS, both ordinances provided that permits issued under either Ordinance would be issued in increments of 6 months and would not exceed 18 months without demonstration of a hardship to the Town Manager; and

WHEREAS, Section 2 of Ordinance 24-04 further clarified that the Town Council intended permitted uses to be temporary in nature, and thereby subject to revocation and rescission at a future date under certain circumstances. More specifically, Paragraph 2 of Ordinance 24-04 identified several circumstances in which these temporary permitted uses required removal:

Unless otherwise provided in this Ordinance or in a Resolution that is adopted hereinafter by the town council, any governmental, residential (manufactured home, mobile home, motor home, recreational vehicle, or other temporary residential dwelling) or moveable commercial use shall be removed from the site 1) no later than 30 (days) after issuance of a certificate of occupancy or certificate of use associated with an approved permit; 2) at the time of the expiration of the ETPP as provided herein or as provided in a resolution; or 3) at the time of expiration of any local or state declaration of emergency or law, whichever is earlier. (Emphasis added).

WHEREAS, Section 2 of Ordinance 24-04(xi) also provided that the issued permit could be revoked for “noncompliance with applicable federal law/regulation, state law and town code”; and

WHEREAS, the number of outstanding temporary permits approved by the Town has decreased as a result of additional hurricanes impacting the Town subsequent to Hurricane Ian, the permitted rebuilding of destroyed properties; and the voluntary removal of the temporary permitted uses; and

WHEREAS, on July 19, 2024 and September 3, 2024, the Town was notified by the Federal Emergency Management Administration (“FEMA”) that the Town would be placed on permanent probation from participation in the National Flood Insurance Program if it allowed structures needed for these temporary uses to continue subsequent to November 18, 2024 in the Special Flood Hazard Area; and

WHEREAS, Section 6-494 of the Town of Fort Myers Beach Land Development Code defines the Special Flood Hazard Area as “[a]n area in the floodplain subject to a one- percent or greater chance of flooding in any given year. Special flood hazard areas are shown on FIRMs as Zone A, AO, A1-A30, AE, A99, AH, V1-V30, VE or V. [Also defined in FBC, B Section 202.]”, which in effect encompasses the entirety of the Town; and

WHEREAS, despite efforts by the Town Council to extend the November 18, 2024 FEMA deadline, the Town was notified by letter on November 21, 2024, that the Town was placed on probation with the National Flood Insurance Program effective November 18, 2024 in part due to its failure to “[r]emove noncompliant structures that were incorrectly permitted and should not have been placed in the Special Flood Hazard Area”; and

WHEREAS, in order to comply with minimum floodplain standards and the requirements of the National Flood Insurance Program, the Town must now revoke and rescind emergency temporary placement permits which allow noncompliant structures in the Special Flood Hazard Area; and

WHEREAS, the definition of a “structure” for floodplain management purposes pursuant to 44 CFR Part 59.1 includes “any walled and roofed building, manufactured home or travel trailer without wheels,” and

WHEREAS, the definition of a “manufactured home” for floodplain management purposes pursuant to 44 CFR 59.1 is “a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured home” does not include a “recreational vehicle”; and

WHEREAS, adoption of this Resolution is in the best interest of the residents of the Town as a step towards removal of its probationary status in the National Flood Insurance Program and compliance with its floodplain regulations.

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 are made a specific part of this Resolution.

Section 2. All emergency temporary placement permits for “noncompliant structures that were incorrectly permitted and should not have been placed in the Special Flood Hazard Area” are hereby revoked and rescinded.

Section 3. The Town Manager is directed and authorized to immediately take the following actions to implement this Resolution:

1. Provide formal Notice to holders of any emergency temporary placement permit by certified mail, posting on the property and any other known method for notification that:
 - a) the permit is revoked and rescinded as of December 16, 2024; and
 - b) the permit holder may appeal this revocation action pursuant to Section 34-86 of the Code of Ordinances as stated in Section 4 of Ordinance 24-04, or by any other lawful means; and
 - c) the contact information for a member of the Town staff, who can answer questions and provide more information.

The Notice shall also include a copy of this Resolution and FEMA's letter of November 21, 2204

2. Initiate or continue any needed code enforcement action against permit holders who fail to immediately begin removal of noncompliant structures.

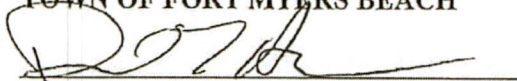
Section 4. This Resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

THE FOREGOING RESOLUTION was adopted by the Town Council upon motion by Mayor Allers and seconded by Vice Mayor Atterholt, and upon being put to a vote, the result was as follows:

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

APPROVED AND ADOPTED this 16th day of December 2024, by the Town Council of the Town of Fort Myers Beach, Florida.

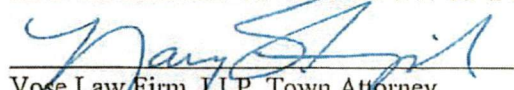
TOWN OF FORT MYERS BEACH


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 16th day of December 2024.



Kledzik Cary & Laura
2006 Stiers Ct
Batavia, IL 60510

RE: REVOCATION AND RESCINDING TEMPORARY USE

Property Address: 8285 Estero Blvd, Fort Myers Beach Florida 33931

VIA: Certified Mail and Posting on 8285 Estero Blvd, Fort Myers Beach, Florida
Certified Mail – Return Receipt Request

Dear Kledzik Cary & Laura :

This letter is Formal Notice that Temporary Use is revoked and rescinded as of the 16th day of December 2024 as directed by Resolution 24-296, which was approved and adopted by the Town of Fort Myers Beach Town Council on December 16, 2024. The Fort Myers Beach Town Council has also previously directed that no extensions or additional temporary permits will be issued in order to comply with the minimum floodplain standards as identified in Page 2 of the U.S. Department of Homeland Security, Federal Emergency Management Agency Town of Fort Myers Beach Post-Disaster Compliance Status Update Report dated July 19, 2024. ("FEMA Report"). A copy of Resolution 24-296 and FEMA's most recent Letter of November 21, 2024 to the Town are included for your information, and as directed to accompany this Formal Notice by the Town Council.

This Formal Notice may be appealed if issued in error pursuant to section 34-86 of the Town of Fort Myers Beach Code of Ordinances and as stated in Section 4 of Ordinance 24-04 or by any other lawful means. To the extent that this letter is provided to you at the direction of the Town Council, this letter constitutes final agency action. If you have any questions regarding the revocation and rescission of this permit, please contact Frank Kropacek at (239) 765-0202

Sincerely,

Andrew Hyatt, Town Manager

Cc: Tom Yozzo, Code Compliance Manager
Frankie Kropacek, Operations & Compliance Director
Enclosures – FEMA November 21, 2024 Letter
Resolution 24-296

20240946

9589 0710 5270 0636 6419 26

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☐ Return Receipt (electronic) \$	
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☐ Adult Signature Required \$	
☐ Adult Signature Restricted Delivery \$	
Postage \$	
Total Postage and Fees \$	
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PS Form 3800, January 2023 PSN 7530-02-000-9044 See Reverse for Instructions

9589 0710 5270 0636 6418 96

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☐ Return Receipt (electronic) \$	
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☐ Adult Signature Required \$	
☐ Adult Signature Restricted Delivery \$	
Postage \$	
Total Postage and Fees \$	
Sent To Northrop Financial Group LLC Street and Apt. No. or PO Box No. 13400 Six Mile Cypress Pkwy Ste 2 City, State, ZIP+4® Fort Myers, FL 33901-12	

PS Form 3800, January 2023 PSN 7530-02-000-9044 See Reverse for Instructions

I certify that this document is
a true copy of the original

Signed: *C. Ballo*

Date: *Feb. 28, 2025*

RESOLUTION NUMBER 24-296

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA ADOPTING A RESOLUTION TO REVOKE AND RESCIND EMERGENCY TEMPORARY PLACEMENT PERMITS AS PROVIDED AND AUTHORIZED IN SECTION 2 OF ORDINANCE 24-4 OF THE TOWN OF FORT MYERS BEACH, WHICH CLARIFIED ORDINANCE 23-05 RELATED TO TEMPORARY PLACEMENT PERMITS, IN FURTHERANCE AND IN SATISFACTION OF DIRECTION CONTAINED IN A LETTER DATED NOVEMBER 21, 2024 FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY ("FEMA") MANDATING REMOVAL OF NONCOMPLIANT STRUCTURES THAT WERE INCORRECTLY PERMITTED IN THE SPECIAL FLOOD HAZARD AREA, IN ORDER TO COMPLY WITH MINIMUM FLOODPLAIN STANDARDS AND THE REQUIREMENTS OF THE NATIONAL FLOOD INSURANCE PROGRAM; 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 September 28, 2022, Hurricane Ian made landfall north of the Town causing historical property damage and loss of life; and

WHEREAS, the Town Council recognized that recovery from a devastating natural disaster such as Hurricane Ian, created an immediate need for temporary housing, governmental services, and commercial uses for the Town's residents and adopted Ordinance 23-05 on May 15, 2023 to provide a temporary relief and the placement of certain structures in the Special Flood Hazard Area; and

WHEREAS, on May 6, 2024 the Town Council adopted Ordinance 24-04 amending and restating Ordinance 23-05 to clarify its intent at the time of adoption and to continue to provide temporary assistance to residents and to aid in the Town's redevelopment efforts by the emergency temporary placement of structures governmental, residential (manufactured homes, mobile homes, motor homes, recreational vehicles, or other temporary residential dwellings) or moveable commercial use; and

WHEREAS, both ordinances provided that permits issued under either Ordinance would be issued in increments of 6 months and would not exceed 18 months without demonstration of a hardship to the Town Manager; and

WHEREAS, Section 2 of Ordinance 24-04 further clarified that the Town Council intended permitted uses to be temporary in nature, and thereby subject to revocation and rescission at a future date under certain circumstances. More specifically, Paragraph 2 of Ordinance 24-04 identified several circumstances in which these temporary permitted uses required removal:

Unless otherwise provided in this Ordinance or in a Resolution that is adopted hereinafter by the town council, any governmental, residential (manufactured home, mobile home, motor home, recreational vehicle, or other temporary residential dwelling) or moveable commercial use shall be removed from the site 1) no later than 30 (days) after issuance of a certificate of occupancy or certificate of use associated with an approved permit; 2) at the time of the expiration of the ETPP as provided herein or as provided in a resolution; or 3) at the time of expiration of any local or state declaration of emergency or law, whichever is earlier. (Emphasis added).

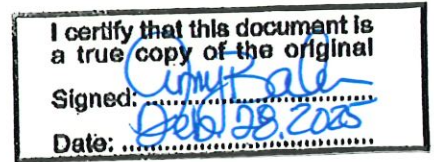
WHEREAS, Section 2 of Ordinance 24-04(xi) also provided that the issued permit could be revoked for "noncompliance with applicable federal law/regulation, state law and town code"; and

WHEREAS, the number of outstanding temporary permits approved by the Town has decreased as a result of additional hurricanes impacting the Town subsequent to Hurricane Ian, the permitted rebuilding of destroyed properties; and the voluntary removal of the temporary permitted uses; and

WHEREAS, on July 19, 2024 and September 3, 2024, the Town was notified by the Federal Emergency Management Administration ("FEMA") that the Town would be placed on permanent probation from participation in the National Flood Insurance Program if it allowed structures needed for these temporary uses to continue subsequent to November 18, 2024 in the Special Flood Hazard Area; and

WHEREAS, Section 6-494 of the Town of Fort Myers Beach Land Development Code defines the Special Flood Hazard Area as "[a]n area in the floodplain subject to a one- percent or greater chance of flooding in any given year. Special flood hazard areas are shown on FIRMs as Zone A, AO, A1-A30, AE, A99, AH, V1-V30, VE or V. [Also defined in FBC, B Section 202.]", which in effect encompasses the entirety of the Town; and

WHEREAS, despite efforts by the Town Council to extend the November 18, 2024 FEMA deadline, the Town was notified by letter on November 21, 2024, that the Town was placed on probation with the National Flood Insurance Program effective November 18, 2024 in part due to its failure to "[r]emove noncompliant structures that were incorrectly permitted and should not have been placed in the Special Flood Hazard Area"; and



WHEREAS, in order to comply with minimum floodplain standards and the requirements of the National Flood Insurance Program, the Town must now revoke and rescind emergency temporary placement permits which allow noncompliant structures in the Special Flood Hazard Area; and

WHEREAS, the definition of a "structure" for floodplain management purposes pursuant to 44 CFR Part 59.1 includes "any walled and roofed building, manufactured home or travel trailer without wheels," and

WHEREAS, the definition of a "manufactured home" for floodplain management purposes pursuant to 44 CFR 59.1 is "a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle"; and

WHEREAS, adoption of this Resolution is in the best interest of the residents of the Town as a step towards removal of its probationary status in the National Flood Insurance Program and compliance with its floodplain regulations.

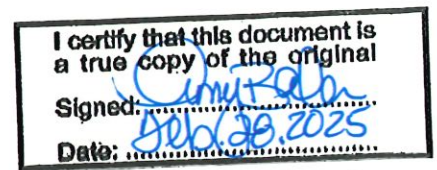
NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

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 are made a specific part of this Resolution.

Section 2. All emergency temporary placement permits for "noncompliant structures that were incorrectly permitted and should not have been placed in the Special Flood Hazard Area" are hereby revoked and rescinded.

Section 3. The Town Manager is directed and authorized to immediately take the following actions to implement this Resolution:

1. Provide formal Notice to holders of any emergency temporary placement permit by certified mail, posting on the property and any other known method for notification that:
 - a) the permit is revoked and rescinded as of December 16, 2024; and
 - b) the permit holder may appeal this revocation action pursuant to Section 34-86 of the Code of Ordinances as stated in Section 4 of Ordinance 24-04, or by any other lawful means; and
 - c) the contact information for a member of the Town staff, who can answer questions and provide more information.



The Notice shall also include a copy of this Resolution and FEMA's letter of November 21, 2204

2. Initiate or continue any needed code enforcement action against permit holders who fail to immediately begin removal of noncompliant structures.

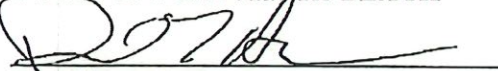
Section 4. This Resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

THE FOREGOING RESOLUTION was adopted by the Town Council upon motion by Mayor Allers and seconded by Vice Mayor Atterholt, and upon being put to a vote, the result was as follows:

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

APPROVED AND ADOPTED this 16th day of December 2024, by the Town Council of the Town of Fort Myers Beach, Florida.

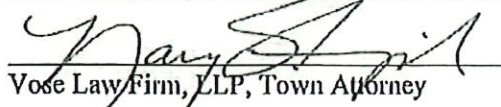
TOWN OF FORT MYERS BEACH


Dan Allers, Mayor

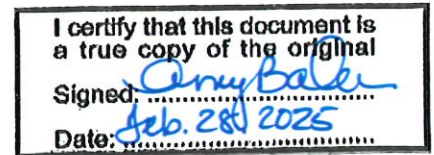
ATTEST:


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 16th day of December 2024.



FMBgov.com

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

Kledzik Cary & Laura
2006 Stiers Ct
Batavia, IL 60510

RE: REVOCATION AND RESCINDING TEMPORARY USE

Property Address: 8285 Estero Blvd, Fort Myers Beach Florida 33931

VIA: Certified Mail and Posting on 8285 Estero Blvd, Fort Myers Beach, Florida
Certified Mail – Return Receipt Request

Dear Kledzik Cary & Laura :

This letter is Formal Notice that Temporary Use is revoked and rescinded as of the 16th day of December 2024 as directed by Resolution 24-296, which was approved and adopted by the Town of Fort Myers Beach Town Council on December 16, 2024. The Fort Myers Beach Town Council has also previously directed that no extensions or additional temporary permits will be issued in order to comply with the minimum floodplain standards as identified in Page 2 of the U.S. Department of Homeland Security, Federal Emergency Management Agency Town of Fort Myers Beach Post-Disaster Compliance Status Update Report dated July 19, 2024. ("FEMA Report"). A copy of Resolution 24-296 and FEMA's most recent Letter of November 21, 2024 to the Town are included for your information, and as directed to accompany this Formal Notice by the Town Council.

This Formal Notice may be appealed if issued in error pursuant to section 34-86 of the Town of Fort Myers Beach Code of Ordinances and as stated in Section 4 of Ordinance 24-04 or by any other lawful means. To the extent that this letter is provided to you at the direction of the Town Council, this letter constitutes final agency action. If you have any questions regarding the revocation and rescission of this permit, please contact Frank Kropacek at (239) 765-0202

Sincerely,

Andrew Hyatt, Town Manager

Cc: Tom Yozzo, Code Compliance Manager
Frankie Kropacek, Operations & Compliance Director
Enclosures – FEMA November 21, 2024 Letter
Resolution 24-296

FORT MYERS BEACH ESTERO ISLAND
P. 239-765-0202 | 2731 Oak Street, Fort Myers Beach, FL 33931

20240946

9589 0710 5270 0636 6478 26

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☐ Return Receipt (electronic) \$	
☐ Certified Mail Restricted Delivery \$	
☐ Adult Signature Required \$	
☐ Adult Signature Restricted Delivery \$	
Postage \$	
Total Postage and Fees \$	

Sent To
 2450 Estero Blvd LLC % Thomas Swanbeck
 Street and Apt. No. or PO Box No. Karen Swanbeck
 2450 Estero Blvd.
 City, State, ZIP+4®
 Fort Myers Beach, FL 33931

PS Form 3800, January 2023 See Reverse for Instructions

9589 0710 5270 0636 6478 96

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☐ Return Receipt (electronic) \$	
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☐ Adult Signature Required \$	
☐ Adult Signature Restricted Delivery \$	
Postage \$	
Total Postage and Fees \$	

Sent To
 Northrop Financial Group LLC
 Street and Apt. No. or PO Box No.
 18700 Six Mile Cypress Pkwy Ste 2
 City, State, ZIP+4®
 Fort Myers, FL 33908-12

PS Form 3800, January 2023 See Reverse for Instructions

I certify that this document is
 a true copy of the original
 Signed: Cathy Bell
 Date: Feb 28 2025

Hearing Exhibit C

Notice of Violation and Affidavit of Posting



Town of Fort Myers Beach

CODE COMPLIANCE

2731 Oak Street Fort Myers Beach, FL 33931

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

11/19/2024

Case Number:	20241106
Certified Mail:	9589071052700183636413
Regular Mail	

KLEDZIK CARY & LAURA
2006 STIERS CT
BATAVIA, IL 60510

SITE ADDRESS: 8285 ESTERO BLVD
PARCEL STRAP NO: 034724W3002440000

NOTICE OF VIOLATION

YOU ARE HEREBY NOTIFIED that an inspection of the above-referenced property on by Town of Fort Myers Beach Code Enforcement Officer **Thomas Yozzo** indicates that the following items are in violation:

For the keeping and/or maintaining of non-compliant structure(s) and/or shipping containers on property, which are not built to current flood design codes in the Special Hazard Areas as defined in Section 6-494 of the FMB Code of Ordinances.

These items are a violation of the following Town Codes:

ASCE 24-14 A copy is available at https://www.fema.gov/sites/default/files/2020-07/asce24-14_highlights_jan2015.pdf

Sec. 6-501. - Design and construction of buildings, structures and facilities exempt from the Florida Building Code. Pursuant to section 6-443, buildings, structures and facilities that are exempt from the Florida Building Code, including substantial improvement or repair of substantial damage of such buildings, structures and facilities, must be designed and constructed in accordance with the flood load and flood-resistant construction requirements of ASCE 24. Structures exempt from the Florida Building Code that are not walled and roofed buildings must comply with the requirements of division 10, subdivision VII.

Sec. 6-525. - General requirements for other development. All development, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in this article or the Florida Building Code, must:

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

COMPLIANCE:

The following action is needed to bring the violation(s) into compliance. 1) Remove Structure(s) and/or Shipping Containers from property. 2) Provide proof of compliance with the requirements of Chapter 6, Article IV Division Section 6-501 and 5-525 of the Land Development Code.

You are hereby directed to bring these violations into compliance within 30-days.

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

If you fail to correct the violation(s) by the date specified above, or if the violation(s) is (are) brought into compliance and reoccur(s), the case may be scheduled for hearing before the Town of Fort Myers Beach Special Magistrate. The Code Enforcement Division may, in their discretion, schedule the case for

a hearing and seek a finding of a violation by the Special Magistrate even if you have corrected the violation prior to the time set for the hearing.

You will be provided with a Notice of Hearing specifying the date, time and location of the hearing if, one is scheduled. Please be aware that under Florida Statutes, Chapter 162 and Town of Fort Myers Beach Land Development Code, Section 2-427(b), a fine of up to \$250.00 per day for the first violation or \$500.00 per day for a repeat violation may be imposed for each day the violation continues to exist past the date set for compliance by the Special Magistrate. If the Special Magistrate finds that a violation is irreparable or irreversible in nature, a fine of up to \$5,000.00 per violation may be imposed. The Special Magistrate may also assess the costs of prosecution of the case against you and you may be required to pay those fees, even if the violation has been corrected prior to the hearing.

Please contact the Town of Fort Myers Beach Code Enforcement Division at 239-292-3568 or code@fmbgov.com if you have any questions concerning this Notice of Violation.

Respectfully,

Thomas Yozzo
Code Enforcement Officer
Town of Fort Myers Beach



TOWN OF FORT MYERS BEACH,

Petitioner,

vs.

Kledzik Cary & Laura
2006 Stiers Ct
Batavia, IL 60510

Respondent,

_____ /

FMB Case Number:	20241106
Certified Mail:	
Regular Mail:	
DOAH Case Number:	[Not Applicable]

Site Address: 8285 Estero Blvd,
Fort Myers Beach, FL 33931
Parcel Strap No. 034724W3002440000

AFFIDAVIT OF NOTICE AND POSTING

STATE OF FLORIDA

COUNTY OF LEE

BEFORE ME, the undersigned authority, personally appeared D. Batt, who is the Code Compliance Coordinator for the Town of Fort Myers Beach, who was sworn and under oath, deposes and says the following regarding case #20241106 for the keeping and/or maintaining of non-compliant structure(s) and/or shipping containers on property, which are not built to current flood design codes in the Special Hazard Areas as defined in Section 6-494 of the FMB Code of Ordinances for the property 8285 Estero Blvd, Fort Myers Beach, FL 33931.

FORT MYERS BEACH ESTERO ISLAND

P. 239-765-0202 | 2731 Oak Street, Fort Myers Beach, FL 33931



1. I personally mailed by certified mail a copy of the Notice of Violation to the following:

- a. Kledzik Cary & Laura
2006 Stiers Ct
Batavia, IL 60510
Certified Mail No. 9589071052700183636413
(Property Owner)

Copies of the certified mailing receipts are attached as evidence.

- 2. I posted a copy of the Notice at 8285 Estero Blvd, Fort Myers Beach, FL 33931, by which is the subject property. I took a photographs of the Notice I posted on the 19th day of November 2024. A true, accurate and unaltered copy of the photographs are attached.
- 3. I posted a copy of the Notice at the primary municipal government office for the Town of Fort Myers Beach, which is Town Hall and located at 2731 Oak Street, Fort Myers Beach, FL 33931. True, accurate and unaltered copies of photographs I took of the Notice posted on the 19th day of November 2024 are attached.
- 4. In addition, I posted a copy of the Notice on the Town's publicly accessible website at <https://www.fortmyersbeachfl.gov/1294/Public-Notices> on the 24th day of September, 2024. A copy of the posted webpage is attached as Evidence



Under penalties of perjury, I declare that I have read the foregoing affidavit and that the facts stated in it are true and to the best of my knowledge and belief comply with Section 2-429 of the Town Land Development Code and Section 162.12, Florida Statutes.

X. D. Batt

Signature of Affiant

**STATE OF FLORIDA
COUNTY OF LEE**

The foregoing instrument was sworn to, subscribed and acknowledged before me by means of either ☒ personal presence or ☐ online notarization this 21st day of January, 2025, by D. Batt. She ☒ is personally known to me or ☐ has produced _____ as identification.



ASHLEY SHEPARD
Commission # HH 253125
Expires April 14, 2026

[Notary Seal]

Ashley Shepard

Notary Public, State of Florida

Print Name: Ashley Shepard

My Commission Expires: April 14 2026

FORT MYERS BEACH ESTERO ISLAND

P. 239-765-0202 | 2731 Oak Street, Fort Myers Beach, FL 33931

9589 0710 5270 0183 6364 13

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☐ Return Receipt (electronic) \$

☐ Certified Mail Restricted Delivery \$

☐ Adult Signature Required \$

☐ Adult Signature Restricted Delivery \$

Postage

\$

Total Postage and Fees

\$

Sent by:

KLEDZIK CARY & LAURA
2006 STIERS CT
BATAVIA, IL 60510

Town of Fort Myers Beach

Postmark
Here

NOV 19 2024

2024/11/04

8285 Estero Blvd

PS Form 3800, January 2023 PSN 7530-01-000-9047 See Reverse for Instructions



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

11/19/2024

Case Number:	20241106
Certified Mail:	9589071052700183636413
Regular Mail:	

KLEDZIK CARY & LAURA
2006 STIERS CT
BATAVIA, IL 60510

SITE ADDRESS: 8285 ESTERO BLVD
PARCEL STRAP NO: 034724W3002440000

NOTICE OF VIOLATION

YOU ARE HEREBY NOTIFIED that an inspection of the above-referenced property on by Town of Fort Myers Beach Code Enforcement Officer Thomas Yozzo indicates that the following items are in violation:

For the keeping and/or maintaining of non-compliant structure(s) and/or shipping containers on property, which are not built to current flood design codes in the Special Hazard Areas as defined in Section 6-494 of the FMB Code of Ordinances.

These items are a violation of the following Town Codes:

ASCE 24-14 A copy is available at https://www.fema.gov/sites/default/files/2020-07/asce24-14_highlights_jan2015.pdf

Sec. 6-501. - Design and construction of buildings, structures and facilities exempt from the Florida Building Code. Pursuant to section 6-443, buildings, structures and facilities that are exempt from the Florida Building Code, including substantial improvement or repair of substantial damage of such buildings, structures and facilities, must be designed and constructed in accordance with the flood load and flood-resistant construction requirements of ASCE 24. Structures exempt from the Florida Building Code that are not walled and roofed buildings must comply with the requirements of division 10, subdivision VII.

Sec. 6-525. - General requirements for other development. All development, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in this article or the Florida Building Code, must:

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

COMPLIANCE:

The following action is needed to bring the violation(s) into compliance. 1) Remove Structure(s) and/or Shipping Containers from property. 2) Provide proof of compliance with the requirements of Chapter 6, Article IV Division Section 6-501 and 5-525 of the Land Development Code.

You are hereby directed to bring these violations into compliance within 30-days.

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

If you fail to correct the violation(s) by the date specified above, or if the violation(s) is (are) brought into compliance and reoccur(s), the case may be scheduled for hearing before the Town of Fort Myers Beach Special Magistrate. The Code Enforcement Division may, in their discretion, schedule the case for

Nov 19, 2024 1:09:41 PM

Hearing Exhibit D

Status of Compliance



01/15/2025

TOWN OF FORT MYERS BEACH,

Petitioner,

vs.

KLEDZIK CARY & LAURA

Respondent.

Site Address: **8285 ESTERO BLVD**
Parcel Strap No.: **034724W3002440000**

Case Number: **20241106**

Certified Mail:

Regular Mail:

AFFIDAVIT OF NON-COMPLIANCE

STATE OF FLORIDA)

COUNTY OF LEE)

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

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

2. On , KLEDZIK CARY & LAURA (property owner) was observed in violation of ASCE 24-14, 6-501 and 6-525 of the Town of Fort Myers Beach Code of Ordinances, For the keeping and/or maintaining of non-compliant structure(s) and/or shipping containers on property, which are not built to current flood design codes in the Special Hazard Areas as defined in Section 6-494 of the FMB Code of Ordinances. , at the property located at 8285 ESTERO BLVD, Fort Myers Beach, FL 33931 ("Subject Property").

3. A Notice of Violation was issued on 11/19/2024, and sent certified mail to the address of record, 2006 STIERS CT, BATAVIA, IL 60510, posted to the violation property located at 8285 ESTERO BLVD, Fort Myers Beach, FL 33931, and posted to Town Hall located at 2731 Oak St., Fort Myers Beach, FL 33931.

4. KLEDZIK CARY & LAURA was/were given 30-days to come into compliance with the Town of Fort Myers Beach Ordinance, which was on or before 12/19/2024.

5. I performed an inspection of the Subject Property on 01/15/2025, and the Subject Property remains in violation with the Town of Fort Myers Beach Ordinance. There does not appear to be any progress made towards compliance at 8285 ESTERO BLVD, Fort Myers Beach, FL 33931.

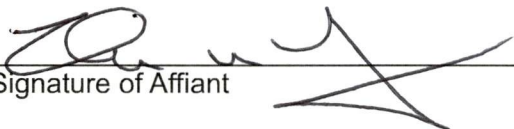
6. I have attached Exhibit A, which are photographs of the Subject Property, which I personally took, and which fairly represent the violation on the Subject Property I personally observed on 01/15/2025.

These photographs have not been altered in any way.

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

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

FURTHER AFFIANT SAYETH NAUGHT.



Signature of Affiant

**STATE OF FLORIDA
COUNTY OF LEE**

The foregoing instrument was certified and subscribed before me by means of X physical presence
OR _____ online notarization, this 15th day of January, 2025, by
Thomas Yozzo, X who is personally known to me OR _____ who has produced
_____ as identification.

(SEAL)



Notary Public Signature

My Commission Expires: July 14th 2026





Jan 15, 2025 9:08:13 AM



Jan 15, 2025 9:08:03 AM

Hearing Exhibit E

Violated Regulations

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

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

(Ord. No. 16-02, § 2, 8-8-2016)

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

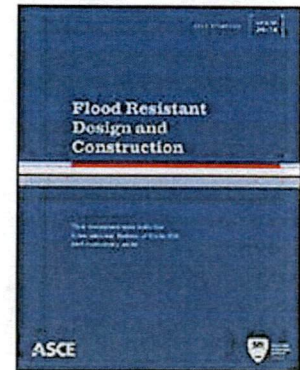
All development, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in this article or the Florida Building Code, must:

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

(Ord. No. 16-02, § 2, 8-8-2016)

HIGHLIGHTS OF ASCE 24-14 *Flood Resistant Design and Construction*

Published by the American Society of Civil Engineers (ASCE), *Flood Resistant Design and Construction*, ASCE 24, is a referenced standard in the *International Codes*[®] (I-Codes[®]). ASCE 24 states the minimum requirements and expected performance for the siting and design and construction of buildings and structures in flood hazard areas that are subject to building code requirements. Types of buildings and structures are described in ASCE 24-14, Table 1-1 (see page 5 of these Highlights), and include commercial, residential, industrial, educational, healthcare, critical facilities, and other occupancy types. Buildings and structures designed according to ASCE 24 are better able to resist flood loads and flood damage.



FEMA deems ASCE 24 to meet or exceed the minimum National Flood Insurance Program (NFIP) requirements for buildings and structures. ASCE 24 includes additional specificity, some additional requirements, and some limitations that are not in NFIP regulations.

Buildings and structures within the scope of the IBC and proposed to be located in any flood hazard area must be designed in accordance with ASCE 24. The 2015 I-Codes reference ASCE 24-14, while the 2006 through 2012 I-Codes reference ASCE 24-05. The *International Residential Code*[®] requires dwellings in floodways to be designed in accordance with ASCE 24, and the 2015 edition of the IRC allows use of ASCE 24 for dwellings in any flood hazard area (the 2012 and 2009 editions allow use of ASCE 24 in Coastal High Hazard Areas).

Highlights of ASCE 24-14 that complement the NFIP minimum requirements are described below.

A summary of significant technical revisions from ASCE 24-05 to ASCE 24-14 is reproduced on page 6 of these Highlights.

Building Performance

- Flood loads and other loads and load combinations are specified in ASCE 7-10, *Minimum Design Loads for Buildings and Other Structures*. Performance of foundations exposed to flooding is specified in ASCE 24. Soil characteristics and underlying strata, including soil consolidation, expansion or movement, erosion and scour, liquefaction and subsidence must be considered, as applicable.
- Flood Design Classes replace Occupancy/Risk Categories for the purpose of establishing elevations of lowest floors, flood-resistant materials, equipment and floodproofing. The 2015 *International Building Code* requires designers to identify the Flood Design Class assigned in accordance with ASCE 24-14.
- Elevation and Freeboard (additional height above the NFIP's base flood elevation) are specified as a function of the Flood Design Class and the nature of the flood hazard areas (see table on page 4 of these Highlights). Essential facilities (Flood Design Class 4) must be elevated or protected to the BFE + 2 ft or 500-year flood elevation, whichever is higher.
- Elevation requirements in Zone V and Coastal A Zones are independent of orientation of the lowest horizontal structural member (relative to direction of wave approach) as a factor in determining the required freeboard (ASCE 24-05 made elevation a function of orientation of the lowest horizontal structural member relative to the direction of wave approach).

ASCE 24 uses 'design flood' and 'design flood elevation' to acknowledge that some communities adopt flood hazard maps that depict flood hazard areas in addition to Special Flood Hazard Areas shown on FEMA's Flood Insurance Rate Maps (FIRM).

The design flood elevation (DFE) equals the base flood elevation (BFE) in communities that regulate based on FIRMs. The DFE is always equal to or higher than the BFE.

- Fill is required to be stable under conditions of flooding, including rapid rise and rapid drawdown, prolonged inundation, and erosion and scour. Compaction of structural fill is specified unless otherwise required by the building code or in a geotechnical or engineering report. Fill side slopes must be no steeper than 1:1.5.
- Two methods are specified to meet the requirements for flood openings in walls of enclosures below elevated buildings, to allow for the automatic entry and exit of floodwater: nonengineered openings that do not require certification (1 sq in per sq ft of enclosed area) and engineered openings that must be certified by a registered design professional. The performance of engineered openings must account for the presence of louvers, blades, screens, grilles, faceplates, or other covers and devices and must ensure that the difference between the exterior and interior floodwater levels does not exceed 1 foot. Installation of all flood openings must be in at least two walls and must be no more than 1 foot above the higher of the interior grade or floor and the finished exterior grade immediately under each opening.
- All breakaway walls in all flood hazard areas must have flood openings (ASCE 24-05 did not require flood openings in Zone V breakaway walls).
- Provisions are included for attached and detached decks and porches, and for garages, carports, and accessory storage structures.
- Provisions are listed for concrete slabs-on-grade, depending on the purpose and location of the slabs.
- Stairways and ramps must be designed and constructed to resist flood loads and to minimize transfer of flood loads to foundations, or to break away without causing damage to the main structure, or to be retractable/able to be raised.
- Where stairways are located inside areas enclosed with breakaway walls, exterior doors are required at the main building entry at the top of the stairs, to minimize entry of wind-driven rain and wave splash after breakaway walls have failed.
- In Coastal High Hazard Areas (Zone V) and Coastal A Zones:
 - Coastal A Zones are treated like Coastal High Hazard Areas if FEMA has delineated a Limit of Moderate Wave Action, or if the community has designated a Coastal A Zone.
 - Buildings must be supported on piles, drilled shafts, caissons, or other deep foundations (including columns, and shear walls) and foundation depth must take into account erosion and local scour.
 - Stem walls supporting floors and backfilled with soil or gravel are allowed in Coastal A Zones if designs provide for the effects of local scour and erosion.
 - Requirements are included for shallow foundations in circumstances where soil conditions prevent deep foundations.
 - Provisions are provided for pile foundations, attachment to piles, and different types of piles (wood, steel H, concrete-filled steel pipe, prestressed concrete, precast concrete, cast-in-place concrete).
 - Provisions are provided for pile design (capacity, capacity of supporting soils, minimum penetration, spacing, connections, splicing, and mixed and multiple types of piles).
 - Provisions are provided for footings, mats, rafts, slabs-on-grade, pile caps, grade beams, bracing, and shear walls.
 - Walls designed to break away must not produce debris that is capable of damaging structures.
 - Erosion control structures (bulkheads, seawalls, revetments) must not be attached to buildings or direct floodwater into or increase flood forces or erosion impacts on structures.
 - Pools must be elevated, or designed to breakaway without producing damaging debris, or designed to remain in the ground without obstructing flow that causes damage. Pools must be structurally independent of buildings and structures unless pools are located in or on elevated floors or roofs that are above the design flood elevation.

- Dry floodproofed nonresidential buildings and non-residential portions of mixed-use buildings:
 - The terms “mixed use” and “residential portions of mixed use” now are defined in Commentary.
 - Dry floodproofing measures are not permitted in Coastal High Hazard Areas, Coastal A Zones, High Risk Flood Hazard Areas, where flood velocities exceed 5 ft/sec, and where conformance with certain human intervention limits cannot be achieved.
 - At least one exit door or emergency escape/rescue opening must be provided above the elevation specified for dry floodproofing.
 - If dry floodproofing measures specified require human intervention to activate or implement, there must be a minimum warning time of 12 hours unless a community warning system provides a warning time sufficient to accomplish certain activities. If removable shields are approved as part of design, flood emergency plans must address specified elements and actions and must be posted in at least two conspicuous locations.

Flood Damage-Resistant Materials

- Flood damage-resistant materials must be used below specified elevations (see table on page 4).
- Metal connectors and fasteners exposed to salt water, salt spray or other corrosive agents must be stainless steel or equivalent corrosion resistant material, or hot-dipped galvanized after fabrication.
- Where preservative treated wood is required, treatment must be in accordance with AWP requirements.

Attendant Utilities and Equipment

- Attendant utilities and equipment must be at or above specified elevations (see table on page 4), or must be specifically designed, constructed, and installed to prevent floodwaters from entering or accumulating within components.
- Fuel supply lines must be equipped with float operated automatic shut-off valves.
- Where required to meet life safety provisions of the code, certain exterior electrical components may be installed below the design flood elevation, provided they are installed on a non-breakaway structural element on the landward or downstream side of structures.
- Tanks that are below the design flood elevation and that are attached to or beneath buildings must be installed and anchored to resist at least 1.5 times the potential buoyant and other flood forces assumed to act on empty tanks.
- Elevator cabs that descend below the design flood elevation must be equipped with controls that prevent the cab from descending into floodwaters. Elevator shafts must be designed to resist flood loads, but are not required to have flood openings or breakaway walls.

Siting Considerations

- New buildings must not be built (1) seaward of the reach of mean high tide, or (2) in areas subject to flash flooding (floodwaters rise to 3 feet or more above banks in less than 2 hours). Unless protected, new buildings must not be built (1) in erosion-prone areas (determined by analysis); or (2) in mudslide areas (determined by analysis); or (3) in certain portions of alluvial fan areas; or (4) in high velocity flow areas (faster than 10 ft/sec); or (5) in ice jam and debris areas.
- Buildings in proximity to flood protective works (dams, levees, floodwalls, diversions, channels, flood control structures) must not have adverse effects on, or conflict with, maintenance and repairs of those protective works.

Prepared by FEMA Building Science Branch. Content from ASCE 24-14 used with permission from ASCE. Purchase ASCE 24 at www.asce.org.

See next page for description of Flood Design Classes →

		Flood Design Class 1	Flood Design Class 2	Flood Design Class 3	Flood Design Class 4
Minimum Elevation* of Lowest Floor (Zone A: ASCE 24-14 Table 2-1)	Zone A not identified as Coastal A Zone	DFE	BFE +1 ft or DFE, whichever is higher	BFE +1 ft or DFE, whichever is higher	BFE +2 ft or DFE, or 500-year flood elevation, whichever is higher
Minimum Elevation of Bottom of Lowest Horizontal Structural Member (Zone V: ASCE 24-14 Table 4-1)	Coastal High Hazard Areas (Zone V) and Coastal A Zone	DFE	BFE +1 ft or DFE, whichever is higher	BFE +2 ft or DFE, whichever is higher	BFE +2 ft or DFE, or 500-year flood elevation, whichever is higher
Minimum Elevation Below Which Flood-Damage-Resistant Materials Shall be Used (Table ASCE 24-14 5-1)	Zone A not identified as Coastal A Zone	DFE	BFE +1 ft or DFE, whichever is higher	BFE +1 ft or DFE, whichever is higher	BFE +2 ft or DFE, or 500-year flood elevation, whichever is higher
	Coastal High Hazard Areas (Zone V) and Coastal A Zone	DFE	BFE +1 ft or DFE, whichever is higher	BFE +2 ft or DFE, whichever is higher	BFE +2 ft or DFE, or 500-year flood elevation, whichever is higher
Minimum Elevation** of Utilities and Equipment (ASCE 24-14 Table 7-1)	Zone A not identified as Coastal A Zone	DFE	BFE +1 ft or DFE, whichever is higher	BFE +1 ft or DFE, whichever is higher	BFE +2 ft or DFE, or 500-year flood elevation, whichever is higher
	Coastal High Hazard Areas (Zone V) and Coastal A Zone	DFE	BFE +1 ft or DFE, whichever is higher	BFE +2 ft or DFE, whichever is higher	BFE +2 ft or DFE, or 500-year flood elevation, whichever is higher
Minimum Elevation of Dry Floodproofing of non-residential structures and non-residential portions of mixed-use buildings (ASCE 24-14 Table 6-1)	Zone A not identified as Coastal A Zone	BFE +1 ft or DFE, whichever is higher	BFE +1 ft or DFE, whichever is higher	BFE +1 ft or DFE, whichever is higher	BFE +2 ft or DFE, or 500-year flood elevation, whichever is higher
	Coastal High Hazard Areas (Zone V) and Coastal A Zone	Not permitted	Not permitted	Not permitted	Not permitted
Minimum Elevation of Wet Floodproofing*** (ASCE 24-14 Table 6-1)	Zone A not identified as Coastal A Zone; Coastal A Zone; Coastal High Hazard Areas (Zone V)	BFE +1 ft or DFE, whichever is higher	BFE +1 ft or DFE, whichever is higher	BFE +1 ft or DFE, whichever is higher	BFE +2 ft or DFE, or 500-year flood elevation, whichever is higher
* Flood Design Class 1 structures shall be allowed below the minimum elevation if the structure meets the wet floodproofing requirements of ASCE 24-14 Section 6.3. ** Unless otherwise permitted by ASCE 24-14 Chapter 7 *** Only if permitted by ASCE 24-14 Section 6.3.1					

ASCE 24-14 Table 1-1 Flood Design Class of Buildings and Structures	
Use or Occupancy of Buildings and Structures	Flood Design Class
Buildings and structures that normally are unoccupied and pose minimal risk to the public or minimal disruption to the community should they be damaged or fail due to flooding. Flood Design Class 1 includes (1) temporary structures that are in place for less than 180 days; (2) accessory storage buildings and minor storage facilities (does not include commercial storage facilities); (3) small structures used for parking of vehicles; and (4) certain agricultural structures. [Note (a)]	1
Buildings and structures that pose a moderate risk to the public or moderate disruption to the community should they be damaged or fail due to flooding, except those listed as Flood Design Classes 1, 3, and 4. Flood Design Class 2 includes the vast majority of buildings and structures that are not specifically assigned another Flood Design Class, including most residential, commercial, and industrial buildings.	2
Buildings and structures that pose a high risk to the public or significant disruption to the community should they be damaged, be unable to perform their intended functions after flooding, or fail due to flooding. Flood Design Class 3 includes (1) buildings and structures in which a large number of persons may assemble in one place, such as theaters, lecture halls, concert halls, and religious institutions with large areas used for worship; (2) museums; (3) community centers and other recreational facilities; (4) athletic facilities with seating for spectators; (5) elementary schools, secondary schools, and buildings with college or adult education classrooms; (6) jails, correctional facilities, and detention facilities; (7) healthcare facilities not having surgery or emergency treatment capabilities; (8) care facilities where residents have limited mobility or ability, including nursing homes but not including care facilities for five or fewer persons; (9) preschool and child care facilities not located in one- and two-family dwellings; (10) buildings and structures associated with power generating stations, water and sewage treatment plants, telecommunication facilities, and other utilities which, if their operations were interrupted by a flood, would cause significant disruption in day-to-day life or significant economic losses in a community; and (11) buildings and other structures not included in Flood Design Class 4 (including but not limited to facilities that manufacture, process, handle, store, use, or dispose of such substances as hazardous fuels, hazardous chemicals, hazardous waste, or explosives) containing toxic or explosive substances where the quantity of the material exceeds a threshold quantity established by the authority having jurisdiction and is sufficient to pose a threat to the public if released. [Note (b)]	3
Buildings and structures that contain essential facilities and services necessary for emergency response and recovery, or that pose a substantial risk to the community at large in the event of failure, disruption of function, or damage by flooding. Flood Design Class 4 includes (1) hospitals and health care facilities having surgery or emergency treatment facilities; (2) fire, rescue, ambulance, and police stations and emergency vehicle garages; (3) designated emergency shelters; (4) designated emergency preparedness, communication, and operation centers and other facilities required for emergency response; (5) power generating stations and other public utility facilities required in emergencies; (6) critical aviation facilities such as control towers, air traffic control centers, and hangars for aircraft used in emergency response; (7) ancillary structures such as communication towers, electrical substations, fuel or water storage tanks, or other structures necessary to allow continued functioning of a Flood Design Class 4 facility during and after an emergency; and (8) buildings and other structures (including, but not limited to, facilities that manufacture, process, handle, store, use, or dispose of such substances as hazardous fuels, hazardous chemicals, or hazardous waste) containing sufficient quantities of highly toxic substances where the quantity of the material exceeds a threshold quantity established by the authority having jurisdiction and is sufficient to pose a threat to the public if released. [Note (b)]	4
[Note (a)] Certain agricultural structures may be exempt from some of the provisions of this standard; see ASCE 24-14 Section C1.4.3. [Note (b)] Buildings and other structures containing toxic, highly toxic, or explosive substances shall be eligible for assignment to a lower Flood Design Class if it can be demonstrated to the satisfaction of the authority having jurisdiction by a hazard assessment as described in ASCE 7-10 Section 1.5.3 of <i>Minimum Design Loads for Buildings and Other Structures</i> that a release of the substances is commensurate with the risk associated with that Flood Design Class.	

Significant Technical Revisions

ASCE 24-14 lists a number of significant technical revisions from the 2005 edition:

1. Defines *Flood Design Class* rather than use Risk/Occupancy Classification assigned under ASCE 7 and requires each building or structure governed by the standard to be assigned to Flood Design Class 1, 2, 3, or 4. Uses the assigned Flood Design Class to apply elevation requirements specified in Chapters 2, 4, 5, 6 and 7. Flood Design Class 4 buildings and facilities are equivalent to Occupancy Category/Risk Category IV buildings, which ASCE 7-10 identifies as essential facilities.
2. Adds definitions for *Mixed Use* and *Residential Portions of Mixed Use* in commentary to clarify limitations on use of dry floodproofing measures.
3. Changes the Coastal A Zone determination requirement from the designer's responsibility to one depending on either: 1) delineation of a Limit of Moderate Wave Action (LiMWA) on a Flood Insurance Rate Map, or 2) designation by the Authority Having Jurisdiction.
4. Separates specifications for flood openings from the installation requirements. Requires the presence of louvers, blades, screens, faceplates, or other covers and devices to be accounted for in determining net open area for non-engineered openings and in determining the performance of engineered openings. Revises coefficient of discharge table for engineered flood openings. Adds commentary regarding selection of coefficient of discharge and for grouping or stacking of flood openings.
5. For Flood Design Class 4 buildings, requires the minimum lowest floor elevation (or floodproofing level of protection) to be the higher of: the Base Flood Elevation plus freeboard specified in Chapters 2, 4 and 6, the Design Flood Elevation, or the 500-year flood elevation. The 500-year flood elevation requirement is new.
6. Clarifies text pertaining to alluvial fan high risk flood hazard areas.
7. In coastal high hazard areas (V Zone) and Coastal A Zones (if delineated):
 - a. Makes explicit that designs must account for local scour and erosion
 - b. Provides for shallow foundations in Coastal A Zones under certain circumstances
 - c. Requires flood openings in breakaway walls
 - d. Eliminates orientation of the lowest horizontal structural member as a factor to determine elevation for lowest floors, equipment, and flood damage-resistant materials
 - e. Requires exterior doors at the top of stairways that are located inside enclosed areas with breakaway walls
 - f. Consolidates requirements for all nonstructural concrete slabs
 - g. Allows substantial improvement of existing buildings seaward of the reach of mean high tide in V zones (makes ASCE 24 consistent with NFIP) and Coastal A Zones.
8. Updates flood damage-resistant material requirements.
9. Clarifies emergency escape and rescue opening requirements for dry floodproofed buildings.
10. Clarifies requirements for garages, carports, and accessory storage structures. Adds new section for multistory parking structures.
11. Consolidates requirements for tanks and more clearly distinguishes between requirements based on flood hazard area.

National Flood Hazard Layer FIRMette



81°53'34"W 26°24'33"N



0 250 500 1,000 1,500 2,000 Feet 1:6,000

81°52'56"W 26°24'1"N

Legend

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

SPECIAL FLOOD HAZARD AREAS		Without Base Flood Elevation (BFE) Zone A, V, A99
		With BFE or Depth Zone AE, AO, AH, VE, AR
		Regulatory Floodway

OTHER AREAS OF FLOOD HAZARD		0.2% Annual Chance Flood Hazard, Area of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X
		Future Conditions 1% Annual Chance Flood Hazard Zone X
		Area with Reduced Flood Risk due to Levee. See Notes, Zone X
		Area with Flood Risk due to Levee Zone D

OTHER AREAS		NO SCREEN Area of Minimal Flood Hazard Zone X
		Effective LOMRs
		Area of Undetermined Flood Hazard Zone

GENERAL STRUCTURES		Channel, Culvert, or Storm Sewer
		Levee, Dike, or Floodwall

OTHER FEATURES		20.2 Cross Sections with 1% Annual Chance Water Surface Elevation
		17.5 Cross Sections with 1% Annual Chance Water Surface Elevation
		Coastal Transect
		Base Flood Elevation Line (BFE)
		Limit of Study
		Jurisdiction Boundary
		Coastal Transect Baseline
		Profile Baseline
MAP PANELS		Digital Data Available
		No Digital Data Available
		Unmapped

The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards.

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 2/10/2025 at 6:53 PM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.

CODE COMPLIANCE SPECIAL MAGISTRATE
THE TOWN OF FORT MYERS BEACH, FLORIDA

TOWN OF FORT MYERS BEACH,
FLORIDA,

Petitioner,

vs.

CE CASE NO. 2024-0914
DOAH CASE NO. 24-4834

1821 ESTERO BLVD CORPORATION,

Respondent.

_____ /

**CODE ENFORCEMENT VIOLATION FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER**

THIS CAUSE came before the undersigned Administrative Law Judge, John G. Van Laningham, serving as the Special Magistrate for the Town of Fort Myers Beach (“Special Magistrate”), on January 7, 2025, for a public hearing pursuant to the Town’s code enforcement authority and Chapter 162, Florida Statutes. The Town of Fort Myers Beach (“Town”) appeared through counsel, Nancy Stuparich, Esquire. Gordon Stojkoski appeared on behalf of Respondent, 1821 Estero Blvd Corporation, and Steve Larson appeared on behalf of Respondent’s tenant, Sun-N-Fun Rentals. The purpose of the hearing was to adjudicate the Town’s Notice of Violation and the Town’s request for an Order finding the Respondent in violation. After reviewing sworn testimony and supporting evidence, including photographs, FEMA correspondence, and Town resolutions, the Special Magistrate makes the following findings and orders:

A. FINDINGS OF FACT

1. On May 15, 2023, the Town Council of Fort Myers Beach adopted Ordinance 23-05 to address recovery efforts following Hurricane Ian. This ordinance authorized the temporary placement of emergency structures for recovery purposes. Later, on May 6, 2024, the Town Council adopted Ordinance 24-04, which amended Ordinance 23-05 to explicitly authorize commercial Emergency Temporary Placement Permits (“ETPPs”) and establish conditions for their revocation.

2. The property at 1821 Estero Boulevard, Fort Myers Beach, Florida (the “Subject Property”),¹ owned by Mr. Stojkoski, previously housed a successful restaurant employing 40 people and a family home, both of which were destroyed by Hurricane Ian. After the storm, Respondent leased space on the property to Mr. Larson, the co-owner of Sun-N-Fun Rentals, to help revitalize Fort Myers Beach.

3. On July 6, 2023, Respondent submitted a Temporary Placement Application for the placement of two mobile storage containers on the Subject Property, with an enclosed outdoor storage area for Sun-N-Fun Rentals, which provides golf carts, bicycles, scooters, and other rental equipment to residents and tourists.

4. The Town issued Temporary Use Permit No. 234692 to the Respondent on August 16, 2023, authorizing the placement of two storage containers at the Subject Property. It was subsequently revised to allow a third container, bringing the total to three. The containers were required to be mobile, with axles and tires, to ensure removal in emergencies. This permit was set to expire on September 23, 2025, and included conditions requiring compliance with hurricane evacuation orders, proper tie-downs, and removal of the temporary structures within 30 days after the issuance of a certificate of occupancy or upon permit expiration.

5. On September 19, 2024, Code Enforcement Officer Thomas Yozzo inspected the Subject Property and identified noncompliant structures, including the three containers, which were not built to current flood design codes. These structures failed to meet the elevation, anchoring, and flood-resistance requirements mandated by ASCE 24-14, as well as Sections 6-501 and 6-525 of the Town of Fort Myers Beach Land Development Code (“Town Code”). The property is in a Coastal A Zone, which requires elevation to a Base Flood Elevation (“BFE”) of 13 feet.

6. On September 24, 2024, the Town issued a Notice of Violation to the Respondent, detailing the deficiencies and providing a 30-day compliance deadline, which expired on October 24, 2024. The notice directed the Respondent to remove the noncompliant structures or bring them into compliance with the Town Code.

7. A follow-up inspection conducted on November 20, 2024, confirmed that the property remained noncompliant. An Affidavit of Noncompliance was prepared, documenting the ongoing violations, including the failure to elevate and properly anchor the storage containers to meet floodplain management standards. Floodplain Manager Carl Thomas reviewed the violations and confirmed that the structures did not meet the requirements set forth under ASCE 24-14 or the Town Code, thereby posing significant risks to public safety and floodplain integrity.

¹ The Subject Property’s Property Identification Number is 19-46-24-W400405.0000. A legal description may be found in that certain Warranty Deed recorded as Instrument #2018000174163 in the Official Records of Lee County, Florida.

8. Mr. Stojkoski testified that the containers were compliant when initially permitted and questioned whether they would have been deemed noncompliant without FEMA's influence. He also highlighted the financial and operational strain caused by the permit revocation.

9. Mr. Larson testified that Sun-N-Fun Rentals relied heavily on the storage containers to operate during the recovery process. He invested significant financial resources to modify the containers and purchase additional equipment required to meet the Town's initial permit conditions. Larson requested additional time to comply with any removal order, suggesting that a compliance deadline in June would be less disruptive than during the busy season.

10. FEMA issued correspondence emphasizing the urgency of addressing noncompliant structures to maintain the Town's compliance with the National Flood Insurance Program ("NFIP"). These letters directed the Town to remove noncompliant structures and enforce floodplain regulations in accordance with FEMA and ASCE 24-14 standards. One letter, dated November 21, 2024, specifically placed the Town on probationary status due to the unresolved violations, warning of increased insurance premiums and reduced disaster assistance if compliance was not achieved. The letters underscored the need for immediate corrective actions to safeguard the Town's participation in the NFIP.

11. On December 16, 2024, the Town Council adopted Resolution No. 24-296, revoking all ETPPs for noncompliant structures identified by FEMA.

12. On December 19, 2024, the Town notified the Respondent that Temporary Use Permit No. 234692 had been revoked, effective December 16, 2024.

13. Despite receiving proper notice and adequate opportunities to correct the violations, Respondent failed to take the necessary steps to bring the property into compliance with the Town's Land Development Code and FEMA regulations.

14. The Special Magistrate acknowledges the significant challenges posed by Hurricane Ian and recognizes Respondent's efforts to maintain operations during the recovery process. However, ongoing noncompliance with floodplain regulations jeopardizes public safety and the Town's standing in the NFIP.

B. CONCLUSIONS OF LAW

15. Sections 6-501 and 6-525 of the Town of Fort Myers Beach Land Development Code, along with ASCE 24-14, establish specific requirements for floodplain management. Section 6-501 specifies that buildings, structures, and facilities exempt from the Florida Building Code must be designed and constructed in accordance with the flood load and flood-resistant construction requirements of ASCE 24. Structures not walled and roofed must comply with division 10, subdivision VII of the Town Code to ensure comprehensive flood-resistance measures.

16. Section 6-525 requires that all development, including man-made changes to improved or unimproved real estate, be located and constructed to minimize flood damage. Such development

must be anchored to prevent flotation or lateral movement during a design flood and built with flood-resistant materials. Mechanical, plumbing, and electrical systems must either be elevated above the design flood elevation or comply with ASCE 24 standards, with limited exceptions for life safety requirements.

17. Respondent's failure to meet these standards constitutes a violation of the Town Code as well as ASCE 24-14. This noncompliance compromises public safety, floodplain integrity, and the Town's eligibility for participation in the NFIP. FEMA's repeated warnings emphasized the broader risks posed by these violations to both the community and the Town's ability to access federal flood insurance and disaster assistance.

18. These violations place the Town's compliance with FEMA regulations and NFIP participation at risk, threatening higher insurance premiums and reduced disaster assistance for the community.

19. Respondent received proper notice and opportunities to remedy the violations but has failed to achieve compliance.

20. The Town's enforcement actions reflect its obligation to maintain public safety, protect neighboring properties, and preserve the community's eligibility for NFIP participation.

C. ORDER

Based on the foregoing, it is hereby ORDERED as follows:

Compliance Deadline and Review Hearing: Respondent must remove or bring the non-compliant structures into compliance with Town and FEMA regulations by **March 1, 2025**. A status review hearing is scheduled for **March 4, 2025**, to evaluate compliance progress. The Special Magistrate will consider compliance steps taken in deciding whether to impose or defer fines.

Daily Fine: A fine of \$250 per day will be imposed for each day the violation continues beyond the Compliance Date, unless deferred at the status review hearing based upon the circumstances then existing.

Abatement Authorization: If compliance is not achieved by the deadline and no satisfactory progress is reported at the hearing, the Town may abate the violation by removing the non-compliant structures. Associated costs will be recoverable as a lien on the Subject Property.

Costs: Pursuant to section 162.07(2), Florida Statutes, Respondent shall pay \$250 to cover the costs associated with this enforcement action.

This Order may be appealed by any aggrieved party to the Circuit Court of Lee County no later than 30 days from the date of this Order. Failure to timely file a written Notice of Appeal will waive the right of appeal.

DONE AND ORDERED this 28th day of January, 2025, at the Division of
Administrative Hearings, Tallahassee, Florida.



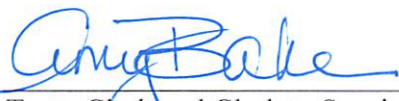
John C. Van Laningham
Special Magistrate

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of this Order has been furnished to
by U.S. mail on this 28 day of January, 2025, to:

1821 Estero Blvd Corporation
c/o Goran Stojkoski
705 10th Street S #305
Naples, FL 33901

Sun and Fun Rentals
c/o Steve Larson
steve.larson2344@outlook.com

BY: 
Town Clerk and Clerk to Special Magistrate

Dated January 28, 2025

CODE COMPLIANCE SPECIAL MAGISTRATE
THE TOWN OF FORT MYERS BEACH, FLORIDA

TOWN OF FORT MYERS BEACH,
FLORIDA,

Petitioner,

vs.

CE CASE NO. 20240908
DOAH CASE NO. 24-4838

HIMMELSTEIN ASSOCIATES, LLC,

Respondent.

**CODE ENFORCEMENT VIOLATION FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER**

THIS CAUSE came before the undersigned Administrative Law Judge, John G. Van Laningham, serving as the Special Magistrate for the Town of Fort Myers Beach (“Special Magistrate”), on January 7, 2025, for a public hearing. The Town of Fort Myers Beach (“Petitioner”) and Himmelstein Associates, LLC (“Respondent”), appeared, with Respondent represented by its Manager, Jeff Walker. The purpose of the hearing was to adjudicate the Town’s Notice of Violation, dated October 2, 2024, and the Town’s request for an Order finding the Respondent in violation. After reviewing sworn testimony and supporting evidence, including photographs, FEMA correspondence, and Town resolutions, the Special Magistrate makes the following findings and orders:

A. FINDINGS OF FACT

1. On February 6, 2023, Respondent applied for a Temporary Use Permit for the temporary placement of two shipping containers on the property located at 2815 Estero Boulevard, Fort Myers Beach, Florida (the “Subject Property”).¹ These containers were used to store inventory and display merchandise, allowing Respondent’s furniture business to continue operations while rebuilding after Hurricane Ian.

2. The Town issued Temporary Use Permit No. 231578 to Respondent on February 13, 2023, with an expiration date of September 23, 2025. The permit required compliance with hurricane

¹ The Subject Property’s Property Identification Number is 30-46-24-W2-003L0.0050. A legal description may be found in that certain Warranty Deed recorded as Instrument #2021000147663 in the Official Records of Lee County, Florida.

evacuation orders, proper tie-downs, and removal of temporary structures within 30 days after a certificate of occupancy or upon permit expiration.

3. On May 15, 2023, the Town Council of Fort Myers Beach adopted Ordinance 23-05 to address recovery efforts following Hurricane Ian. It authorized the temporary placement of emergency structures for recovery purposes. Ordinance 24-04, effective May 6, 2024, amended Ordinance 23-05 to explicitly authorize commercial Emergency Temporary Placement Permits (“ETPPs”) and establish conditions for revocation.

4. On September 19, 2024, Code Enforcement Officer Thomas Yozzo inspected the Subject Property and found two shipping containers non-compliant with FEMA floodplain regulations and Town Code Sections 6-501 and 6-525, which incorporate ASCE 24-14 standards. These standards require elevation to the Base Flood Elevation (“BFE”), secure anchoring, and flood openings. Respondent failed to meet these standards, increasing flood risks.

5. Floodplain Manager Carl Thomas confirmed the non-compliance and highlighted risks of structural displacement and public safety hazards.

6. On October 17, 2024, the Town issued a Notice of Violation to Respondent, detailing deficiencies and providing 30 days for compliance.

7. Follow-up inspections on December 10, 2024, and January 6, 2025, confirmed continued non-compliance. Jeff Walker testified that Respondent applied for permits to rebuild the store on the same footprint and expected full compliance within four to six weeks after permit issuance. An Affidavit of Non-Compliance and photographic evidence were presented.

8. FEMA issued letters to the Town directing the removal of non-compliant structures and stricter enforcement of floodplain regulations. A November 21, 2024, letter placed the Town on probation in the National Flood Insurance Program (“NFIP”), threatening increased insurance premiums and reduced disaster assistance.

9. On December 16, 2024, the Town Council adopted Resolution No. 24-296, revoking all non-compliant ETPPs.

10. On December 19, 2024, the Town notified Respondent that Temporary Use Permit No. 231578 had been revoked effective December 16, 2024.

11. The Special Magistrate acknowledges the challenges caused by Hurricane Ian and Respondent’s efforts to continue operations. However, ongoing non-compliance with floodplain regulations places the Town at risk of losing NFIP participation.

B. CONCLUSIONS OF LAW

12. Respondent violated Sections 6-501 and 6-525 of the Town’s Land Development Code and ASCE 24-14 by failing to elevate, anchor, or modify the shipping containers.

13. These violations jeopardize the Town's compliance with FEMA floodplain regulations, risking higher insurance premiums and reduced disaster assistance.

14. Respondent received proper notice and adequate opportunities to correct the violations but failed to take corrective action.

15. The Town's enforcement efforts reflect its responsibility to protect public safety and maintain NFIP eligibility.

C. ORDER

Based on the foregoing, it is hereby ORDERED as follows:

Compliance Deadline and Review Hearing: Respondent must remove or bring the non-compliant structures into compliance with Town and FEMA regulations by **March 1, 2025**. A status review hearing is scheduled for **March 4, 2025**, to evaluate compliance progress. The Special Magistrate will consider compliance steps taken in deciding whether to impose or defer fines.

Daily Fine: A fine of \$250 per day will be imposed for each day the violation continues beyond the Compliance Date, unless deferred at the status review hearing based upon the circumstances then existing.

Abatement Authorization: If compliance is not achieved by the deadline and no satisfactory progress is reported at the hearing, the Town may abate the violation by removing the non-compliant structures. Associated costs will be recoverable as a lien on the Subject Property.

Costs: Pursuant to section 162.07(2), Florida Statutes, Respondent shall pay \$250 to cover the costs associated with this enforcement action.

This Order may be appealed by any aggrieved party to the Circuit Court of Lee County no later than 30 days from the date of this Order. Failure to timely file a written Notice of Appeal will waive the right of appeal.

DONE AND ORDERED this 15th day of January, 2025, at the Division of Administrative Hearings, Tallahassee, Florida.



John G. Van Laningham
Special Magistrate

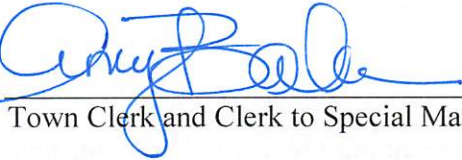
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of this Order has been furnished to
by U.S. mail on this 16 day of January, 2025, to:

Himmelstein Associates LLC
P.O. Box 218
Somers Point, NJ 08244

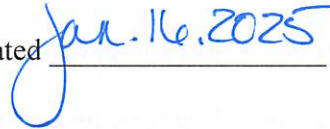
Himmelstein Associates LLC
907 Hyacinth Dr.
Delray Beach, Florida 33483

BY:



Town Clerk and Clerk to Special Magistrate

Dated



IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL APPELLATE DIVISION

KLC SURF, LLC, and TEH4, INC.,

CE CASE NO. 2024-0915
DOAH CASE NO. 24-4407

Appellants,

vs.

**TOWN OF FORT MYERS BEACH, a Florida
Municipal Corporation,**

Appellee.

NOTICE OF APPEAL

NOTICE IS GIVEN that Appellants, KLC SURF LLC and TEH4 INC., pursuant to Florida Rules of Appellate Procedure 9.030(c)(1)(A) & (C) and 9.110(a)(1) & (2), (c), Florida Statutes § 162.11, and Town of Fort Myers Beach Land Development Code § 2-428(b), appeal to the Circuit Court for the Twentieth Judicial Circuit, the Code Enforcement Order, Findings of Fact, and Conclusions of Law, executed and rendered by the Town of Fort Myer Beach Special Magistrate on February 5, 2025, for Code Enforcement Case No. 2024-0915 (DOAH Case No. 24-4407). This order resolves all claims in the foregoing Town of Fort Myers Beach Code Enforcement Case No. 2024-0915. The nature of the order appealed is a final order reviewable under the procedures in Florida Rule of Appellate Procedure 9.110.

/s/ Amy S. Thibaut

Amy S. Thibaut, Esq.
Florida Bar No. 1013569
athibaut@ralaw.com
robrien@ralaw.com
Roetzel & Andress, LPA
2320 First Street, Suite 1000
Fort Myers, FL 33901
239.337.3850
239.337.0970
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Florida Courts E-Filing Portal on Nancy Stuparich, Esq. (nstuparich@voselaw.com), Vose Law Firm, 324 Morse Boulevard, Winter Park, Florida 32789-4294 (counsel for Respondent) this 12th day of February 2025.

/s/ Amy S. Thibaut

Amy S. Thibaut, Esq.
Florida Bar No. 1013569
athibaut@ralaw.com
robrien@ralaw.com

CODE COMPLIANCE SPECIAL MAGISTRATE
THE TOWN OF FORT MYERS BEACH, FLORIDA

TOWN OF FORT MYERS BEACH,
FLORIDA,

Petitioner,

vs.

CE CASE NO. 2024-0915
DOAH CASE NO. 24-4407

KLC SURF, LLC,

Respondent.

**CODE ENFORCEMENT VIOLATION FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER**

THIS CAUSE came before the undersigned Administrative Law Judge, John G. Van Laningham, serving as the Special Magistrate for the Town of Fort Myers Beach (“Special Magistrate”), on January 7, 2025, for a public hearing. The Town of Fort Myers Beach (“Town”) appeared through its counsel, Nancy Stuparich, Esquire. Amy Thibaut, Esquire, appeared as attorney for Respondent, KLC Surf, LLC. Chris Primaue, Manager of KLC Surf, LLC, was present on behalf of the property owner, and Tom Houghton, Manager of TEH4, Inc., d/b/a La Ola Surfside Restaurant, was present on behalf of the lessee, which operates the restaurant on the subject property and utilizes the shipping containers in question. The purpose of the hearing was to determine whether Respondent violated Sections 6-501 and 6-525 of the Town’s Land Development Code (“LDC”), as alleged in the Notice of Violation, and to decide on the appropriate enforcement action, if necessary. After reviewing sworn testimony and supporting evidence, including photographs, FEMA correspondence, the Affidavit of Non-Compliance, Town resolutions, the permit-related documents, and arguments from both parties, the Special Magistrate makes the following findings and orders:

A. FINDINGS OF FACT

1. The property at 1035 Estero Boulevard (the “Subject Property”) is owned by KLC Surf, LLC, whose manager is Chris Primaue. The lessee, TEH4, Inc., d/b/a La Ola Surfside Restaurant, managed by Tom Houghton, operates a restaurant at the location, which utilizes shipping containers for commercial operations. These containers function as part of the restaurant’s infrastructure, serving as a bar and kitchen area, and have given rise to the violations at issue.

2. On May 15, 2023, the Town Council adopted Ordinance 23-05 in response to the ongoing recovery efforts following Hurricane Ian. This ordinance authorized the temporary placement of

emergency structures to aid in rebuilding efforts while ensuring compliance with FEMA floodplain management requirements. Subsequently, on May 6, 2024, the Town Council adopted Ordinance 24-04, which amended Ordinance 23-05 to explicitly authorize commercial Emergency Temporary Placement Permits (“ETPPs”) and establish conditions for their revocation. These legislative actions were intended to balance disaster recovery with regulatory compliance in flood-prone areas, preserving public safety and the Town’s standing in the National Flood Insurance Program (“NFIP”).

3. On or around January 9, 2023, Respondent applied for a temporary use permit for the placement of shipping containers to serve as a bar and kitchen area. The application specified that the containers measured 20 feet in length, 16 feet in width, and 9 feet in height. The application stated that the containers were intended as a temporary measure to support uninterrupted restaurant operations during post-hurricane recovery efforts.

4. On August 4, 2023, the Town issued Temporary Use Permit No. 233201 for the shipping container bar at La Ola Surfside Restaurant, with an expiration date of September 23, 2025. The permit required compliance with mandatory hurricane evacuation orders, stating that failure to comply could result in revocation. Additionally, the permit required that any manufactured home, mobile home, trailer, RV, or similar structure must meet all Florida Statutes and Florida Building Code tie-down requirements.

5. On July 19, 2024, FEMA issued a formal notice to the Town outlining ongoing compliance deficiencies related to floodplain management and the Town’s participation in the NFIP. The letter warned that unless all violations were corrected by November 18, 2024, the Town would be placed on NFIP probation, effective April 1, 2025. This would result in significant increases in flood insurance premiums for property owners within the Town.

6. FEMA’s letter identified multiple deficiencies in the Town’s floodplain management enforcement, including failure to require floodplain development permits, inadequate record-keeping for permit applications, and failure to conduct substantial damage/substantial improvement determinations for Hurricane Ian-affected structures. FEMA’s compliance review specifically highlighted non-compliant shipping containers, including those at the Subject Property, as structures that must either be removed or brought into compliance to maintain the Town’s standing in the NFIP.

7. On September 18, 2024, Code Enforcement Officer Thomas Yozzo conducted an inspection of the Subject Property and determined that the shipping containers failed to meet required flood design codes. Specifically, he found that the structures did not comply with the elevation, anchoring, or flood-resistance requirements mandated by ASCE 24-14 and Sections 6-501 and 6-525 of the LDC. The inspection confirmed that the Subject Property is located within a VE Zone, requiring a Base Flood Elevation of 13 feet, which the shipping containers do not meet.

8. On September 24, 2024, the Town issued a Notice of Violation to Respondent, citing violations of Sections 6-501 and 6-525 of the LDC. The notice required Respondent to either

remove the non-compliant structures or bring them into compliance by October 24, 2024, within 30 days of issuance.

9. On November 1, 2024, the Town sent a formal letter to FEMA requesting an extension to allow compliant, easily removable shipping containers, including those used by La Ola Surfside Restaurant, to remain in place until June 1, 2025. The Town stated that many businesses, including La Ola, demonstrated that their containers could be quickly disassembled and removed before a storm event, citing Hurricane Milton as an example.

10. On November 12, 2024, FEMA responded, denying the proposed extension. FEMA's letter stated that under the Code of Federal Regulations governing the NFIP, the shipping containers qualify as structures and not recreational vehicles. FEMA further stated that all development in the Special Flood Hazard Area must comply with NFIP minimum standards and local floodplain management regulations, without exceptions for temporary structures.

11. A follow-up inspection of the Subject Property was conducted on November 18, 2024. This reinspection confirmed that the property remained non-compliant. An Affidavit of Non-Compliance, executed by Officer D. Batt, documented that the containers had not been removed or brought into compliance with flood regulations.

12. On November 21, 2024, FEMA issued a letter formally placing the Town on probation within the NFIP due to ongoing violations of federal floodplain management regulations. The letter reiterated the Town's failure to complete a full assessment of all floodplain development that occurred after Hurricane Ian, enforce code compliance on non-conforming structures within the Special Flood Hazard Area, and remove incorrectly permitted structures that violated FEMA's floodplain management regulations. FEMA emphasized that the Town's inability to correct these deficiencies within the established timeframe had resulted in probationary status and would lead to financial consequences for all insured property owners in the Town.

13. The letter confirmed that as a direct consequence of these unresolved violations, all flood insurance policies sold or renewed within the Town would incur an additional \$50 surcharge, beginning immediately. Furthermore, FEMA notified the Town that, as of April 1, 2025, it would be downgraded to a Class 10 in the Community Rating System ("CRS"), eliminating all NFIP premium discounts that had previously been available to Fort Myers Beach property owners. Additionally, the Town would be ineligible to apply for an improved CRS rating for at least two years, and only upon FEMA's verification that all outstanding compliance issues had been resolved and corrective actions had been fully implemented.

14. FEMA's November 21, 2024, letter identified non-compliant shipping containers as among the violations that required immediate resolution. FEMA emphasized that these structures had been improperly permitted and must either be removed or brought into compliance with applicable floodplain management regulations. The continued presence of these structures at the Subject Property directly contributed to the Town's NFIP probation status.

15. On December 16, 2024, the Town Council adopted Resolution No. 24-296, formally revoking and rescinding all Emergency Temporary Placement Permits (ETPPs) issued for non-

compliant structures within the Special Flood Hazard Area. This legislative action was taken in direct response to FEMA's November 21, 2024, letter. The resolution mandated that all permit holders be formally notified of revocation and that code enforcement actions be pursued for any non-compliant structures still present. Resolution No. 24-296 applied to the shipping containers at the Subject Property, which FEMA identified as non-compliant structures requiring removal or regulatory compliance.

16. In compliance with Resolution No. 24-296, the Town issued a formal notice of revocation to Respondent on December 19, 2024, advising that Temporary Use Permit No. 233201 for 1035 Estero Blvd had been revoked, effective December 16, 2024. The notice explained that the revocation was necessary to comply with federal floodplain management requirements and avoid prolonged NFIP probation and financial penalties for all Town property owners.

B. CONCLUSIONS OF LAW

17. The Town has charged Respondent with violations of Sections 6-501 and 6-525 of the LDC. Respondent disputes these allegations, arguing that the LDC provisions cited by the Town do not apply to them because the containers on the Subject Property do not qualify as "structures" under FEMA regulations.

18. Section 6-501 provides, in pertinent part, as follows: "Pursuant to section 6-443, buildings, structures and facilities that are exempt from the Florida Building Code ... must be designed and constructed in accordance with the flood load and flood-resistant construction requirements of ASCE 24." Section 6-501 refers to Section 6-443 and must be read in conjunction with it. Section 6-443 states that pursuant to the requirements of federal regulation for participation in the NFIP, floodplain development permits or approvals will be required for certain buildings, structures, and facilities that are exempt from the Florida Building Code and are subject to the Town's floodplain regulations. Section 6-443 then lists the structures for which floodplain permits are required. These include railroads, nonresidential farm buildings, temporary buildings or sheds used for construction, mobile or modular structures used as temporary offices, and many others.

19. For Section 6-501 to apply, the containers must (1) be exempt from the Florida Building Code and (2) fall within one of the exempt categories listed in Section 6-443. The Town contends that the containers qualify as either "temporary buildings used exclusively for construction" or "mobile or modular structures used as temporary offices." However, this assertion lacks factual and legal support. The containers are used as part of a commercial restaurant operation rather than for any kind of office or construction-related purpose. Section 6-443's reference to "temporary buildings or sheds used exclusively for construction" applies only to short-term structures that serve an active construction project, while the reference to "mobile or modular structures used as temporary offices" concerns administrative or clerical office space. Because the containers here serve as a restaurant's bar and kitchen, they do not qualify for either exemption and are therefore not subject to Section 6-501.

20. Alternatively, for the foregoing conclusion suffices to deem Section 6-501 inapplicable, Respondent argues that the containers in question are not “structures” within the meaning of Section 6-501. The LDC does not specifically define the term “structure.” To fill the void, Respondent relies on FEMA’s definition of “structure” as set forth in 44 C.F.R. s. 59.1, but its reliance is misplaced because the LDC, which is the controlling law, does not default to the federal definition of “structure.” Instead, the LDC provides that where terms are not defined in the LDC, they have the meanings ascribed to them in the Florida Building Code, and if not found there, they assume their ordinarily accepted meanings. See LDC §§ 6-492 & 6-493. The Florida Building Code defines “structure” broadly as “[t]hat which is built or constructed.” See FBC § 202. Because the containers are things that were built or constructed, they qualify as structures for purposes of Section 6-501.

21. To fall under Section 6-501, the containers must not only be structures, which they are, but also exempt from the Florida Building Code. Section 102.2 of the FBC identifies structures that are exempt, including temporary buildings or sheds used exclusively for construction, and mobile or modular structures used as temporary offices, among other categories. The containers here are neither used in a construction project nor employed as administrative or office space. Instead, they function as a commercial bar and kitchen area. Because they do not meet any FBC exemption, they fall outside the regulatory scope of Section 6-501.

22. Respondent suggests that the containers might qualify as either recreational vehicles (“RVs”) or manufactured homes under applicable regulations. However, this classification is irrelevant to determining their status under Section 6-501. Even if the containers met the definition of an RV or manufactured home, they would not be exempt from the Florida Building Code but, instead, not covered by it, which is different from being exempt. Simply put, Section 6-501 applies exclusively to structures that are exempt from the Florida Building Code, and because the containers do not qualify for any listed exemptions, Section 6-501 does not pertain to them.

23. Because Section 6-501 applies only to structures that are exempt from the Florida Building Code, and because these containers are not exempt, it follows that Respondent is not guilty of violating Section 6-501. This resolves one of the alleged violations.

24. The remaining charge is brought under Section 6-525, which provides that all “development, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in that article or the Florida Building Code,” must be located and constructed to minimize flood damage, be anchored to prevent flotation, collapse, or lateral movement from hydrostatic loads, be constructed of flood damage-resistant materials, and have mechanical, plumbing, and electrical systems above the design flood elevation or meet the requirements of ASCE 24. Minimum electric service required to address life safety and code requirements is permitted below the design flood elevation if it conforms to the electrical part of the building code for wet locations.

25. Both the Town and Respondent agree that neither the LDC nor the FBC contains provisions prescribing flood-resistance requirements specifically for shipping containers placed in the manner they are placed at the Subject Property. Section 6-525 thus applies if the containers

constitute “development.” Section 6-494 defines “development” to include any man-made change to improved or unimproved real estate, including buildings or other structures, temporary or permanent storage of equipment or materials, and other activities. The containers at issue qualify as “development” within this broad definition.

26. Based on the evidence presented, it is concluded that the containers violate the requirements of Section 6-525, because they are not elevated to or above the Base Flood Elevation of 13 feet, are not anchored to prevent flotation or lateral movement, and are not constructed of flood damage-resistant materials.

27. Respondent argues that the Town’s previous issuance of Temporary Use Permit No. 233201 should estop it from enforcing floodplain regulations. At the outset, the undersigned notes that the Special Magistrate’s jurisdiction likely does not extend to full adjudication of equitable estoppel claims, which may require resolution in a court of general jurisdiction. Nevertheless, for the purposes of this enforcement proceeding, the Special Magistrate will evaluate the factual basis of Respondent’s estoppel defense to create a complete record.

28. Florida courts have consistently held that municipalities or counties generally cannot be estopped from enforcing land use requirements when a permit or approval is erroneously issued or maintained. *See Corona Props. of Fla., Inc. v. Monroe Cty.*, 485 So. 2d 1314, 1317 (Fla. 3d DCA 1986) (holding that a county was not estopped from revoking a building permit illegally issued). Equitable estoppel may apply only under exceptional circumstances, typically requiring that the permit or approval was lawfully issued in good faith, relied upon substantially by the permittee, and then arbitrarily rescinded. *See Sakolsky v. City of Coral Gables*, 151 So. 2d 433, 435 (Fla. 1963). Where the permit was never lawfully valid or the government’s conduct was simply a mistake of law or oversight, estoppel is ordinarily unavailable. *See Crowell v. Monroe Cty.*, 578 So. 2d 837 (Fla. 3d DCA 1991).

29. Under Florida law, permitting authorities may be estopped only where the owner can demonstrate clear reliance upon the government’s express assurance that the activity is lawful, coupled with extensive obligations or expenses undertaken that render it inequitable to deny the validity of the permit. *See Santa Rosa Dev. LLC v. Santa Rosa Cty.*, 2023 WL 3089818, *8 (N.D. Fla. Mar. 20, 2023). In *Santa Rosa Development*, the court rejected estoppel where the county mistakenly allowed an RV park, contrary to a restrictive lease. The court found that because the approval violated the controlling legal requirements, the county retained authority to withdraw the improperly issued development order, even though the developer had invested money in reliance. Likewise, in *Corona Properties*, the county was permitted to revoke a permit that had been issued on the basis of a finding by a zoning official acting outside his lawful authority. Those holdings reflect a general principle that the government’s mistaken interpretation of the controlling law, without more, does not create a vested right.

30. In rare situations, a government’s prolonged acceptance of a non-compliant situation can equitably estop a later enforcement action. *See Fraga v. Dep’t of HRS*, 464 So. 2d 144, 147-48 (Fla. 3d DCA 1984). In *Fraga*, the court found that the state’s continued reimbursement of a physician, along with affirmative misleading conduct and callous non-responsiveness over a multi-year period, rose to a level of “exceptional circumstances” justifying estoppel. By contrast,

no evidence here shows the Town engaged in comparably egregious or misleading conduct. Rather, the Town acted to correct or revoke a non-compliant situation once FEMA clarified that these containers were disallowed, consistent with the controlling floodplain regulations. In the absence of a deliberate, lawful approval or an explicit assurance to Respondent that the structures were permanently allowed, the circumstances do not warrant estoppel.

31. The issuance of Temporary Use Permit No. 233201, which FEMA subsequently deemed to be an improper permit, did not create a vested right to maintain the containers indefinitely. The permit was granted with the understanding that compliance with all applicable regulations, including FEMA floodplain requirements, remained mandatory. Because the permit contravened controlling flood provisions, the Town was obligated to revoke it upon discovering the error. The Town's error in issuing or maintaining the permit does not negate its duty to ensure that all structures within the Special Flood Hazard Area meet the minimum standards mandated by NFIP-participating communities.

32. Once a municipality or county realizes that a permit is improperly issued in violation of public safety or floodplain requirements, the doctrine of equitable estoppel will not bar enforcement unless the property owner shows extraordinary and affirmative misrepresentations by the government, along with substantial good-faith reliance on a lawful approval. No such demonstration has been made here. Respondent's reliance on the original permit was not authorized by controlling regulations, as FEMA's letters, the local floodplain management code, and Town records all show the containers do not meet required elevation, anchoring, or construction standards. The Town did not engage in any "callous non-responsiveness" or multi-year misleading approvals of the type found in Fraga. Thus, the circumstances do not suffice to sustain an estoppel claim.

33. In sum, Respondent is not in violation of Section 6-501 but is in violation of Section 6-525. Equitable estoppel does not bar the Town's enforcement of floodplain management regulations, as the Town is legally obligated to comply with FEMA's enforcement directives to maintain its participation in the NFIP. The Town's corrective actions were taken in response to Resolution No. 24-296 and FEMA's July 19, 2024, and November 21, 2024, compliance letters, which mandated strict enforcement of floodplain regulations.

C. ORDER

Based on the foregoing, it is hereby ORDERED as follows:

Compliance Deadline and Review Hearing: Respondent shall, no later than March 1, 2025, either remove the non-compliant structures from the Subject Property or take all necessary actions to bring them into full compliance with Town floodplain regulations, ASCE 24-14 standards, and FEMA directives governing structures in the Special Flood Hazard Area. A status review hearing is scheduled for March 4, 2025, to assess compliance progress. The Special Magistrate may consider evidence of substantial compliance efforts in determining whether to impose or defer penalties.

Daily Fine: A fine of \$250 per day shall be imposed for each day the violation continues beyond the Compliance Date. However, the Special Magistrate reserves discretion to defer fines based on evidence of substantial compliance efforts presented at the status review hearing existing.

Abatement Authorization: If Respondent fails to achieve compliance by the deadline and does not demonstrate substantial progress at the status review hearing, the Town shall be authorized to initiate abatement procedures as expressly provided in Resolution No. 24-296. The Town's abatement efforts shall ensure compliance with FEMA's November 21, 2024, compliance letter, which mandated the removal of non-compliant structures to maintain NFIP eligibility. All abatement costs shall be assessed as a lien against the Subject Property, enforceable under applicable Florida law.

Costs: Pursuant to section 162.07(2), Florida Statutes, Respondent shall pay \$250 to cover the costs associated with this enforcement action.

This Order may be appealed by any aggrieved party to the Circuit Court of Lee County no later than 30 days from the date of this Order. Failure to timely file a written Notice of Appeal will waive the right of appeal.

DONE AND ORDERED this 4th day of February, 2025, at the Division of Administrative Hearings, Tallahassee, Florida.


John G. Van Laningham
Special Magistrate

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of this Order has been furnished to by U.S. mail on this 5 day of February, 2025, to:

KLC Surf LLC
4625 W. Euclid Avenue
Tampa, Florida 33629

Amy Sarazen Thibaut, Esquire
Attorney at Law
1833 Hendry Street
Ft. Myers, Florida 33901

BY: 
Town Clerk and Clerk to Special Magistrate

Dated Feb. 5, 2025



02/10/2025

TOWN OF FORT MYERS BEACH,

Petitioner,

vs.

ISLAND TOWERS CONDO ASSOC INC

Respondent.

Site Address: 4900 ESTERO BLVD
Parcel Strap No.: 284624W4022001010

Case Number: 20240960

Certified Mail:

Regular Mail:

AFFIDAVIT OF COMPLIANCE

STATE OF FLORIDA)

COUNTY OF LEE)

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

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

2. On , ISLAND TOWERS CONDO ASSOC INC (property owner) was observed in violation of ASCE 24-14, 6-501 and 6-525 of the Town of Fort Myers Beach Code of Ordinances, For the keeping and/or maintaining of non-compliant structure(s) and/or shipping containers on property, which are not built to current flood design codes in the Special Hazard Areas as defined in Section 6-494 of the FMB Code of Ordinances. (VE Zone for this property requires 15 feet), at the property located at 4900 ESTERO BLVD, Fort Myers Beach, FL 33931 ("Subject Property").

3. A Notice of Violation was issued on 10/24/2024, and sent certified mail to the address of record, ATTN: JOHN SHAW 17810 SAN CARLOS BLVD, FORT MYERS BEACH, FL 33931, posted to the violation property located at 4900 ESTERO BLVD, Fort Myers Beach, FL 33931, and posted to Town Hall located at 2731 Oak St., Fort Myers Beach, FL 33931.

4. ISLAND TOWERS CONDO ASSOC INC was/were given 30-days to come into compliance with the Town of Fort Myers Beach Ordinance, which was on or before 11/24/2024.

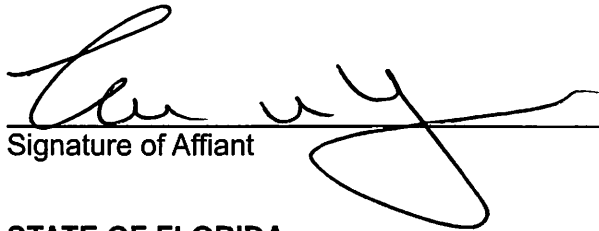
5. I performed an inspection of the Subject Property on 02/07/2025, and the Subject Property was observed to be compliant with the Town of Fort Myers Beach Ordinance.

6. I have attached Exhibit A, which are photographs of the Subject Property, which I personally took, and which fairly represent the current condition of the Subject Property I personally observed on 02/07/2025. These photographs have not been altered in any way.

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

8. The Town of Fort Myers Beach hereby has determined the property located at 4900 ESTERO BLVD is in compliance with Fort Myers Beach Code of Ordinances.

FURTHER AFFIANT SAYETH NAUGHT.



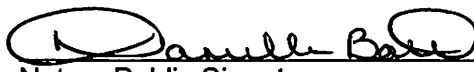
Signature of Affiant

**STATE OF FLORIDA
COUNTY OF LEE**

The foregoing instrument was certified and subscribed before me by means of x physical presence OR _____ online notarization, this 18th day of February, 2025, by Thomas Yozzo, x who is personally known to me OR _____ who has produced _____ as identification.



(SEAL)



Notary Public Signature

My Commission Expires: July 14 2026



Feb 7, 2025 8:17:01 AM



Feb 7, 2025 8:17:04 AM



Feb 7, 2025 8:17:17 AM

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

**TOWN OF FORT MYERS BEACH,
A Florida Municipal Corporation,**

DOAH Case No. 24-004841

FMB Case No. 20240994

Petitioner,

vs.

ISLAND TOWERS CONDO ASSOC. INC.,

Respondent,

MOTION TO DISMISS

The Town of Fort Myers Beach, hereby requests dismissal of DOAH Case No. 24-004841, filed on the 19th day of December, 2024, and moves this Honorable Court for an Order of Dismissal of the above captioned case since the Respondent has come into compliance with the Town of Fort Myers Beach Code of Ordinances and Land Development Code.

Dated this 28th day of February 2025.



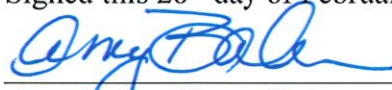
Amy Baker, Town Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of February 2025, a true and correct copy
of the foregoing was filed electronically and served to:

ISLAND TOWERS CONDO ASSOC. INC.,
4900 ESTERO BLVD.
FT. MYERS BEACH, FL 33931

Signed this 28th day of February 2025.



Amy Baker, Town Clerk



02/10/2025

TOWN OF FORT MYERS BEACH,

Petitioner,

vs.

2450 ESTERO BLVD LLC

Respondent.

Site Address: 2450 ESTERO BLVD
Parcel Strap No.: 194624W30120A0070

Case Number: 20240946

Certified Mail:

Regular Mail:

AFFIDAVIT OF COMPLIANCE

STATE OF FLORIDA)

COUNTY OF LEE)

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

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

2. On , 2450 ESTERO BLVD LLC (property owner) was observed in violation of ASCE 24-14, 6-501 and 6-525 of the Town of Fort Myers Beach Code of Ordinances, For the keeping and/or maintaining of non-compliant structure(s) and/or shipping containers on property, which are not built to current flood design codes in the Special Hazard Areas as defined in Section 6-494 of the FMB Code of Ordinances. (Coastal AE Zone for this property requires 13 feet), at the property located at 2450 ESTERO BLVD, Fort Myers Beach, FL 33931 ("Subject Property").

3. A Notice of Violation was issued on 10/22/2024, and sent certified mail to the address of record, 2450 ESTERO BLVD, FORT MYERS BEACH, FL 33931, posted to the violation property located at 2450 ESTERO BLVD, Fort Myers Beach, FL 33931, and posted to Town Hall located at 2731 Oak St., Fort Myers Beach, FL 33931.

4. 2450 ESTERO BLVD LLC was/were given 30-days to come into compliance with the Town of Fort Myers Beach Ordinance, which was on or before 11/22/2024.

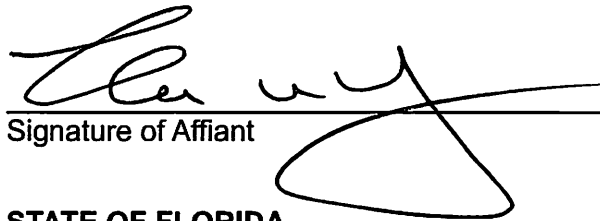
5. I performed an inspection of the Subject Property on 02/03/2025, and the Subject Property was observed to be compliant with the Town of Fort Myers Beach Ordinance.

6. I have attached Exhibit A, which are photographs of the Subject Property, which I personally took, and which fairly represent the current condition of the Subject Property I personally observed on 02/03/2025. These photographs have not been altered in any way.

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

8. The Town of Fort Myers Beach hereby has determined the property located at 2450 ESTERO BLVD is in compliance with Fort Myers Beach Code of Ordinances.

FURTHER AFFIANT SAYETH NAUGHT.



Signature of Affiant

**STATE OF FLORIDA
COUNTY OF LEE**

The foregoing instrument was certified and subscribed before me by means of X physical presence OR _____ online notarization, this 18th day of February, 2025, by Thomas Yozzo, X who is personally known to me OR _____ who has produced _____ as identification.

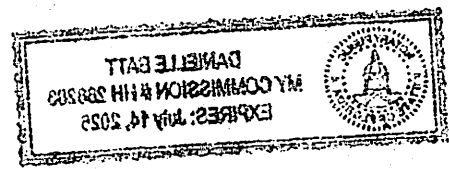




Notary Public Signature

My Commission Expires: July 14 2026

[Handwritten signature]



[Handwritten signature]

[Faint handwritten text]



Feb 3, 2025 3:04:26 PM



Feb 3, 2025 3:03:56 PM



Feb 3, 2025 3:04:12 PM

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

**TOWN OF FORT MYERS BEACH,
A Florida Municipal Corporation,**

DOAH Case No. 24-004843

FMB Case No. 20240946

Petitioner,

vs.

2450 ESTERO BLVD LLC,

Respondent,

MOTION TO DISMISS

The Town of Fort Myers Beach, hereby requests dismissal of DOAH Case No. 24-004843, filed on the 19th day of December, 2024, and moves this Honorable Court for an Order of Dismissal of the above captioned case since the Respondent has come into compliance with the Town of Fort Myers Beach Code of Ordinances and Land Development Code.

Dated this 28th day of February 2025.



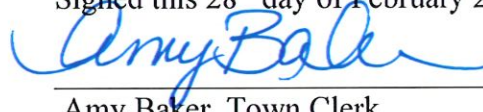
Amy Baker, Town Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of February 2025, a true and correct copy
of the foregoing was filed electronically and served to:

2450 ESTERO BLVD LLC
2450 ESTERO BLVD.
FT. MYERS BEACH, FL 33931

Signed this 28th day of February 2025.



Amy Baker, Town Clerk



02/10/2025

TOWN OF FORT MYERS BEACH,

Petitioner,

vs.

WINDWARD PASSAGE RESORT CONDO

Respondent.

Site Address: 406 ESTERO BLVD
Parcel Strap No.: 244623W100700028B

Case Number: 20240921

Certified Mail:

Regular Mail:

AFFIDAVIT OF COMPLIANCE

STATE OF FLORIDA)

COUNTY OF LEE)

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

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

2. On 09/19/2024, WINDWARD PASSAGE RESORT CONDO (property owner) was observed in violation of ASCE 24-14, 6-501 and 6-525 of the Town of Fort Myers Beach Code of Ordinances, For the keeping and/or maintaining of non-compliant structure(s) and/or shipping containers on property, which are not built to current flood design codes in the Special Hazard Areas as defined in Section 6-494 of the FMB Code of Ordinances. (VE Zone for this property requires 14 feet), at the property located at 406 ESTERO BLVD, Fort Myers Beach, FL 33931 ("Subject Property").

3. A Notice of Violation was issued on 09/24/2024, and sent certified mail to the address of record, 25510 COMMERCENTRE DR STE 100, LAKE FOREST, CA 92630, posted to the violation property located at 406 ESTERO BLVD, Fort Myers Beach, FL 33931, and posted to Town Hall located at 2731 Oak St., Fort Myers Beach, FL 33931.

4. WINDWARD PASSAGE RESORT CONDO was/were given 30 days to come into compliance with the Town of Fort Myers Beach Ordinance, which was on or before 10/24/2024.

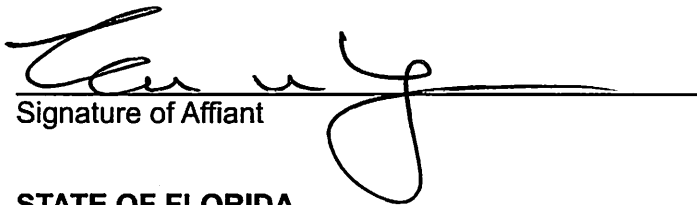
5. I performed an inspection of the Subject Property on 01/15/2025, and the Subject Property was observed to be compliant with the Town of Fort Myers Beach Ordinance.

6. I have attached Exhibit A, which are photographs of the Subject Property, which I personally took, and which fairly represent the current condition of the Subject Property I personally observed on 01/15/2025. These photographs have not been altered in any way.

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

8. The Town of Fort Myers Beach hereby has determined the property located at 406 ESTERO BLVD is in compliance with Fort Myers Beach Code of Ordinances.

FURTHER AFFIANT SAYETH NAUGHT.


Signature of Affiant

**STATE OF FLORIDA
COUNTY OF LEE**

The foregoing instrument was certified and subscribed before me by means of X physical presence OR _____ online notarization, this 18th day of February, 2025, by Thomas Yozzo, X who is personally known to me OR _____ who has produced _____ as identification.




Notary Public Signature

My Commission Expires: July 14 2026



Jan 15, 2025 8:18:20 AM



Jan 15, 2025 8:18:21 AM



Jan 15, 2025 8:18:28 AM



Jan 15, 2025 8:18:39 AM

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

**TOWN OF FORT MYERS BEACH,
A Florida Municipal Corporation,**

DOAH Case No. 24-004845

FMB Case No. 20240921

Petitioner,

vs.

WINWARD PASSAGE RESORT CONDO

Respondent,

MOTION TO DISMISS

The Town of Fort Myers Beach, hereby requests dismissal of DOAH Case No. 24-004845, filed on the 19th day of December, 2024, and moves this Honorable Court for an Order of Dismissal of the above captioned case since the Respondent has come into compliance with the Town of Fort Myers Beach Code of Ordinances and Land Development Code.

Dated this 28th day of February 2025.



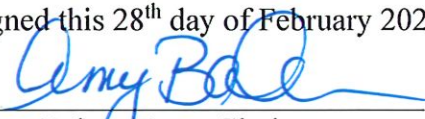
Amy Baker, Town Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of February 2025, a true and correct copy
of the foregoing was filed electronically and served to:

WINDWARD PASSAGE RESORT CONDO
25510 COMMERCENTRE DRIVE
SUITE 100
LAKE FOREST, CA 92630

Signed this 28th day of February 2025.



Amy Baker, Town Clerk



02/19/2025

TOWN OF FORT MYERS BEACH,
Petitioner,

Case Number: 20240912

Certified Mail:

Regular Mail:

vs.

SMITH PATRICIA O TR FOR PATRICIA O SMITH
TRUST

Respondent.

Site Address: 81 MIRAMAR ST
Parcel Strap No.: 194624W40080C0050

AFFIDAVIT OF COMPLIANCE

STATE OF FLORIDA)

COUNTY OF LEE)

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

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

2. On 09/19/2024, SMITH PATRICIA O TR FOR PATRICIA O SMITH TRUST (property owner) was observed in violation of 24-14, 6-501 and 6-525 of the Town of Fort Myers Beach Code of Ordinances, For the keeping and/or maintaining of non-compliant structure(s) and/or shipping containers on property, which are not built to current flood design codes in the Special Hazard Areas as defined in Section 6-494 of the FMB Code of Ordinances. (Coastal A Zone for this property requires 13 feet), at the property located at 81 MIRAMAR ST, Fort Myers Beach, FL 33931 ("Subject Property").

3. A Notice of Violation was issued on 09/23/2025, and sent certified mail to the address of record, 60 RIVERSIDE BLVD #1808, NEW YORK, NY 10069, posted to the violation property located at 81 MIRAMAR ST, Fort Myers Beach, FL 33931, and posted to Town Hall located at 2731 Oak St., Fort Myers Beach, FL 33931.

4. SMITH PATRICIA O TR FOR PATRICIA O SMITH TRUST was/were given 30 days to come into compliance with the Town of Fort Myers Beach Ordinance, which was on or before 10/23/2025.

5. I performed an inspection of the Subject Property on 02/19/2025, and the Subject Property was observed to be compliant with the Town of Fort Myers Beach Ordinance.

6. I have attached Exhibit A, which are photographs of the Subject Property, which I personally took, and which fairly represent the current condition of the Subject Property I personally observed on 02/19/2025. These photographs have not been altered in any way.

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

8. The Town of Fort Myers Beach hereby has determined the property located at 81 MIRAMAR ST is in compliance with Fort Myers Beach Code of Ordinances.

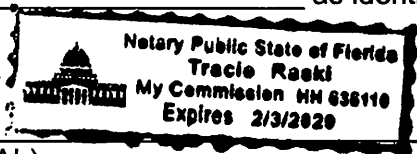
FURTHER AFFIANT SAYETH NAUGHT.



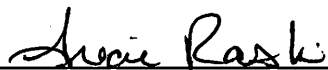
Signature of Affiant

**STATE OF FLORIDA
COUNTY OF LEE**

The foregoing instrument was certified and subscribed before me by means of X physical presence
OR _____ online notarization, this 19th day of February, 2025, by
_____, X who is personally known to me OR _____ who has produced
_____ as identification.

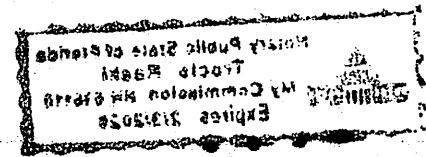


(SEAL)



Notary Public Signature

My Commission Expires: 2/3/2029





Feb 19, 2025 8:18:05 AM



Feb 19, 2025 8:19:35 AM

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

**TOWN OF FORT MYERS BEACH,
A Florida Municipal Corporation,**

DOAH Case No. 24-004844

FMB Case No. 20240912

Petitioner,

vs.

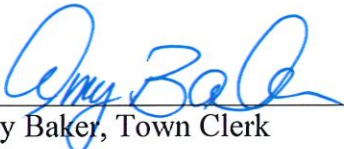
**SMITH PATRICIA O TR
FOR PATRICIA O SMITH TRUST**

Respondent,

MOTION TO DISMISS

The Town of Fort Myers Beach, hereby requests dismissal of DOAH Case No. 24-004844, filed on the 19th day of December, 2024, and moves this Honorable Court for an Order of Dismissal of the above captioned case since the Respondent has come into compliance with the Town of Fort Myers Beach Code of Ordinances and Land Development Code.

Dated this 28th day of February 2025.



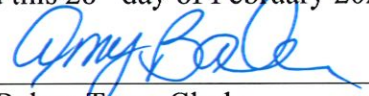
Amy Baker, Town Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of February 2025, a true and correct copy
of the foregoing was filed electronically and served to:

SMITH PATRICIA O TR
FOR PATRICIA O SMITH TRUST
150 S BROAD ST PH 1
RIDGEWOOD NJ 07450-4335

Signed this 28th day of February 2025.



Amy Baker, Town Clerk