



Fort Myers Beach Town Council

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

REVISED Agenda

Monday, April 7, 2025

9:00 AM

ORDER OF BUSINESS

- I. CALL TO ORDER
- II. INVOCATION
- III. PLEDGE OF ALLEGIANCE
- IV. APPROVAL OF FINAL AGENDA
- V. PUBLIC COMMENT
- VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS
- VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS
- VIII. APPROVAL OF MINUTES

- A. Management & Planning Session - March 13, 2025
- B. Town Council - March 17, 2025

IX. CONSENT AGENDA

- A. Resolutions 25-96 through 25-100; Extension of Local Emergency - Hurricane Ian

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

- B. Resolutions 25-101 through 25-105; Extension of Local Emergency - Hurricane Idalia

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

VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE.

- C. Resolutions 25-106 through 25-110; Extension of Local Emergency - Tropical Storm Debby

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

- D. Resolutions 25-111 through 25-115; Extension of Local Emergency - Hurricane Helene

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

- E. Resolutions 25-116 through 25-120: Extending Local State of Emergency, Hurricane Milton

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

X. ITEMS REMOVED FROM CONSENT AGENDA

XI. PUBLIC HEARINGS

- A. Ordinance 25-02; 2500 Estero CPD Boundary Expansion

Second reading and public hearing of and ordinance entitled: AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/ DENYING AN AMENDMENT TO THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING, PREVIOUSLY APPROVED BY RESOLUTION 07-28 FOR PARCELS LOCATED AT 2500 AND 2510 ESTERO BLVD., GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0120A.0100; 19-46-24-

W3-01302.0000, TO ADD PARCELS 2518 ESTERO BLVD. AND 2543 COTTAGE AVENUE, GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-01301.0000; 19-46-24-W3-0120A.013A IN FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

B. Ordinance 25-01; DCI20240137.2, Mobile Vending/Food Truck Park CPD Amendment

1. Second reading and public hearing of and ordinance entitled: AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING WITH CONDITIONS THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 2500, 2510 AND 2518 ESTERO BLVD. AND 2543 COTTAGE AVENUE, GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0120A.0100; 19-46-24-W3-01302.0000; 19-46-24-W3-01301.0000; 19-46-24-W3-0120A.013A IN FORT MYERS BEACH, TO ALLOW A MOBILE VENDOR/FOOD TRUCK PARK WITH SHARED PARKING; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

2. Request from Pelican Watch Condominium Association, Thomas F. and Debra Danford as managers and members of Coastal Cottages LLC, and Edwin T. French III, to have Intervenor Status.

C. Ordinance 25-03; Bicycle Safety

Second reading and adoption public hearing of an ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING ARTICLE III "BEACH BICYCLE AND VEHICLE SAFETY" OF CHAPTER 28 "TRAFFIC AND VEHICLES" OF THE CODE OF ORDINANCES OF FORT MYERS BEACH, FLORIDA, TO ALLOW THE OPERATION OF ELECTRIC BICYCLES ON SIDEWALKS; ESTABLISHING SAFETY REGULATIONS; ESTABLISHING A MAXIMUM SPEED AND PASSING PROCEDURES; REQUIRING OPERATION WITH THE FLOW OF TRAFFIC; ESTABLISHING RESPONSIBLE PARTIES AND PENALTIES; ESTABLISHING ADDITIONAL REGULATIONS FOR THE SAFE OPERATION OF BICYCLES ON SIDEWALKS; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

XII. ADMINISTRATIVE AGENDA

A. Town Manager Selection Process

**Attachment
Added Town Council to Select Top 5 Town Manager Candidates for Interviews on April 18, 2025**

- B. Resolution 25-95, Authorizing Adoption of Policies Required by HUD for CDBG-DR
Adopt CDBG-DR Policies
- C. Resolution 25-94, Authorize Interfund Loan to Cover FEMA/FDEM Receivables
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, APPROVING INTERFUND LOAN TO COVER OUTSTANDING FEMA AND FDEM RECEIVABLES; PROVIDING FOR EFFECTIVE DATE.
- D. Resolution 25-90, Sole Source Contract with Metro Forecasting Models, LLC
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING THE SCOPE OF SERVICES FROM METRO FORECASTING MODELS, LLC AS A SOLE SOURCE PROVIDER AND AUTHORIZING THE TOWN MANAGER TO EXECUTE A PROFESSIONAL SERVICES CONTRACT IN THE AMOUNT NOT TO EXCEED \$150,000.00; AND PROVIDING FOR AN EFFECTIVE DATE.
- E. Resolution 25-93; Piggyback of Demolition Services with Honc Destruction
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AGREEMENT FOR DEMOLITION SERVICES WITH HONC DESTRUCTION BASED ON PRICING COMPETITIVELY PROCURED BY THE CITY OF BONITA SPRINGS; AUTHORIZING THE MAYOR OR TOWN MANAGER TO SIGN THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.
- F. Resolution 25-122; Amendment to FDEP Agreement 23LE1A1
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, APPROVING AMENDMENT NO. 1 TO AGREEMENT 23LE1 BETWEEN THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION AND TOWN OF FORT MYERS BEACH FOR DESIGN, PERMITTING, CONSTRUCTION AND MONITORING OF THE ESTERO ISLAND SHORE PROTECTION PROJECT; AND AUTHORIZES THE TOWN MANAGER TO EXECUTE THE AGREEMENT AND RELATED DOCUMENTS AND TO EXPEND BUDGETED LOCAL MATCHING FUNDS TO MATCH FUNDING RECEIVED FROM THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION; AND PROVIDING FOR AN EFFECTIVE DATE.

XIII. FINAL PUBLIC COMMENT

XIV. TOWN MANAGER'S ITEMS

XV. TOWN ATTORNEY'S ITEMS

- A. Settlement Agreement
Approval of DiBiasi Settlement Agreement to conclude litigation concerning the Town's placement of stormwater infrastructure on

DiBiasi property without an easement as previously directed by the Town Council.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

XVII. ADJOURNMENT

NOTE: THIS MEETING IS STREAMED LIVE ON [YOUTUBE](#).

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



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

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



Fort Myers Beach Management & Planning Session

Town Hall Council Chambers
2731 Oak Street
Fort Myers Beach, FL 33931
Thursday, March 13, 2025

Minutes

9:00 AM

ORDER OF BUSINESS

I. CALL TO ORDER

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

II. PLEDGE OF ALLEGIANCE

III. ITEMS FOR DISCUSSION

A. Charter Review Commission

Discussion of Charter Review Process

Town Attorney Stuparich explained the charter review process as stated on the green sheet. Town Clerk Amy Baker indicated that the Charter Review Committee is comprised of five members. The Town Attorney and Clerk were ex-officio members to help guide the discussion. The town council appoints members of the committee. Members of the last committee included Rexann Hosafros as council liaison and Tom Babcock, Miffie Greer, Dan Hughes, Jay Light and Dan Parker. Consensus was reached to appoint members by May 16, 2025. Vice Mayor Atterholt suggested that the listing should clarify that residents currently serving on advisory committees were welcome to apply.

B. Proposed Ordinance; Payment of Fees / Charges for Review prior to issuance of permit(s)

DISCUSSION OF A DRAFT ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA SUGGESTED BY THE LAND PLANNING AGENCY TO AMEND SECTION 34-53 OF CHAPTER 34, ARTICLE II, DIVISION 1 OF THE LAND DEVELOPMENT CODE REGARDING ACCEPTANCE OF PAYMENT OF FEES AND CHARGES FOR REVIEW OF ANY APPLICATION OR ISSUANCE OF A PERMIT, INCLUDING INSPECTIONS, UNTIL ALL FEES AND CHARGES DUE THE TOWN INCLUDING BUT NOT LIMITED TO EXPENDITURES FOR NOTICING, ADVERTISING, ADDITIONAL PROFESSIONAL SERVICES, OUTSTANDING UTILITY BILLS OR CODE ENFORCEMENT FINES OR

LIENS HAVE BEEN PAID AND THE PROPERTY IS IN COMPLIANCE WITH ALL APPLICABLE TOWN CODES AND ORDINANCES UNLESS REVIEW OF THE APPLICATION IS NEEDED FOR SAFETY PURPOSES OR FOR COMPLIANCE WITH TOWN CODES AND ORDINANCES; PROVIDING FOR SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS; CONFLICTS OF LAW; AND PROVIDING AN EFFECTIVE DATE.

Town Attorney Stuparich reviewed the background of the discussion as stated on the green sheet. Mayor Allers read the proposed title of the ordinance. Town Attorney Stuparich stated the first question was whether they wanted to prohibit anyone with indebtedness to the town from asking for a land use approval or a building permit. The second question dealt with the type of indebtedness, from a parking ticket to a lien. She recommended limiting it to land use approvals because that was the beginning of the process and building permits were regulated by state statutes. Council Member Safford asked how the process would work if one owned two LLCs. Community Development Planner Sarah Propst replied that the applicant could provide an affidavit of the properties they owned. Mayor Allers was not comfortable relying on a bad actor's honor. Town Attorney Stuparich noted that performing title or property searches cost money and created a delay.

She recommended that it only be the property that was the subject matter of the application. Mayor Allers asked whether someone running an illegal parking lot could apply to change the use of a rental on the same property without paying the lien for the illegal parking lot. She replied that this would prohibit them from moving forward. The town council agreed with the recommendation to limit it to a land use approval.

Town Attorney Stuparich asked whether someone requesting a rezoning should have to pay for an outstanding parking ticket before being allowed to move forward with the rezoning. All council members agreed.

C. Proposed Ordinance; Notices

DISCUSSION OF A DRAFT ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING LAND DEVELOPMENT CODE SECTION 34-236 RELATED TO NOTICES SUGGESTED BY THE LOCAL PLANNING AGENCY.

Mayor Allers read the title of the draft ordinance. Planner Propst reviewed the background of the item as stated on the green sheet. People complained that they were not receiving notices and she thought it made more sense for the applicants to handle this. The town currently charges for postage and printing but not staff time. This change would apply to applicants with bigger projects like CPDs and rezoning cases. It would not apply to variances and special exceptions. She indicated that other communities require similar things, including larger signage. This ordinance would not require larger signs, but anyone requesting a variance or special exception would be required to do the signage and the town would do the mailings. Planner Propst noted that other communities require certified mail receipts and an affidavit that notices were sent. Council members did not support requiring

certified mail receipts but supported the applicant being responsible for the mailings and signage.

Town Attorney Stuparich indicated that another change required that the signage posted be in layperson's language so a multi-family dwelling would be identified as an apartment building to provide transparency. Mayor Allers asked about extending the seven calendar days and Planner Propst replied that they aim for ten days now. Council members agreed with the ten-day requirement.

D. Discussion - Temporary Housing

DISCUSSION OF STATUS OF TEMPORARY HOUSING ON FORT MYERS BEACH REQUESTED BY TOWN COUNCIL

Council Member Woodson asked if they were keeping the September 30, 2025, deadline for residents to remove their RVs or trailers unless they could prove they were in the process of rebuilding. If they were allowed to stay, what were the parameters? Council Member Safford asked whether the state extended the deadline. Town Attorney Stuparich replied that the statute preempted local governments from prohibiting temporary resident structures from remaining in specific zoning categories after a storm. She read three criteria included in the statute and qualifications in the town's ordinance regarding extensions. FEMA (Federal Emergency Management Agency) indicated in their letter that temporary housing for survivors that has been permitted by the town is acceptable. Town Attorney Stuparich suggested that they determine how many residential permits are out there and who does and does not fall into that category. Town Manager Hyatt commented that he could get most of the information in a couple of days. Town Attorney Stuparich suggested that the town not issue any extensions unless there was a hardship. Council Member Woodson suggested leaving the deadline and dealing with the exceptions for those who have done nothing toward rebuilding. Mayor Allers revealed that some temporary permits were open-ended with no renewal date. He stated they had to find out how many had temporary permits but had no plans to do anything. Operations & Compliance Director Frankie Kropacek noted there was enough time to send letters to questionable properties to determine their intentions. Town Council members agreed to address the situation now. Town Manager Hyatt will present the data at the next council meeting.

IV. AGENDA MANAGEMENT

A. March 2025

Add an FDOT (Florida Department of Transportation) representative to discuss the base of the bridge construction.

Add a formal plan from staff regarding the status of derelict properties on the side streets. Vice Mayor Atterholt described rats terrorizing the neighborhood due to a derelict house on Tropical Shores Way. He suggested it would be nice for the public to be able to monitor and update the status of derelict structures. Director Kropacek commented that he would work on posting the

information on the website. Mayor Allers described another property that had not been touched since Ian and he could not find any information from the town regarding violations on that property. He asked what they were going to do to address these properties.

Planner Propst described the community outreach opportunity at the library so that people could take a survey and give feedback regarding the Comprehensive Plan and LDC (Land Development Code).

Discussion was held regarding the progress of the town hall and the parking lot. Town Attorney Stuparich discussed the CRA (Community Redevelopment Agency) bills in the legislature. Director Kropacek explained how the process helped to revitalize the downtown district. Mayor Allers suggested they call Bonita Springs regarding their process. Town Attorney Stuparich suggested it was now or never because of the possible deadline. She also suggested working with the town's lobbyist regarding an extension. She will come back with a resolution. Vice Mayor Atterholt requested they invite an expert to explain why a CRA was a good idea. Director Kropacek will work on it.

V. ADJOURNMENT

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

The meeting was adjourned at 10:39 AM



Fort Myers Beach Town Council

Town Hall Council Chambers

2731 Oak Street

Fort Myers Beach, FL 33931

Minutes

Monday, March 17, 2025

9:00 AM

ORDER OF BUSINESS

I. CALL TO ORDER

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

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Remove the approval of the settlement agreement under Town Attorney's Items. Council Member King moved to approve the amended agenda, seconded by Council Member Safford.

The motion carried unanimously.

V. PUBLIC COMMENT

Becky Knight, resident, was disappointed because she did not get any information from the town regarding a 12.6-foot setback from the road for a property 100 feet long on Miramar. She discussed Table 34.3 regarding zoning districts. Also, the building coverage was more than allowed. She wanted someone to explain how it happened.

Gary Knight, resident, commented that there were multiple issues with the plans submitted. He noted there was no driveway for the rental and asked where they were supposed to park. He stated the whole situation did not add up and was concerned about safety issues. He wanted to know how the issues were going to be fixed. He wanted the town to look at the lot and asked how it passed.

Philip Miglioratti, resident, commented about an investor who purchased a house on 8211 Estero after Ian and has done nothing to it. He stated the property was a wreck with rats everywhere and the pool was a cesspool with no fencing around it. He wrote several emails to the town but received no response except from Council Member King.

He stated the house was red-tagged and needed to be demolished. He was tired of cleaning the mess that blew over to his property and in his pool. The town kept giving the contractor extensions, but it was time to fix it or tear it down.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Safford recognized Barb, Deb and Dawn of the Woman's Club for doing a great job with the St. Patrick's Day parade.

Council Member Woodson noted the Shrimp parade the previous weekend was fun and well attended.

Vice Mayor Atterholt agreed that the St. Patrick's Day parade was great and recognized Margaritaville for the signs to encourage people to use the walkover. Council Member King echoed the comments regarding the St. Patrick's Day parade and he thanked the Lee County Sheriff's Office for their presence. He welcomed the opening of the Library and thanked Jan Fleming for her hard work. He thanked a list of staff who were there to solicit feedback regarding the Comprehensive Plan and LDC (Land Development Code).

Mayor Allers thanked Jan Fleming and her team for the library opening.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

Chair Dave Nusbaum from MERTF (Marine & Environmental Resources Task Force) reported that Dr. Chris Daly from FGCU (Florida Gulf Coast University) gave an update regarding the computer scenarios for Hurricane Ian. The report should be completed in September. He asked for guidance regarding comments from residents about dredging canals. The Murphie Award recipient was Ben Duval, his Tunaskin employees and the volunteers for organizing a beach cleanup. Regarding the canal dredging, Mayor Allers suggested that MERTF contact the gentleman who lives on the corner of Santos and Palermo Circle. He also suggested contacting Jason for details. Vice Mayor Atterholt suggested that AAC and MERTF have another joint meeting to determine which canals were public and private.

A. Anchorage Advisory Committee - Cruiser's Appreciation Day

AAC Chair Chris King reviewed the joint MERTF meeting with Captain Chris Wittman, co-founder of Captains for Clean Water. Both committees encouraged the town council to actively lobby for the continuation of the Everglades restoration project. She noted that some of the AAC documents were not in sync and they will work on correcting them. AAC Vice Chair Sam Lurie requested approval for the Cruiser's Appreciation Day on April 27, 2025, from 1-3:30 p.m. at Bayside Park. An overview of the event was in their packet. He asked permission to solicit individuals and businesses for various donations. Town Attorney Stuparich noted that soliciting donations was legal because there was no personal gain to anyone. She mentioned providing funds from the town for the event if needed. Vice Mayor Atterholt suggested that the council consider giving Harbormaster Ludwig and staff the flexibility to utilize funds if necessary.

Vice Mayor Atterholt moved to allow the AAC to host the Cruiser's Appreciation Day, solicit and raise funds per the town attorney and utilize the town's funds to support the event if needed, seconded by Mayor Allers.

The motion carried unanimously.

B. Anchorage Advisory Committee Appointment

New member appointment to the Anchorage Advisory Committee (AAC)

Terry Carling-Kelly introduced himself and noted he wanted to help.

Ron Fleming explained why he wanted to participate on the committee.

Ron Fleming was appointed.

Council Member King moved to appoint Ron Fleming to the AAC, seconded by Council Member Woodson.

The motion carried unanimously.

VIII. APPROVAL OF MINUTES

A. Town Council - March 3, 2025

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

The motion carried unanimously.

IX. CONSENT AGENDA

No items.

X. ITEMS REMOVED FROM CONSENT AGENDA

XI. PUBLIC HEARINGS

No items.

XII. ADMINISTRATIVE AGENDA

A. Resolution 25-84; CVA Application, Execution and Administration

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE TOWN MANAGER OR DESIGNEE TO APPLY FOR, EXECUTE UPON AWARD, AND ADMINISTER A GRANT FROM FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION'S CLEAN VESSEL ACT FOR FUNDS IN THE AMOUNT \$61,552 WITH A MATCH FROM THE TOWN OF FORT MYERS BEACH OF \$20,517 FOR A PROJECT TOTAL OF \$82,069 FOR PUMPOUTS OF VESSELS WITHIN THE TOWN'S JURISDICTION; AUTHORIZING THE TOWN MANAGER OR DESIGNEE TO EXECUTE RELATED DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE

Mayor Allers read the title of the resolution. Operations & Compliance Director Frankie Kropacek explained why the funds were needed.

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

The motion carried unanimously by roll call vote.

B. Resolution 25-87; WCIND Application, Execution, & Administration

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE TOWN MANAGER OR DESIGNEE TO APPLY FOR, EXECUTE UPON AWARD, AND ADMINISTER A GRANT FROM WEST COAST INLAND NAVIGATION DISTRICT'S WATERWAY DEVELOPMENT PROGRAM FOR FUNDS IN THE AMOUNT OF \$35,000.00 WITH A MATCH FROM THE TOWN OF FORT MYERS BEACH OF 100% FOR A PROJECT TOTAL OF \$70,000.00 FOR WATERWAY LAW ENFORCEMENT ASSISTANCE; AUTHORIZING THE TOWN MANAGER OR DESIGNEE TO EXECUTE RELATED DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE

Mayor Allers read the title of the resolution. Director Kropacek explained why the funds were needed.

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

The motion carried unanimously by roll call vote.

C. Resolution 25-88, Authorizing Agreement for Water and Storm Water Rate Study

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, APPROVING AN AGREEMENT BETWEEN THE TOWN OF FORT MYERS BEACH AND RAFTELIS FINANCIAL CONSULTANTS, INC. TO PERFORM A WATER AND STORMWATER RATE STUDY; PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the resolution's title. Finance Director Joe Onzick explained that a rate study was needed, and Raftelis already had experience with Lee County. He clarified Vice Mayor Atterholt's concerns.

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

The motion carried unanimously by roll call vote.

D. Resolution 25-86, 1st Amendment to Softrim Professional Services Agreement

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE FIRST AMENDMENT TO THE PROFESSIONAL SERVICE PROVIDER AGREEMENT DATED OCTOBER 1, 2024, WITH SOFTRIM LLC, INCREASING THE NOT-TO-EXCEED AMOUNT FOR THE FIRST CONTRACT YEAR BY \$350,000.00 TO A TOTAL OF \$556,784.00, FOR ADDITIONAL SERVICES AND ITEMS RELATED TO THE RENOVATION OF THE NEW TOWN HALL; AND PROVIDING FOR AN EFFECTIVE DATE

Mayor Allers read the title of the resolution. Town Manager Andy Hyatt explained why the funds were needed and noted that insurance proceeds covered services. Director Onzick pointed out that he added a contingency to cover possible changes. Josh from the IT department described the system in the new town hall.

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

The motion carried unanimously.

- E. Resolution 25-82, Ratify STA #7 for DRMP RFQ-22-25-AD BORC Value Engineering

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA RATIFYING THE AUTHORIZATION OF STA #7 IN THE AMOUNT OF \$24,000.00 WITH DRMP, INC. FOR VALUE ENGINEERING UNDER RFQ-22-25-AD FOR BAY OAKS RECREATIONAL CAMPUS REDEVELOPMENT PROJECT, WHICH WHEN COMBINED WITH PREVIOUS STA #5 FOR \$55,650.00 AND STA #6 FOR \$6,650.00 FOR THE SAME PROJECT TOTAL \$86,300.00; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Community Services Director Jeff Hauge explained that this was a redesign to reduce costs and the RFP (Request for Proposal) would go out this week. He described what the new campus would look like.

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

The motion carried unanimously by roll call vote.

- F. Resolution 25-85, Ratify Andrew Sitework Emergency Contract - South Booster Station 12-19-2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING ACTION OF THE TOWN TAKEN DECEMBER 19, 2024, UNDER THE EMERGENCY PROCUREMENT POLICY TO CONTRACT WITH ANDREW SITEWORK LLC TO TAKE EMERGENCY PROTECTIVE MEASURES TO MAINTAIN POTABLE WATER PRESSURE BY INSTALLING A GATE VALVE AT THE SOUTH BOOSTER STATION FOR A NOT-TO-EXCEED AMOUNT OF \$129,745.00; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Director Onzick stated that it would be funded by the water fund and any remaining insurance proceeds.

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

The motion carried unanimously.

- G. Resolution 25-89, Ratify Kirkwood Electric Expenditures for New Town Hall

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING ACTIONS OF THE TOWN TAKEN JANUARY 10, 2025, AND JANUARY 27, 2025, UNDER THE EMERGENCY PROCUREMENT POLICY TO APPROVE TWO PURCHASE ORDERS WITH KIRKWOOD ELECTRIC FOR ELECTRICAL WORK RELATED TO THE RENOVATION OF THE NEW TOWN HALL, THE COMBINED TOTAL OF WHICH IS \$76,662.00; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Director Onzick stated there were two phases of the project and insurance proceeds would pay for the work.

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

The motion carried unanimously by roll call vote.

H. 25-92, Authorize Amendment #3 to Jacobs Project Management Co Agreement

Authorize the Town Manager to execute Amendment #3 to the Jacobs Project Management Co Agreement.

Mayor Allers read the title. Director Kropacek indicated it was an ongoing contract with the vendor and funds came from the general fund. John Dalton, Project Manager, described their services and thought permitting data could probably be pulled from the software. Director Kropacek encouraged people to answer all the questions on the permit application before submission. Mr. Dalton added that anyone with questions about the application should contact the town. Director Kropacek and Mr. Dalton agreed they could use more inspectors. Director Kropacek stated they were researching purchasing new permitting software system to replace iWork.

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

The motion carried unanimously by roll call vote.

XIII. FINAL PUBLIC COMMENT

No public comment.

XIV. TOWN MANAGER'S ITEMS

Town Manager Hyatt described the work left to finish the town hall and the parking lot. He revealed that Comcast would set up FMBTV, a community access channel. The search for a new town manager is ongoing.

Director Hauge provided an update on completing Bay Oaks and thought it would be ready by mid-May.

Director Kropacek addressed the derelict building on 8211 Estero Blvd., which was brought up earlier by a resident. All permits were vacated and the building would have to be demolished at some point. Town Attorney Stuparich explained the demolition process and indicated that the code had a property maintenance section that could help clean up unsafe properties. The Special Magistrate could order the demolition of hazardous properties because they have not been adequately maintained. Director Kropacek stated that they could use more code enforcement officers. Town Attorney Stuparich will work with Director Kropacek regarding shortening the time a demolition permit is valid.

Town Manager Hyatt noted he and the Mayor would be in Tallahassee for a couple of days lobbying on behalf of the town.

XV. TOWN ATTORNEY'S ITEMS

Town Attorney Stuparich indicated that she distributed a copy of the final reading of the public hearing agenda materials for June 5, 2025, regarding parallelogram lots. Director Kropacek commented that after investigation, the plans for the parallelogram house referred to in public comment were fine. Mayor Allers suggested a meeting with Building Inspector Joe Specht, the planners and the neighbors. Director Kropacek will set up a meeting and keep the town council informed.

- A. DiBiasi Settlement Agreement
Removed from the agenda.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Safford asked when the charter review would be noticed. Town Clerk Baker said she would meet with Nicole to get the notice out. She noted that the committee application would be adjusted and resumes would be attached. No items from other members.

XVII. ADJOURNMENT

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

The meeting was adjourned at 11:09 a.m.

1. **Request:**

Meeting Date: April 7, 2025

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

Why the action is necessary:

Extending the local state of emergency provides the Town with the needed flexibility to respond to the catastrophic disaster caused by Hurricane Ian and maintains the Town's eligibility for federal and state reimbursement funding for the costs of recovery.

What the action accomplishes:

Extends the Town's Declaration of state of local emergency.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

Hurricane Ian has caused a catastrophic disaster in the Town, causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas. Approving and ratifying these Resolutions will maintain in place the Town Declaration of State of Local Emergency originally adopted via Resolution 22-34.

Attachments:

1. 25-96, Extending Declaration of Local Emergency Ian 4.1.25-4.7.25
2. 25-97, Extending Declaration of Local Emergency Ian 4.8.25-4.14.25
3. 25-98, Extending Declaration of Local Emergency Ian 4.15.25-4.21.25
4. 25-99, Extending Declaration of Local Emergency Ian 4.22.25-4.28.25
5. 25-100, Extending Declaration of Local Emergency Ian 4.29.25-5.5.25

Financial Impact:

6. **Alternative Action**

Not adopt resolutions and the end the Local State of Emergency for Fort Myers Beach

7. **Management Recommendations:**

Approve

8. **Recommended Approval:**

Eva Spychalski, Administrative Resources Coordinator
Amy Baker, Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 3/20/2025
Approved - 3/20/2025
Approved - 3/20/2025
Approved - 3/25/2025
Final Approval - 3/25/2025

RESOLUTION 25-96

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

WHEREAS, Chapter 252, *Florida Statutes*, authorizes the waiver of procedures and formalities, otherwise required of municipalities, and to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency; and

WHEREAS, Section 252.38 *Florida Statutes*, specifically authorizes municipalities to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions required by law pertaining to performance of public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community such as but not limited to entering into contracts; incurring obligations; employing permanent and temporary workers; utilizing volunteer workers; renting of equipment; acquiring and distributing supplies, materials and facilities with or without compensation, and appropriating and expending public funds; and

WHEREAS, the Town of Fort Myers Beach, Florida (Town), pursuant to its inherent home rule powers under Florida Constitution and otherwise has adopted certain emergency procedures set forth in Chapter 12, Article II – “Emergency and Disaster Planning” of the Code of Ordinances, Town of Fort Myers Beach, Florida (“Code”), and is otherwise authorized to activate the Town’s emergency plan; and

WHEREAS, the State of Florida and Lee County have declared a state of local emergency due to the catastrophic impacts of Hurricane Ian to Lee County; and

WHEREAS, as defined in the Code, Hurricane Ian has caused a catastrophic disaster in the Town causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas; and

WHEREAS, Section 12-21 of the Code provides that where it is not possible to obtain a quorum to convene an emergency meeting to proclaim a state of local emergency, or extend or rescind such a proclamation, the Mayor, Vice-Mayor, or Town Manager are authorized to proclaim, extend, or rescind a local state of emergency.

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

Section 1. The foregoing whereas clauses are true and correct and hereby adopted as the legislative and administrative findings of the Town Council and made a specific part of this Resolution; all exhibits attached hereto are incorporated herein and made a specific part of this Resolution.

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 1st day of April 2025.

Section 3. The amendment and extension of the proclamation of a state of local emergency set forth in Resolution 22-35 is an emergency measure necessary for the protection of the public safety, due to the catastrophic disaster caused by Hurricane Ian.

Section 4. As provided in Section 252.38(3)(a), *Florida Statutes* and Chapter 12, Article II of the Code, the Town hereby waives the procedures and formalities otherwise required by law of a municipality as set forth in said State law and the Code.

Section 5. The Town Manager or designee is hereby designated as the declaring official for purposes of implementing the emergency and disaster regulations of the Town. The Town Manager or designee will exercise all powers necessary to protect the health and safety of the public set forth in any Executive Order that may be issued by the Governor, Chapter 252, Fla. Stat., and Chapter 12, Article II of the Code. This proclamation also authorizes the Town Manager or designee to utilize government employees and volunteers to assist in securing private property to minimize the overall damage to the Town.

Section 6. The state of local emergency shall remain in effect until terminated as provided in Section 12-21 of the Code. However, the mandatory curfew and prohibition regarding the use of fresh water supplied by the County or local water company for any purpose other than cooking, drinking, or bathing set forth in Section 12-24 of the Code are hereby waived at this time.

Section 7. As provided in Section 12-21(a) of the Code, the Mayor, Vice-Mayor, or Town Manager may extend the proclamation of a state of local emergency as the "responsible official" of the Town.

Section 8. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. Any scrivener or typographical errors that do not affect intent of this Resolution may be corrected with notice to and authorization of the Town Attorney and Town Manager without further process.

Section 10. If any clause, section, other part, or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 11. This Resolution shall become effective upon the signature of the Mayor.

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

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

ADOPTED this 7th day of April 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on the ____ day of April 2025.

RESOLUTION 25-97

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

WHEREAS, Chapter 252, *Florida Statutes*, authorizes the waiver of procedures and formalities, otherwise required of municipalities, and to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency; and

WHEREAS, Section 252.38 *Florida Statutes*, specifically authorizes municipalities to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions required by law pertaining to performance of public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community such as but not limited to entering into contracts; incurring obligations; employing permanent and temporary workers; utilizing volunteer workers; renting of equipment; acquiring and distributing supplies, materials and facilities with or without compensation, and appropriating and expending public funds; and

WHEREAS, the Town of Fort Myers Beach, Florida (Town), pursuant to its inherent home rule powers under Florida Constitution and otherwise has adopted certain emergency procedures set forth in Chapter 12, Article II – “Emergency and Disaster Planning” of the Code of Ordinances, Town of Fort Myers Beach, Florida (“Code”), and is otherwise authorized to activate the Town’s emergency plan; and

WHEREAS, the State of Florida and Lee County have declared a state of local emergency due to the catastrophic impacts of Hurricane Ian to Lee County; and

WHEREAS, as defined in the Code, Hurricane Ian has caused a catastrophic disaster in the Town causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas; and

WHEREAS, Section 12-21 of the Code provides that where it is not possible to obtain a quorum to convene an emergency meeting to proclaim a state of local emergency, or extend or rescind such a proclamation, the Mayor, Vice-Mayor, or Town Manager are authorized to proclaim, extend, or rescind a local state of emergency.

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

Section 1. The foregoing whereas clauses are true and correct and hereby adopted as the legislative and administrative findings of the Town Council and made a specific part of this Resolution; all exhibits attached hereto are incorporated herein and made a specific part of this Resolution.

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 8th day of April 2025.

Section 3. The amendment and extension of the proclamation of a state of local emergency set forth in Resolution 22-35 is an emergency measure necessary for the protection of the public safety, due to the catastrophic disaster caused by Hurricane Ian.

Section 4. As provided in Section 252.38(3)(a), *Florida Statutes* and Chapter 12, Article II of the Code, the Town hereby waives the procedures and formalities otherwise required by law of a municipality as set forth in said State law and the Code.

Section 5. The Town Manager or designee is hereby designated as the declaring official for purposes of implementing the emergency and disaster regulations of the Town. The Town Manager or designee will exercise all powers necessary to protect the health and safety of the public set forth in any Executive Order that may be issued by the Governor, Chapter 252, Fla. Stat., and Chapter 12, Article II of the Code. This proclamation also authorizes the Town Manager or designee to utilize government employees and volunteers to assist in securing private property to minimize the overall damage to the Town.

Section 6. The state of local emergency shall remain in effect until terminated as provided in Section 12-21 of the Code. However, the mandatory curfew and prohibition regarding the use of fresh water supplied by the County or local water company for any purpose other than cooking, drinking, or bathing set forth in Section 12-24 of the Code are hereby waived at this time.

Section 7. As provided in Section 12-21(a) of the Code, the Mayor, Vice-Mayor, or Town Manager may extend the proclamation of a state of local emergency as the "responsible official" of the Town.

Section 8. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. Any scrivener or typographical errors that do not affect intent of this Resolution may be corrected with notice to and authorization of the Town Attorney and Town Manager without further process.

Section 10. If any clause, section, other part, or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 11. This Resolution shall become effective upon the signature of the Mayor.

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

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

ADOPTED this 7th day of April 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on the ____ day of April 2025.

RESOLUTION 25-98

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

WHEREAS, Chapter 252, *Florida Statutes*, authorizes the waiver of procedures and formalities, otherwise required of municipalities, and to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency; and

WHEREAS, Section 252.38 *Florida Statutes*, specifically authorizes municipalities to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions required by law pertaining to performance of public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community such as but not limited to entering into contracts; incurring obligations; employing permanent and temporary workers; utilizing volunteer workers; renting of equipment; acquiring and distributing supplies, materials and facilities with or without compensation, and appropriating and expending public funds; and

WHEREAS, the Town of Fort Myers Beach, Florida (Town), pursuant to its inherent home rule powers under Florida Constitution and otherwise has adopted certain emergency procedures set forth in Chapter 12, Article II – “Emergency and Disaster Planning” of the Code of Ordinances, Town of Fort Myers Beach, Florida (“Code”), and is otherwise authorized to activate the Town’s emergency plan; and

WHEREAS, the State of Florida and Lee County have declared a state of local emergency due to the catastrophic impacts of Hurricane Ian to Lee County; and

WHEREAS, as defined in the Code, Hurricane Ian has caused a catastrophic disaster in the Town causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas; and

WHEREAS, Section 12-21 of the Code provides that where it is not possible to obtain a quorum to convene an emergency meeting to proclaim a state of local emergency, or extend or rescind such a proclamation, the Mayor, Vice-Mayor, or Town Manager are authorized to proclaim, extend, or rescind a local state of emergency.

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

Section 1. The foregoing whereas clauses are true and correct and hereby adopted as the legislative and administrative findings of the Town Council and made a specific part of this Resolution; all exhibits attached hereto are incorporated herein and made a specific part of this Resolution.

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 15th day of April 2025.

Section 3. The amendment and extension of the proclamation of a state of local emergency set forth in Resolution 22-35 is an emergency measure necessary for the protection of the public safety, due to the catastrophic disaster caused by Hurricane Ian.

Section 4. As provided in Section 252.38(3)(a), *Florida Statutes* and Chapter 12, Article II of the Code, the Town hereby waives the procedures and formalities otherwise required by law of a municipality as set forth in said State law and the Code.

Section 5. The Town Manager or designee is hereby designated as the declaring official for purposes of implementing the emergency and disaster regulations of the Town. The Town Manager or designee will exercise all powers necessary to protect the health and safety of the public set forth in any Executive Order that may be issued by the Governor, Chapter 252, Fla. Stat., and Chapter 12, Article II of the Code. This proclamation also authorizes the Town Manager or designee to utilize government employees and volunteers to assist in securing private property to minimize the overall damage to the Town.

Section 6. The state of local emergency shall remain in effect until terminated as provided in Section 12-21 of the Code. However, the mandatory curfew and prohibition regarding the use of fresh water supplied by the County or local water company for any purpose other than cooking, drinking, or bathing set forth in Section 12-24 of the Code are hereby waived at this time.

Section 7. As provided in Section 12-21(a) of the Code, the Mayor, Vice-Mayor, or Town Manager may extend the proclamation of a state of local emergency as the "responsible official" of the Town.

Section 8. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. Any scrivener or typographical errors that do not affect intent of this Resolution may be corrected with notice to and authorization of the Town Attorney and Town Manager without further process.

Section 10. If any clause, section, other part, or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 11. This Resolution shall become effective upon the signature of the Mayor.

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

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

ADOPTED this 7th day of April 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on the ____ day of April 2025.

RESOLUTION 25-99

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

WHEREAS, Chapter 252, *Florida Statutes*, authorizes the waiver of procedures and formalities, otherwise required of municipalities, and to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency; and

WHEREAS, Section 252.38 *Florida Statutes*, specifically authorizes municipalities to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions required by law pertaining to performance of public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community such as but not limited to entering into contracts; incurring obligations; employing permanent and temporary workers; utilizing volunteer workers; renting of equipment; acquiring and distributing supplies, materials and facilities with or without compensation, and appropriating and expending public funds; and

WHEREAS, the Town of Fort Myers Beach, Florida (Town), pursuant to its inherent home rule powers under Florida Constitution and otherwise has adopted certain emergency procedures set forth in Chapter 12, Article II – “Emergency and Disaster Planning” of the Code of Ordinances, Town of Fort Myers Beach, Florida (“Code”), and is otherwise authorized to activate the Town’s emergency plan; and

WHEREAS, the State of Florida and Lee County have declared a state of local emergency due to the catastrophic impacts of Hurricane Ian to Lee County; and

WHEREAS, as defined in the Code, Hurricane Ian has caused a catastrophic disaster in the Town causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas; and

WHEREAS, Section 12-21 of the Code provides that where it is not possible to obtain a quorum to convene an emergency meeting to proclaim a state of local emergency, or extend or rescind such a proclamation, the Mayor, Vice-Mayor, or Town Manager are authorized to proclaim, extend, or rescind a local state of emergency.

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

Section 1. The foregoing whereas clauses are true and correct and hereby adopted as the legislative and administrative findings of the Town Council and made a specific part of this Resolution; all exhibits attached hereto are incorporated herein and made a specific part of this Resolution.

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 22nd day of April 2025.

Section 3. The amendment and extension of the proclamation of a state of local emergency set forth in Resolution 22-35 is an emergency measure necessary for the protection of the public safety, due to the catastrophic disaster caused by Hurricane Ian.

Section 4. As provided in Section 252.38(3)(a), *Florida Statutes* and Chapter 12, Article II of the Code, the Town hereby waives the procedures and formalities otherwise required by law of a municipality as set forth in said State law and the Code.

Section 5. The Town Manager or designee is hereby designated as the declaring official for purposes of implementing the emergency and disaster regulations of the Town. The Town Manager or designee will exercise all powers necessary to protect the health and safety of the public set forth in any Executive Order that may be issued by the Governor, Chapter 252, Fla. Stat., and Chapter 12, Article II of the Code. This proclamation also authorizes the Town Manager or designee to utilize government employees and volunteers to assist in securing private property to minimize the overall damage to the Town.

Section 6. The state of local emergency shall remain in effect until terminated as provided in Section 12-21 of the Code. However, the mandatory curfew and prohibition regarding the use of fresh water supplied by the County or local water company for any purpose other than cooking, drinking, or bathing set forth in Section 12-24 of the Code are hereby waived at this time.

Section 7. As provided in Section 12-21(a) of the Code, the Mayor, Vice-Mayor, or Town Manager may extend the proclamation of a state of local emergency as the "responsible official" of the Town.

Section 8. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. Any scrivener or typographical errors that do not affect intent of this Resolution may be corrected with notice to and authorization of the Town Attorney and Town Manager without further process.

Section 10. If any clause, section, other part, or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 11. This Resolution shall become effective upon the signature of the Mayor.

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

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

ADOPTED this 7th day of April 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on the ____ day of April 2025.

RESOLUTION 25-100

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

WHEREAS, Chapter 252, *Florida Statutes*, authorizes the waiver of procedures and formalities, otherwise required of municipalities, and to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency; and

WHEREAS, Section 252.38 *Florida Statutes*, specifically authorizes municipalities to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions required by law pertaining to performance of public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community such as but not limited to entering into contracts; incurring obligations; employing permanent and temporary workers; utilizing volunteer workers; renting of equipment; acquiring and distributing supplies, materials and facilities with or without compensation, and appropriating and expending public funds; and

WHEREAS, the Town of Fort Myers Beach, Florida (Town), pursuant to its inherent home rule powers under Florida Constitution and otherwise has adopted certain emergency procedures set forth in Chapter 12, Article II – “Emergency and Disaster Planning” of the Code of Ordinances, Town of Fort Myers Beach, Florida (“Code”), and is otherwise authorized to activate the Town’s emergency plan; and

WHEREAS, the State of Florida and Lee County have declared a state of local emergency due to the catastrophic impacts of Hurricane Ian to Lee County; and

WHEREAS, as defined in the Code, Hurricane Ian has caused a catastrophic disaster in the Town causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas; and

WHEREAS, Section 12-21 of the Code provides that where it is not possible to obtain a quorum to convene an emergency meeting to proclaim a state of local emergency, or extend or rescind such a proclamation, the Mayor, Vice-Mayor, or Town Manager are authorized to proclaim, extend, or rescind a local state of emergency.

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

Section 1. The foregoing whereas clauses are true and correct and hereby adopted as the legislative and administrative findings of the Town Council and made a specific part of this Resolution; all exhibits attached hereto are incorporated herein and made a specific part of this Resolution.

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 29th day of April 2025.

Section 3. The amendment and extension of the proclamation of a state of local emergency set forth in Resolution 22-35 is an emergency measure necessary for the protection of the public safety, due to the catastrophic disaster caused by Hurricane Ian.

Section 4. As provided in Section 252.38(3)(a), *Florida Statutes* and Chapter 12, Article II of the Code, the Town hereby waives the procedures and formalities otherwise required by law of a municipality as set forth in said State law and the Code.

Section 5. The Town Manager or designee is hereby designated as the declaring official for purposes of implementing the emergency and disaster regulations of the Town. The Town Manager or designee will exercise all powers necessary to protect the health and safety of the public set forth in any Executive Order that may be issued by the Governor, Chapter 252, Fla. Stat., and Chapter 12, Article II of the Code. This proclamation also authorizes the Town Manager or designee to utilize government employees and volunteers to assist in securing private property to minimize the overall damage to the Town.

Section 6. The state of local emergency shall remain in effect until terminated as provided in Section 12-21 of the Code. However, the mandatory curfew and prohibition regarding the use of fresh water supplied by the County or local water company for any purpose other than cooking, drinking, or bathing set forth in Section 12-24 of the Code are hereby waived at this time.

Section 7. As provided in Section 12-21(a) of the Code, the Mayor, Vice-Mayor, or Town Manager may extend the proclamation of a state of local emergency as the "responsible official" of the Town.

Section 8. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. Any scrivener or typographical errors that do not affect intent of this Resolution may be corrected with notice to and authorization of the Town Attorney and Town Manager without further process.

Section 10. If any clause, section, other part, or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 11. This Resolution shall become effective upon the signature of the Mayor.

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

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

ADOPTED this 7th day of April 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on the ____ day of April 2025.

1. **Request:**

Meeting Date: April 7, 2025

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

Why the action is necessary:

Keeps the Local State of Emergency in effect for Hurricane Idalia

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

Approving and ratifying this Resolution will maintain in place the Town Declaration of State of Local Emergency originally adopted via Resolution 23-99.

Attachments:

1. 25-101, Extension of Local Emergency - Idalia 4.1.25-4.7.25
2. 25-102, Extension of Local Emergency - Idalia 4.8.25-4.14.25
3. 25-103, Extension of Local Emergency - Idalia 4.15.25-4.21.25
4. 25-104, Extension of Local Emergency - Idalia 4.22.25-4.28.25
5. 25-105, Extension of Local Emergency - Idalia 4.29.25-5.5.25

Financial Impact:

6. **Alternative Action**

Do not approve and end the Local State of Emergency for Hurricane Idalia

7. **Management Recommendations:**

Approve

8. **Recommended Approval:**

Eva Spychalski, Administrative Resources Coordinator
Amy Baker, Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 3/20/2025
Approved - 3/20/2025
Approved - 3/20/2025
Approved - 3/25/2025
Final Approval - 3/25/2025

RESOLUTION NUMBER 25-101

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

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Idalia impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 29, 2023, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.
2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order

specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
 - (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action

shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefor, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

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

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

ADOPTED this 7th day of April 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of April 2025.

RESOLUTION NUMBER 25-102

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

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Idalia impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 29, 2023, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.
2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order

specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
 - (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action

shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefor, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

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

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

ADOPTED this 7th day of April 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of April 2025.

RESOLUTION NUMBER 25-103

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

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Idalia impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 29, 2023, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.
2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order

specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
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 - Entering into contracts;
 - Incurring obligations;
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 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
 - (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action

shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefor, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

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

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

ADOPTED this 7th day of April 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of April 2025.

RESOLUTION NUMBER 25-104

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

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Idalia impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 29, 2023, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.
2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order

specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
 - (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action

shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefor, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

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

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

ADOPTED this 7th day of April 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of April 2025.

RESOLUTION NUMBER 25-105

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

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Idalia impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 29, 2023, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.
2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order

specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
 - (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action

shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefor, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

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

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

ADOPTED this 7th day of April 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of April 2025.

1. **Request:**

Meeting Date: April 7, 2025

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

Why the action is necessary:

Keeps the Local State of Emergency in effect for Tropical Storm Debby

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

Approving and ratifying this Resolution will maintain in place the Town Declaration of State of Local Emergency originally adopted via Resolution 24-154.

Attachments:

1. 25-106, Extension of Local Emergency - Debby 4.1.25-4.7.25
2. 25-107, Extension of Local Emergency - Debby 4.8.25-4.14.25
3. 25-108, Extension of Local Emergency - Debby 4.15.25-4.21.25
4. 25-109, Extension of Local Emergency - Debby 4.22.25-4.28.25
5. 25-110, Extension of Local Emergency - Debby 4.29.25-5.5.25

Financial Impact:

6. **Alternative Action**

Do not approve and end the Local State of Emergency for Tropical Storm Debby

7. **Management Recommendations:**

Approve

8. **Recommended Approval:**

Eva Spychalski, Administrative Resources Coordinator
Amy Baker, Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 3/20/2025
Approved - 3/20/2025
Approved - 3/20/2025
Approved - 3/25/2025
Final Approval - 3/25/2025

RESOLUTION NUMBER 25-106

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

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Tropical Storm Debby impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 5, 2024, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.
2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order

specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
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 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
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 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
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an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

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

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

ADOPTED this 7th day of April 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this __ day of April 2025.

RESOLUTION NUMBER 25-107

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

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

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 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
 - (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to,

an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

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

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

ADOPTED this 7th day of April 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this __ day of April 2025.

RESOLUTION NUMBER 25-108

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

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Tropical Storm Debby impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 5, 2024, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.
2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order

specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
 - (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to,

an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

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

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

ADOPTED this 7th day of April 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ___ day of April 2025.

RESOLUTION NUMBER 25-109

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

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Tropical Storm Debby impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 5, 2024, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.
2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order

specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
 - (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to,

an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

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

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

ADOPTED this 7th day of April 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ___ day of April 2025.

RESOLUTION NUMBER 25-110

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

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Tropical Storm Debby impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 5, 2024, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.
2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order

specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
 - (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to,

an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

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

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

ADOPTED this 7th day of April 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ___ day of April 2025.

1. **Request:**

Meeting Date: April 7, 2025

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

Why the action is necessary:

Keeps the Local State of Emergency in effect for Hurricane Helene

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

Approving and ratifying this Resolution will maintain in place the Town Declaration of State of Local Emergency originally adopted via Resolution 24-192

Attachments:

1. 25-111, Extension of Local Emergency - Helene 4.1.25-4.7.25
2. 25-112, Extension of Local Emergency - Helene 4.8.25-4.14.25
3. 25-113, Extension of Local Emergency - Helene 4.15.25-4.21.25
4. 25-114, Extension of Local Emergency - Helene 4.22.25-4.28.25
5. 25-115, Extension of Local Emergency - Helene 4.29.25-5.5.25

Financial Impact:

6. **Alternative Action**

Do not approve and end the Local State of Emergency for Hurricane Helene

7. **Management Recommendations:**

Approve

8. **Recommended Approval:**

Eva Spychalski, Administrative Resources Coordinator
Amy Baker, Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 3/20/2025
Approved - 3/20/2025
Approved - 3/20/2025
Approved - 3/25/2025
Final Approval - 3/25/2025

RESOLUTION NUMBER 25-111

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE HELENE (FORMERLY KNOWN AS POTENTIAL TROPICAL CYCLONE NINE); PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Helene impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on September 23, 2024, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.

2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.
3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.

- (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.
 - (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such

other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

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

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

ADOPTED this 7th day of April 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of April 2025.

RESOLUTION NUMBER 25-112

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE HELENE (FORMERLY KNOWN AS POTENTIAL TROPICAL CYCLONE NINE); PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Helene impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on September 23, 2024, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.

2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.
3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.

- (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.
 - (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such

other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

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

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

ADOPTED this 7th day of April 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of April 2025.

RESOLUTION NUMBER 25-113

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE HELENE (FORMERLY KNOWN AS POTENTIAL TROPICAL CYCLONE NINE); PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Helene impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on September 23, 2024, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

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1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.

2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.
3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
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 - Employment of permanent and temporary workers;
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 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.

- (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.
 - (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
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7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such

other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

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

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

ADOPTED this 7th day of April 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of April 2025.

RESOLUTION NUMBER 25-114

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE HELENE (FORMERLY KNOWN AS POTENTIAL TROPICAL CYCLONE NINE); PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Helene impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on September 23, 2024, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.

2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.
3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.

- (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.
 - (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such

other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

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

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

ADOPTED this 7th day of April 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of April 2025.

RESOLUTION NUMBER 25-115

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE HELENE (FORMERLY KNOWN AS POTENTIAL TROPICAL CYCLONE NINE); PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Helene impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on September 23, 2024, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.

2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.
3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.

- (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.
 - (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such

other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

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

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

ADOPTED this 7th day of April 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of April 2025.

1. **Request:**

Meeting Date: April 7, 2025

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

Why the action is necessary:

Keeps the Local State of Emergency in effect for Hurricane Milton

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

Approving and ratifying this Resolution will maintain in place the Town Declaration of State of Local Emergency originally adopted via Resolution 24-214

Attachments:

1. 25-116, Extension of Local Emergency - Milton 4.1.25-4.7.25
2. 25-117, Extension of Local Emergency - Milton 4.8.25-4.14.25
3. 25-118, Extension of Local Emergency - Milton 4.15.25-4.21.25
4. 25-119, Extension of Local Emergency - Milton 4.22.25-4.28.25
5. 25-120, Extension of Local Emergency - Milton 4.29.25-5.5.25

Financial Impact:

6. **Alternative Action**

Do not approve and end the Local State of Emergency for Hurricane Milton

7. **Management Recommendations:**

Approve

8. **Recommended Approval:**

Eva Spychalski, Administrative Resources Coordinator
Amy Baker, Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 3/20/2025
Approved - 3/20/2025
Approved - 3/20/2025
Approved - 3/25/2025
Final Approval - 3/25/2025

RESOLUTION NUMBER 25-116

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

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Milton impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on October 6, 2024, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.
2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order

specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
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 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
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 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
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an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

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

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

ADOPTED this 7th day of April 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this __ day of April 2025.

RESOLUTION NUMBER 25-117

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

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

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specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

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 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
 - (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to,

an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

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

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

ADOPTED this 7th day of April 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ___ day of April 2025.

RESOLUTION NUMBER 25-118

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

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Milton impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on October 6, 2024, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.
2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order

specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
 - (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to,

an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

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

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

ADOPTED this 7th day of April 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this __ day of April 2025.

RESOLUTION NUMBER 25-119

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

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Milton impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on October 6, 2024, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.
2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order

specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
 - (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to,

an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

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

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

ADOPTED this 7th day of April 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ___ day of April 2025.

RESOLUTION NUMBER 25-120

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

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Milton impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on October 6, 2024, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.
2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order

specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
 - (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to,

an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

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

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

ADOPTED this 7th day of April 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ___ day of April 2025.

1. **Request:**

Meeting Date: April 7, 2025

Second reading and public hearing of and ordinance entitled: AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/ DENYING AN AMENDMENT TO THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING, PREVIOUSLY APPROVED BY RESOLUTION 07-28 FOR PARCELS LOCATED AT 2500 AND 2510 ESTERO BLVD., GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0120A.0100; 19-46-24-W3-01302.0000, TO ADD PARCELS 2518 ESTERO BLVD. AND 2543 COTTAGE AVENUE, GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-01301.0000; 19-46-24-W3-0120A.013A IN FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The Town Council hears rezoning requests and makes final decisions.

What the action accomplishes:

Approval of the CPD will allow the applicant to add two adjacent parcels to the existing CPD zoning.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Judith Frankel, Principal Planner

5. **Background:**

This ordinance expands the boundary of the CPD approved in Resolution 07-28 to include two adjacent parcels. At the first reading on March 3rd the Town Council made the following motions:

1. Mayor Allers made a motion to approve intervenor status for the attorney from Becker Polikaff representing three entities. The motion was seconded by Vice Mayor Atterholt and approved unanimously by Town Council.
2. Mayor Allers made a motion to approve intervenor status for the adjacent property owners Derek O'Loughlin (2553 Cottage Ave,) and the Tezaks (50 Chapel Street). The motion was seconded by Vice Mayor Atterholt and approved unanimously by Town Council.
3. Mayor Allers made a motion to move the subject ordinance to second reading. The motion was seconded by Councilor Woodson and approved unanimously by Town Council.

Attachments:

1. Ordinance 25-02 expanded CPD boundaries for 2500 Estero
2. Staff Report expanded boundary CPD Amendment
3. Exhibit A: 07-28, Resolution 2500 Estero (1)
4. Exhibit B: Expanded boundary survey
5. Business Impact Estimate 2500 Estero: Expanded boundary Ord 25-02

Financial Impact:

Unknown

6. **Alternative Action**

Approve with conditions

7. **Management Recommendations:**

8. **Recommended Approval:**

Judith Frankel, Principal Planner
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 3/21/2025
Approved - 3/21/2025
Approved - 3/25/2025
Approved - 3/26/2025
Final Approval - 3/26/2025

ORDINANCE 25-02

AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/ DENYING AN AMENDMENT TO THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING, PREVIOUSLY APPROVED BY RESOLUTION 07-28 FOR PARCELS LOCATED AT 2500 AND 2510 ESTERO BLVD., GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0120A.0100; 19-46-24-W3-01302.0000, TO ADD PARCELS 2518 ESTERO BLVD. AND 2543 COTTAGE AVENUE, GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-01301.0000; 19-46-24-W3-0120A.013A IN FORT MYERS BEACH,; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, Empire Holding Corp. an Indiana Corporation as Trustee for Ann Trust, the owner, and The Neighborhood Company, as agents for the property located at 2500/2510/2518 Estero Blvd. & 2543 Cottage Ave., Ft Myers Beach, FL 33931, parcels generally identified as STRAP numbers 19-46-24-W3-0120A.0100; 19-46-24-W3-01302.0000; 19-46-24-W3-01301.0000; 19-46-24-W3-0120A.013A in the Town of Fort Myers Beach, filed applications to rezone the property from the CPD adopted in Resolution 07-28 (for 2500 and 2510 Estero Blvd.) to CPD with expanded boundaries (addition of 2518 Estero Blvd. and 2543 Cottage Avenue; and

WHEREAS, the subject property is a combination of four parcels located in the Boulevard Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on January 9th, 2025; and

WHEREAS, at the January 9th, 2025 public hearing the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, as required by Section 34-85 of the Town Land Development Code; and

WHEREAS, at the January 9th, 2025 public hearing the LPA found that the

request **is** consistent with the comprehensive plan and the requirements of the LDC and voted to recommend **approval with conditions**; and

WHEREAS, on March 3rd 2025 the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Section 34-85 of the LDC; and

WHEREAS, the Town Council voted to have a second reading of the proposed Ordinance and a public hearing on this matter was noticed in the Fort Myers News-Press more than 10 days prior to the Town Council on March 15, 2025; and

WHEREAS, at the March 3, 2025 public hearing, the Town Council gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34- 85; and

WHEREAS, the applicant has resolved and is current on any outstanding fees associated with notice, advertisement, and consulting services required by the Town; and

WHEREAS, a Business Impact Estimate has been prepared and published on the Town's website; and

WHEREAS, with the following terms, conditions, and requirements which the LPA finds to be in the public health, safety, and welfare, all of which are in compliance with the comprehensive plan and the Land Development Code; and

WHEREAS, Exhibit A provides Resolution 07-28 which created the subject CPD; and

WHEREAS, Exhibit B demonstrates the expanded boundaries which future development shall maintain; and

WHEREAS, the Town Council considered all relevant factors and made the following formal findings before making its final decision on the requested rezone to a Commercial Planned Development (see LDC 34-85 and 34-216):

- a. The rezoning would carry out the policies and requirements of the Comprehensive Plan and Land Development Code.
- b. The Town Council carefully considered the testimony of the applicant, the recommendations of staff and of the local planning agency, and testimony from the public.
- c. The rezoning would be consistent with the goals, objectives, policies, and

intent, and with the densities, intensities, and general uses in the Comprehensive Plan.

- d. The rezoning would meet or exceed all performance and locational standards set forth for the proposed use.
- e. Urban services are available and adequate to serve the proposed use.
- f. The rezoning would protect, conserve, or preserve environmentally critical areas and natural resources.
- g. The rezoning would be compatible with existing and planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- h. The rezoning would not place an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.
- i. The rezoning, with the mitigating factors volunteered by the applicant and the special conditions imposed by the Town Council, is consistent with the Fort Myers Beach Comprehensive Plan, Land Development Code, and other applicable town ordinances or codes.
- l. The proposed use or mix of uses is appropriate at the subject location.
- m. Sufficient safeguards to the public interest are provided by the recommended special conditions to the master concept plan and by other applicable regulations.
- n. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.

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

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

WHEREAS, the Town Council finds that this application to approve Ordinance 25-02, which is, **consistent/inconsistent** with the Town of Fort Myers Beach Comprehensive Plan and LDC and voted to **approve/approve with conditions/deny** the Application.

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

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

Section 2. The Town Council determines the Applicant **did** meet its burden of proof, that the request to approve Town of Fort Myers Beach's Ordinance 25-02 and the conditions of approval for the commercial planned development zoning, **does/does not** meet the requirements of the Town Comprehensive Plan and LDC. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council **APPROVE/APPROVE WITH CONDITIONS/DENY** the requested application.

Section 3. Town Ordinance 25-02 is adopted and the schedule of uses and conditions of approval for the Property's CPD set forth in Exhibit A and the attached Master Concept Plan in Exhibit B, attached hereto and incorporated herein by this reference are approved.

Section 4. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted LDC or Town Code provision, ordinance, or statute, the most restrictive shall apply.

Section 5. Any typographical errors that do not affect the intent of this Ordinance may be corrected with notice to and authorization of the Town Manager without further process.

Section 6. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 7. This Ordinance will take effect immediately upon adoption by the Town Council.

THE FOREGOING ORDINANCE was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a vote, the result was as follows:

DULY PASSED AND ADOPTED on this ____ day of _____ 2025.

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

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of _____ 2025.
Attachments:

- A –Resolution 07-28
- B – Expanded Boundary Map



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

TYPE OF CASE: Commercial Planned Development Amendment

CASE NUMBER: DCI Rezoning 20240137.1

CASE NAME: Food Truck Park

LPA

HEARING DATE: January 9th, 2025

1st TOWN COUNCIL

HEARING DATE: March 3rd, 2025

2nd TOWN COUNCIL

HEARING DATE: April 7th, 2025

STAFF

RECOMMENDATION: Approval with conditions

PREPARED/

SUBMITTED BY: Judith Frankel, AICP/Jason Smalley, Senior Planner

I. APPLICATION SUMMARY

Applicant/Owner: Empire Holding Corp. TR for Ann Trust/Neighborhood Company

Request: Amend the existing CPD RES#07-28 to: 1) expand the boundary to include and rezone Lot 1 (2518 Estero Boulevard) from Commercial Boulevard to CPD.; and 2) expand the boundary to include and rezone the remainder of Lot 13 (2543 Cottage Avenue) from Residential Multifamily (RM) to CPD

Subject property: See Exhibit B

Physical Address: 2500/2510/2518 Estero Blvd. & 2543 Cottage Ave

STRAP #: 19-46-24-W3-0120A.0100; 19-46-24-W3-01302.0000;
19-46-24-W3-01301.0000; 19-46-24-W3-0120A.013A

FLU: Boulevard

Zoning: CPD/Commercial Boulevard/Residential Multi-family

Adjacent zoning and land uses:

North:	INSTITUTIONAL (IN) Boulevard
South:	RESIDENTIAL MULTIFAMILY (RM) Boulevard
East:	COMMERCIAL BOULEVARD (CB) Boulevard
West:	RESIDENTIAL MULTIFAMILY (RM) Boulevard

II. BACKGROUND AND ANALYSIS

The applicant, Neighborhood Company on behalf of the property owner Empire Holding Corp, is requesting to expand the CPD boundaries approved by Resolution 07-28. The existing CPD consists of a 0.52+ acre parcel (at 2500 and 2510 Estero Blvd.) with a maximum of 23,067 square feet, consisting of 9,952 square feet of commercial and office plus (3) three dwelling units developed as either 3 multi-family or 3 live/work units with a total of 13,115 square feet in two (2) buildings, not to exceed a maximum building height of 40 feet above base flood elevation/3 stories and an FAR of 1.0. The CPD approved by Resolution 07-28 allowed “Option A” as a part of the Master Concept Plan. The site was not developed.

Since the approval of the original CPD in 2007, the owner has purchased two abutting parcels located at 2518 Estero and 2543 Cottage Avenue. These lots each contained a single-family home. Both homes were destroyed by Hurricane Ian in 2022. The applicant is requesting an extension of the CPD boundaries to include these two additional properties. This would increase the CPD boundary area to a total of +/- 0.691 acres. This ordinance is necessary to enable the applicant to develop the site as one entity.

At the LPA meeting on January 9th, 2025 the LPA voted unanimously to recommend approval of this request. At the Town Council hearing on March 3rd the Town Council voted unanimously to move this request to a second reading.

Analysis:

The site is located in the designated “Civic Complex” neighborhood and with a “Boulevard” land use designation in the Comprehensive Plan. The Boulevard land use category permits a maximum 1.5 F.A.R. LDC Section 34-953, states that building placement, size, design, and all other property development regulations in a CPD zoning district shall be the same as for the CB zoning district for CPDs that are not primarily lodging. The CB zoning district permits a maximum FAR of 1.0. The proposed redevelopment being brought to the LPA and Town Council under a separate ordinance, in “Option B” MCP will be well below that maximum, which is compliant with Town regulations.

Neighborhood Compatibility:

The subject property is located approximately 1.07 miles from Times Square and is southwest of the area known as the Civic Center of Fort Myers Beach. The properties front on the southside of Estero Boulevard; north of Cottage Avenue; and to the east of Chapel Street. The project is

surrounded by vacant commercial properties as well as single and multifamily residential properties.

IV. FINDINGS AND CONCLUSIONS

LDC Sec. 34-85(b) and (c) and 34-216(2) sets forth the required considerations and findings for the approval of a rezoning:

LDC Sec. 34-85 (b) Considerations. In reaching its decision, the town council shall consider the following, whenever applicable:

(1) Whether there exists an error or ambiguity which must be corrected.

Staff response: No errors or ambiguities exist.

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

Staff response: The purchase of two adjacent properties initiated the request for expanded boundary.

(3) The impact of a proposed change on the intent of this chapter.

Staff response: No impact on the intent of this chapter will occur, although the LPA may desire to consider additional regulation to govern this use in the future.

(4) The testimony of any applicant.

(5) The recommendation of staff and of the local planning agency.

(6) The testimony of the public.

(7) Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.

Staff response: The expanded boundary is consistent with the Town of Fort Myers Beach Comprehensive Plan.

(8) Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.

Staff response: The proposed development will be required to meet performance standards set forth in 34-2031 and 34-2032.

(9) Whether urban services are, or will be, available and adequate to serve a proposed land use change.

Staff response: The urban services exist in this location.

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

Staff response: The request will have no impact on designated environmentally critical areas and natural resources. The request does not include any revision to the environmentally critical areas.

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

Staff response: The expanded boundary is compatible.

(12) Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.

Staff response: The location is compatible.

(13) For planned development rezonings, see § 34-216 for additional considerations

LDC Sec. 34-85 (c) Findings: Before granting any rezoning, the town council shall find that the requested zoning district complies with:

(1) The Fort Myers Beach Comprehensive Plan.

Staff response: The proposed uses and requested deviations for the CPD comply with the Comprehensive Plan.

(2) This chapter.

Staff response: The proposed uses comply with this chapter.

(3) Any other applicable town ordinances or codes.

Staff response: The proposed request complies with the town ordinances and codes.

(4) For planned development rezonings, see § 34-216 of this chapter for additional findings

LDC Sec. 34-216(b)(2) The recommendation made to the town council must be supported by the guidelines set forth in [§ 34-85](#) of this chapter. In addition, the findings must address whether the following criteria can be satisfied:

a. The proposed use or mix of uses is appropriate at the subject location;

Staff response: The proposed uses are not being altered under this ordinance.

b. Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations;

Staff response: Sufficient safeguards are provided for the public interest through required buffering at the property boundaries.

c. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development;

Staff response: No special conditions are requested as part of this application.

d. The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:

1. Policies 4-B-4 and 4-C-3 on commercial uses in the "mixed residential" category.

Staff response: Not applicable.

2. Policies 4-B-5 and 4-C-3 on commercial rezonings in the "boulevard" category.

Staff response: Not applicable.

3. Policy 4-C-4 on building heights taller than the standard height limit.

Staff response: No additional height is requested.

4. Policy 4-C-8 on density transfers.

Staff response: Not applicable.

5. Policy 4-E-1 on pre-disaster build back.

Staff response: Not applicable.

6. Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts.

Staff response: There are no anticipated adverse traffic impacts

V. RECOMMENDATION

Staff finds that the CPD amendment meets the criteria set forth in Sec. 34-85(b) and (c) and 34-216(2) of the LDC. Staff recommends **approval** of DCI20240137.1.

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 07-28

WHEREAS, McHarris Planning and Design (Applicant) has requested the Town Council rezone an approximately .52+/- acres from Commercial Boulevard (CB) to Commercial Planned Development (CPD) to allow the development of commercial, offices and residential multi-family units at 2500 Estero Boulevard; and

WHEREAS, Applicant has proposed two (2) options to the Town of Fort Myers Beach for consideration in the aforesaid application; and

WHEREAS, Option "A" as presented by Applicant offers a maximum of 23,067 square feet, consisting of 9,952 square feet of commercial and office plus three (3) residential units with a total of 13,115 square feet in two (2) buildings, not to exceed a maximum building height of 40 feet above base flood elevation/3 stories; and

WHEREAS, Option "B" as presented by Applicant offers a maximum of 22,990 square feet that consists of 6,795 square feet of commercial and office and four (4) residential units with a total of 16,195 square feet in two (2) buildings not to exceed a height of 35 feet above base flood elevation/3 stories; and

WHEREAS, the subject property is located at 2500 Estero Blvd, Fort Myers Beach, FL 33931(follow Estero Blvd South to 2500), in S19-T46S-R24E, in Fort Myers Beach, Lee County, FL; and

WHEREAS, Applicant has indicated the property's current STRAP numbers are 19-46-24-W3-0120A.0100 and 19-46-24-W3-01302.0000 with the legal description set forth on Exhibit "A" which is attached hereto and hereby incorporated by reference; and

WHEREAS, a public hearing was legally advertised and held before the Local Planning Agency (LPA) on June 19, 2007, at which time the LPA recommended that the Town Council approve the Applicant's request, with three (3) members recommending Option A and three (3) members recommending Option B, with the approval subject to various conditions as set forth more fully in the LPA Resolution 2007-13; and

WHEREAS, the Town Council gave full and complete consideration to recommendations of staff, the LPA resolution, the documents in the file, and the testimony of all interested persons.

IT IS HEREBY RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA as follows:

The Town Council hereby **APPROVES Option A and DISAPPROVES Option B** to rezone the subject property from CB and RC to CPD, subject to the nine (9) conditions and one deviation set forth with specificity below.

A. CONDITIONS AND DEVIATIONS

A. CONDITIONS

1. The development of this project must be consistent with the six (6) page Master Concept Plan entitled "2500 Estero," stamped received October 6, 2006, except as modified by the conditions below. This development must comply with all requirements of the LDC at time of local Development Order Approval, except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.

2. The following limits apply to the project and uses:

The project is limited to a maximum of 23,067 square feet and a maximum of 3 dwelling units of 13,115 square feet

- a. **Schedule of Uses**

Residential

Dwelling Unit:

Multi-family - maximum of 3 units

Live/work pursuant to LDC Section 34-1773 - maximum of 3 units

Lodging

Rental of any permitted dwelling unit to a single family for periods of one week or longer pursuant to Section LDC 34-2391 through 34-2410

Office

Administrative Offices

Retail

Retail Store, small (less than 5,000 square feet)

Civic

Essential Services

Daycare center, adult or child (by Administrative Approval)

Cultural Facilities (by Administrative Approval)

- b. **Site Development Regulations**

Minimum Lot Size: 23,067.00± Square Feet or 0.52 ± acres

Minimum Lot Width: 160 feet along Estero Boulevard

Minimum Lot Depth: 150± feet along Chapel Street

Minimum Lot Width: 119± feet along Cottage Street

Minimum Setbacks:

Street: 5 feet (Estero Boulevard)

10 feet (Chapel Street)

10 feet (Cottage Street)

Side: 5 feet

Floor Area Ratio (FAR): 1.0

Maximum Height: 40 feet above base flood elevation /3 stories

3. At the time of Development Order, the applicant must provide the following buffers:

Along Chapel Street (the west property line), a 10 foot wide buffer with a minimum of 4 trees per 100 linear feet (6 trees) and a 3 foot high hedge planted in a double staggered row.

Along the east property line that extends from Estero Boulevard for a distance of 100± feet, a 5 foot wide buffer with a minimum of 4 trees per 100 linear feet (4 trees) and a 3 foot high hedge planted in a double staggered row.

Along the southeast property lines that depicts a 6 foot high wall, a 3 foot high hedge planted in a double staggered row to be planted on the outside of the wall.

Along Cottage Avenue,(the south property line), a 10 foot wide buffer with a minimum of 4 trees per 100 linear feet (4 trees) and a 3 foot high hedge planted in a double staggered row to be planted in between the driveways to the residential units.

4. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the Fort Myers Beach Land Development Code ("LDC") may be required to obtain a local development order.
5. The local development order must be in compliance with LDC Section 14-71 through 14-79 regarding sea turtle lighting.
6. Approval of this zoning request does not give the Developer an undeniable right to receive local development order approval. Future development order approvals must satisfy the requirements of the Fort Myers Beach Comprehensive Plan ("Plan").
7. Development of this property must comply with all of the requirements of the LDC at the time of local development order approval, except as may be granted by deviations approved as part of this planned development.
8. Prior to local development order approval, the construction plans must indicate that pervious pavement and exfiltration will be incorporated throughout the project to maximize the overall stormwater management capacity.
9. Prior to local development order approval, the project developer will partner with the Town to coordinate survey, site preparation, and infrastructure improvements for the project with the Town's plans for work in the adjacent public rights-of-way.

B. DEVIATION

Deviation #1 is from Section 10-285 that requires driveways to be located at least 250 feet from the centerline of a local street such as Chapel Street, to allow a distance of 100 feet from Estero Boulevard. Chapel Street is a local

street that is maintained by Town of Fort Myers Beach. The previous development on the site used this driveway as an access point and the proposed development will continue to use this driveway. The applicant is unable to meet the 250 foot separation distance, therefore the Town Council **APPROVES** this application with a condition that the property owner voluntary donate a 5 foot easement along Estero Boulevard to the Town of Fort Myers Beach for roadway, utility, drainage and reasonably related purposes.

FINDINGS AND CONCLUSIONS

Based upon the presentations by Applicant, staff, and other interested parties at the hearing, and review of the application and the standards for planned development zoning approval, the Town Council makes the following findings and conclusions:

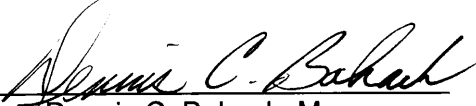
1. The requested rezoning to the Commercial Planned Development (CPD) zoning district, as conditioned **DOES** comply with:
 - a. The Plan;
 - b. LDC Chapter 34;
 - c. all other applicable Town ordinances and codes; and
 - d. the following additional requirements for planned development zoning requests:
 - i. Policies 4-B-5 and 4-C-3 on commercial and residential uses in the "Boulevard" future land use category; and
 - ii. Policy 4-C-5 on maximum residential densities for properties; and
 - iii. Policy 4-C-4 on maximum height limitations; and
 - iv. Policy 4-E-4 on flood proofing of commercial buildings.
2. The proposed use or mix of uses, as conditioned above, **IS** appropriate at the subject location.
3. Sufficient safeguards to the public interest **ARE** provided by the recommended conditions to the concept plan or by other applicable regulations.
4. All recommended conditions **ARE** reasonably related to the impacts on the public's interest created by or expected from the proposed development.
5. As to the requested deviation, as conditioned:
 - a. Each item **DOES** enhance the achievement of the objectives of the planned development; and
 - b. The general intent of LDC Chapter 34 to protect the public health, safety, and welfare **WILL** be preserved and promoted; and
 - c. Each deviation **DOES** operate to the benefit, or at least not to the detriment, of the public interest; and

- d. Each deviation **IS** consistent with the Fort Myers Beach Comprehensive Plan.

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

Dennis C. Boback, Mayor	<u>aye</u>
Larry Kiker, Vice Mayor	<u>aye</u>
Herb Acken	<u>aye</u>
Charles Meador, Jr.	<u>aye</u>
William Shenko, Jr.	<u>aye</u>

DULY PASSED AND ADOPTED THIS 13TH DAY OF AUGUST, 2007, BY THE
TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

By: 
Dennis C. Boback, Mayor

Approved as to legal sufficiency:

ATTEST:

By: 
Anne Dalton, Esquire
Town Attorney

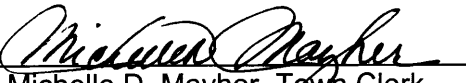
By: 
Michelle D. Mayher, Town Clerk

EXHIBIT (A 1/2)

LAND SURVEY

LOT 2, **BLAKES SUBDIVISION**, ACCORDING TO THE MAP OR PLAT THEREOF ON FILE AND RECORDED IN PLAT BOOK 4, PAGE 44, AND LOTS 10, 11, 12, AND PART OF LOT 13, BLOCK A, **SEAGRAPE SUBDIVISION**, ACCORDING TO THE MAP OR PLAT THEREOF ON FILE AND RECORDED IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT IN PLAT BOOK 4, PAGE 17, ALL IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 13, BLOCK A: THENCE N 68°32'41"W, FOR A DISTANCE OF 67.20 FEET TO THE POINT OF BEGINNING; THENCE N 68°32'41"W, ALONG THE NORTH RIGHT OF WAY LINE OF COTTAGE AVENUE (30' WIDE) FOR A DISTANCE OF 119.95 FEET TO THE SOUTHWESTERLY CORNER OF SAID LOT 10; THENCE N 21°27'19"E, FOR A DISTANCE OF 150.00 FEET, ALONG THE EASTERLY RIGHT-OF-WAY LINE OF CHAPEL STREET, (30' WIDE), FOR A DISTANCE OF 150.00 FEET TO THE NORTHWESTERLY PROPERTY CORNER OF SAID LOT 12; THENCE S 68°32'41" E, ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF ESTERO BOULEVARD (50' WIDE), FOR A DISTANCE OF 160.59 FEET TO THE NORTHEASTERLY CORNER OF SAID LOT 2; THENCE S 00°00'00" E, ALONG THE EAST LINE OF SAID LOT 2, FOR A DISTANCE OF 100.00 FEET TO THE SOUTHEASTERLY CORNER OF SAID LOT 2; THENCE N68°32'41"W, FOR A DISTANCE OF 42.94 FEET; THENCE N 00°00'00"W, FOR A DISTANCE OF 10.45 FEET; THENCE N 72°57'20"W, FOR A DISTANCE OF 27.81 FEET; THENCE S 17°02'40" W, FOR A DISTANCE OF 3.61 FEET; THENCE N 72°57'20"W, FOR A DISTANCE OF 7.68 FEET; THENCE S 17°02'40" W, FOR A DISTANCE OF 60.50 FEET TO THE POINT OF BEGINNING, CONTAINING 23.067 SQUARE FEET, MORE OR LESS.

SUBJECT TO EASEMENTS AND RESTRICTIONS ON FILE IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA

**ATTORNEY'S
REAL ESTATE
LAND SURVEYING
INC.**

1930 PARK MEADOWS DRIVE
SUITE 9
FORT MYERS, FLORIDA
(239) 277-7330
(239) 277-7332 FAX

RECEIVED
JAN 04 2007

COMMUNITY DEVELOPMENT
REC'D SECOND PLAT

Applicant's Legal Checked
by CS 1/5/07

LARRY GARDNER, SURVEYOR AND MAPPER #4294
NOT VALID WITHOUT EMBOSSED SEAL

JOB NUMBER: 05-1430A1

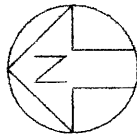
LAND SURVEY

LOT 2, **BLACKSBURG SUBDIVISION**, ACCORDING TO THE MAP OR PLAT THEREOF ON FILE AND RECORDED IN PLAT BOOK 44, PAGE 44. AND LOTS 10, 11, 12, AND PART OF LOT 13, BLOCK A, **SEABRIDGE SUBDIVISION**, ACCORDING TO THE MAP OR PLAT THEREOF ON FILE AND RECORDED IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT IN PLAT BOOK 4, PAGE 17, ALL IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 13, BLOCK "A", THENCE N 68°32'41" W, FOR A DISTANCE OF 67.20 FEET TO THE POINT OF BEGINNING; THENCE N 68°32'41" E, ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF COTTAGE AVENUE (30' WIDE) FOR A DISTANCE OF 18.93 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID LOT 10; THENCE N 21°17'19" E, FOR A DISTANCE OF 95.00 FEET TO THE NORTHEASTERLY CORNER OF SAID LOT 12; THENCE S 68°32'41" E, ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF ESTERLO BOULEVARD (50' WIDE) FOR A DISTANCE OF 160.50 FEET TO THE NORTHEASTLY CORNER OF SAID LOT 2; THENCE S 00°00'00" E, ALONG THE EAST LINE OF SAID LOT 2, FOR A DISTANCE OF 100.00 FEET TO THE SOUTHEASTERLY CORNER OF SAID LOT 2; THENCE N 68°32'41" W, FOR A DISTANCE OF 84.20 FEET TO THE SOUTHEAST CORNER OF SAID LOT 1; THENCE N 00°00'00" E, FOR A DISTANCE OF 45.51 FEET TO THE POINT OF BEGINNING; THENCE S 27°19'45" E, FOR A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING; THENCE N 27°19'45" E, FOR A DISTANCE OF 72.57 FEET TO THE POINT OF BEGINNING; THENCE N 27°19'45" E, FOR A DISTANCE OF 60.50 FEET TO THE POINT OF BEGINNING. CONTAINING 23,067 SQUARE FEET, MORE OR LESS. SUBJECT TO EASEMENTS AND RESTRICTIONS ON FILE IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

THE PROPERTY SHOWN HEREON IS LYING IN ZONE A12
OF THE NATIONAL FLOOD INSURANCE PROGRAM, ELEVATION - 14'

PROPERTY ADDRESS:
2500/2510 ESTERO BOULEVARD
FORT MYERS BEACH, FLORIDA



SCALE 1 INCH = 50 FEET

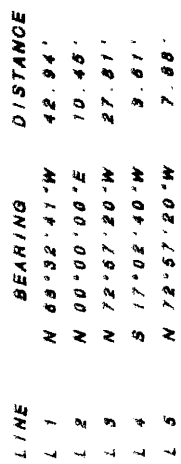
50
Applicant's Legal Checked
by (65) 1/5/8

DATE: AUGUST 1

THIS SURVEY IS HEREBY CERTIFIED AS MEETING THE MINIMUM TECHNICAL STANDARDS AS SET FORTH BY THE FLORIDA BOARD OF SURVEYORS AND MAPPERS PURSUANT TO CHAPTER 177, FLORIDA STATUTES, CHAPTER 427, FLORIDA STATUTES AND CHAPTER 6161, FAC AND IS CORRECT SURVEY TO THE BEST OF MY KNOWLEDGE AND BELIEF. CERTIFIED BY: EUGENE W. HINDS, LICENSED SURVEYOR, NO. 10000. ZONING OR FLOOD HAZARD ENCUMBRANCES: NONE. IF IT BEARS THE SIGNATURE AND THE ORIGINAL EMBOSSED SEAL OF THE FLORIDA LICENSED SURVEYOR AND MAPPER, THIS DRAFTING, SWETCH, PLAT OR MAP IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT VALID. NO COPIES SHALL BE MADE WITHOUT WRITTEN AUTHORIZATION.

L. LARR GARDNER, SURVEYOR AND MAPPER #4294
NOT VALID WITHOUT EMBOSSED SEAL

JOB NUMBER: 05-1430



BENCHMARK
RIM OF MANHOLE
ELEVATION-5.3
NGVD 1929

SURVEYORS NOTES:

- 111FIR - FOUND 1/2" IRON ROD
UNLESS SHOWN OTHERWISE.
2) THE EAST LINE IS ASSUMED TO BEAR AS SHOWN.
3) SIR - SET 1/2" IRON ROD #LB594.
4) ELEVATIONS SHOWN THUS: 4.
REFER TO NGVD 1929 AND ARE
RELATIVE TO BENCHMARK SHOWN.

THIS SURVEY IS CERTIFIED TO:
2500 ESTERO BOULEVARD, L.L.C.,
BANK LEUMI, USA,
RUTHERFORD MULHALL, P.A.,
CHICAGO TITLE INSURANCE

COM

COMMUNITY DEVELOPMENT
RECORDS AND FLOOR

REVISION:

WROTE NEW LEGAL 1-4-07
CERTIFICATIONS 8/29/2005
FILE DISK: AUG 05-
CREW: LEWIS/RICE/RODRIGUEZ

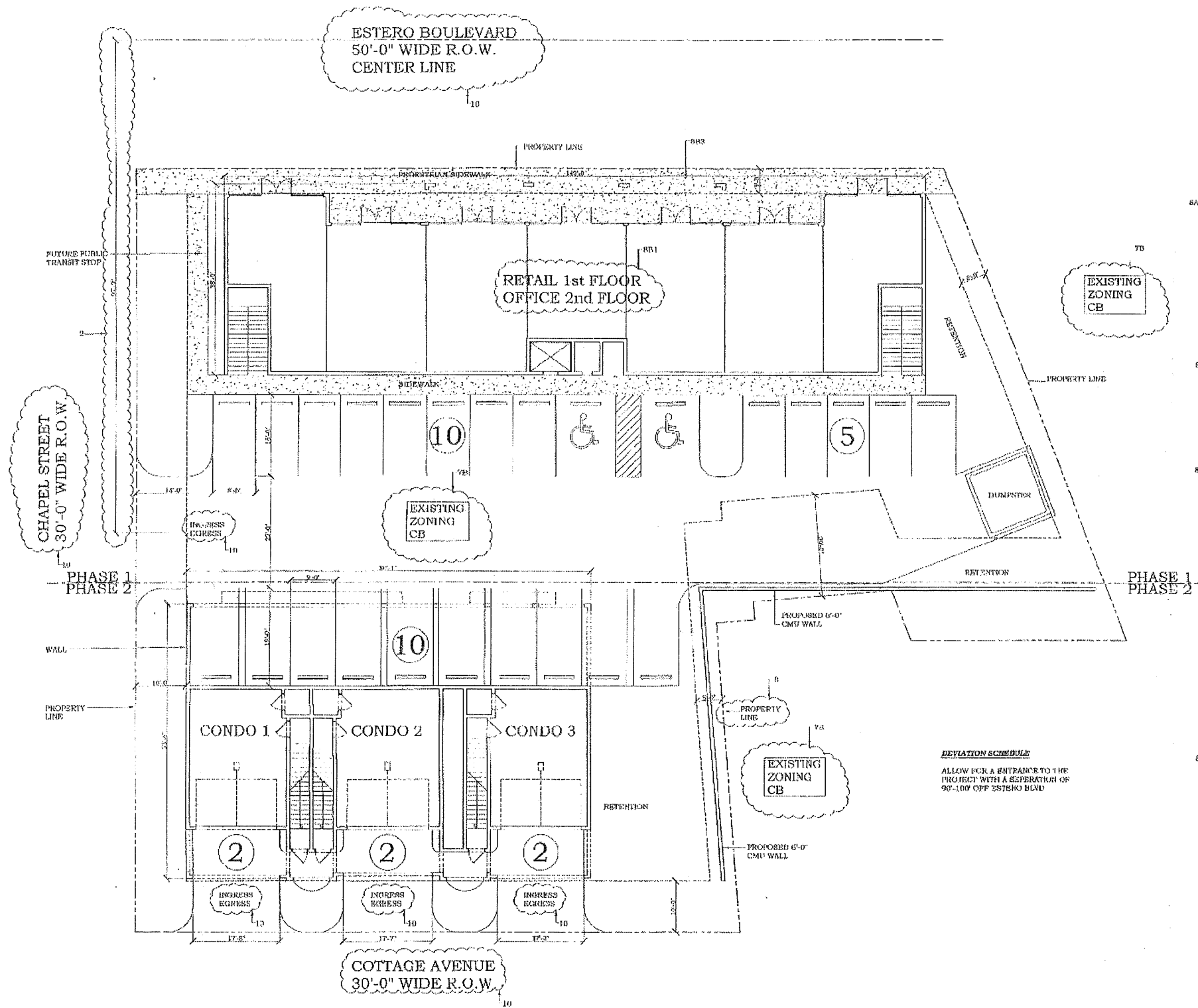
ATTORNEY'S
REAL ESTATE
LAND SURVEYING
INC.

1930 PARK MEADOWS DRIVE
SUITE 9
FORT MYERS, FLORIDA
(239) 277-7330
(239) 277-7332 FAX

1
BENCHMARK
EIM OF MANHOLE
LEVATION-6.1

POINT OF BEGINNING

~~POINT OF COMMENCEMENT~~



KEY

PROPERTY LINE
SETRASK LINE
PARKING SPACES
SIDEWALKS

SITE DATA
COMMERCIAL BLVD
TOTAL SITE SQ FT 23,067 SQ FT

DEVELOPMENT REGULATIONS
FRONT SETBACK (ESTERO BLVD) 5'-0"
REAR SETBACK (CHATEL STREET) 10'-0"
SIDE SETBACK (SOUTH SIDE) 5'-0"
REAR SETBACK (NORTH SIDE) 10'-0"
REAR SETBACK (ESTERO BLVD) 20'-0"

8A2 LOT COVERAGE (P.A.R.) 1.0
BUILDING HEIGHT MAX 40'-0" ABOVE FLOOD
MAX STORIES 5

F.A.R. (FLOOR AREA RATIO) CALC
TOTAL LAND AREA 23,067 SQ FT
FIRST FLOOR RETAIL 5,189 SQ FT
SECOND FLOOR RETAIL 4,793 SQ FT
FIRST FLOOR CONDO 4,244 SQ FT
SECOND FLOOR CONDO 4,411 SQ FT
THIRD FLOOR CONDO 4,420 SQ FT
TOTAL FLOOR AREA 23,067 SQ FT

8A6 FLOOR AREA RATIO 1
OPEN SPACE CALCULATIONS 17.1%

PARKING CALCULATIONS
90 OFFICE (2 PER 1000) 10
RETAIL (3 PER 1000) 15
MULTIFAMILY (2 PER UNIT) 5
SPACES REQUIRED 31
SPACES PROVIDED 31

8B5 **SCHEDULE OF USE CHART**
RESIDENTIAL
MULTIFAMILY
LIVE WORK (34-1723)
LODGING
RENTAL OF ANY UNIT FOR OVER A WEEK
OFFICE
ADMINISTRATIVE OFFICES
COMMERCIAL
RETAIL STORE
CIVIL
ESSENTIAL SERVICES
DAYCARE
CULTURAL FACILITIES

GENERAL LANDSCAPE REQUIREMENTS
1 TREE PER 3,000 SF DEVELOPMENT AREA (23,067 / 3,000) 8 TREES REQUIRED

TREE CREDIT NONE

PARKING LANDSCAPE REQUIREMENTS
10% INTERNAL LANDSCAPING REQUIRED (6,421 x 10%)
1 TREE PER 250 SQ FT OF INTERNAL AREA 612.1 SQ FT
3 TREES REQUIRED

8A4 **PROPERTY BUFFERS**
NORTH PROPERTY LINE
COMMERCIAL BLVD TO R.O.W. NO BUFFER REQUIRED
SOUTH PROPERTY LINE
COMMERCIAL BLVD TO COMMERCIAL BLVD NO BUFFER REQUIRED
EAST PROPERTY LINE
COMMERCIAL BLVD TO R.O.W. NO BUFFER REQUIRED
WEST PROPERTY LINE
COMMERCIAL BLVD TO R.O.W. (NORTHERN) NO BUFFER REQUIRED
COMMERCIAL BLVD TO R.O.W. (SOUTHERN) NO BUFFER REQUIRED

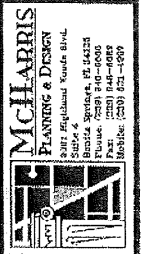
3 **GENERAL BUFFER NOTES**
THE QUALITY OF ALL PLANT MATERIAL WILL MEET THE STANDARDS FOR FLORIDA GRADE #1 OR BETTER.
NO BUFFER PLANT MATERIAL SHALL BE INSTALLED IN BASEMENT.
THE TREES SHALL BE A MINIMUM OF 10 FEET IN HEIGHT WITH TWO INCH TRUNK DIAMETER MEASURED AT ONE FOOT ABOVE GROUND AND A MINIMUM CANOPY OF 4 FEET AT TIME OF INSTALLATION.
A MINIMUM OF 75% OF TREES REQUIRED TO MEET CODE SHALL BE INDIGENOUS NATIVE VARIETIES.
A MINIMUM OF 50% OF SHRUBS REQUIRED TO MEET CODE SHALL BE INDIGENOUS NATIVE VARIETIES.
ANY AND ALL EXOTIC VEGETATION (PER LEE COUNTY & THE TOWN OF FORT MYERS BEACH) ON THE PARCEL SHALL BE COMPLETELY REMOVED AND DISPOSED OF OFF SITE BY CONTRACTOR. THE SITE SHALL BE MAINTAINED FREE OF INDIGENOUS EXOTIC VEGETATION IN PERMANENCY.

BUILDING EDGE PLANTINGS
REQUIRED TO BE INSTALLED ALONG & LEAST 5% OF THE LENGTH OF ALL WALK THAT FACE ON SITE PARKING WITH MORE THAN 25 PARKING SPACES.
MINIMUM WIDTH OF 5'-0"
MINIMUM OF 50% COVERAGE AT TIME OF PLANTING NONE REQUIRED

MASTER CONCEPT PLAN (A)

SCALE: 3/32"=1'-0"

001 2006-00033

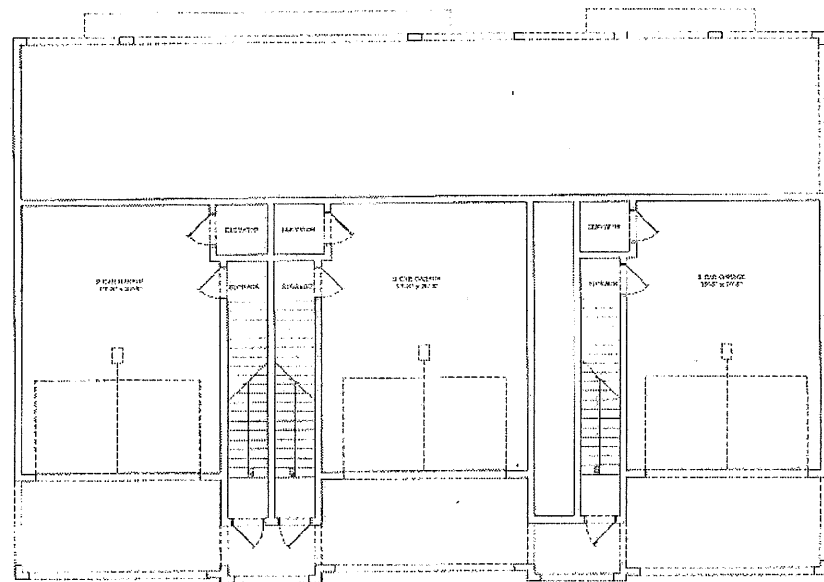


McHARRIS PLANNING & DESIGN
3001 Regalway, Suite 200
Fort Myers, FL 33901
Phone: 789-740-0000
Fax: 789-740-0001
Mobile: (202) 421-4909

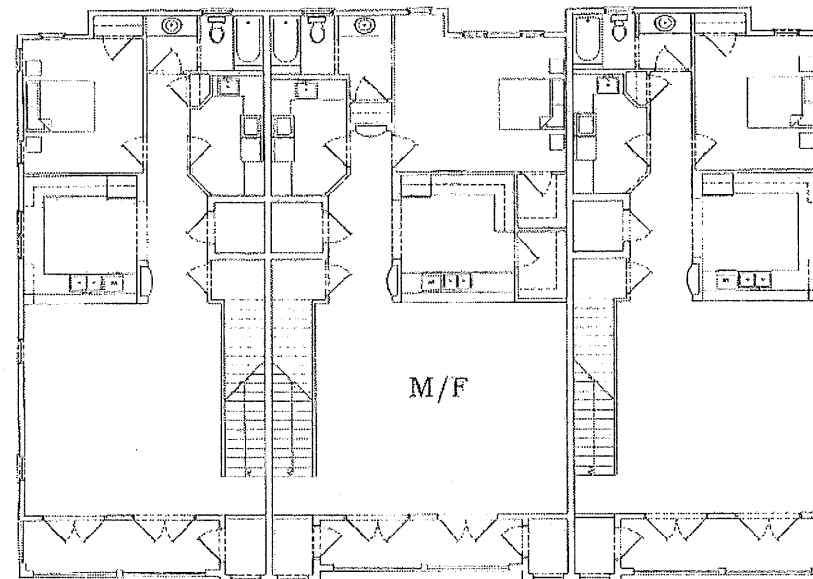
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1	Site Plan	Set	1	
2	Site Plan	Set	1	
3	Site Plan	Set	1	
4	Site Plan	Set	1	
5	Site Plan	Set	1	

2500 ESTERO CONCEPT A
2500 ESTERO BLVD.
FORT MYERS BEACH, FL

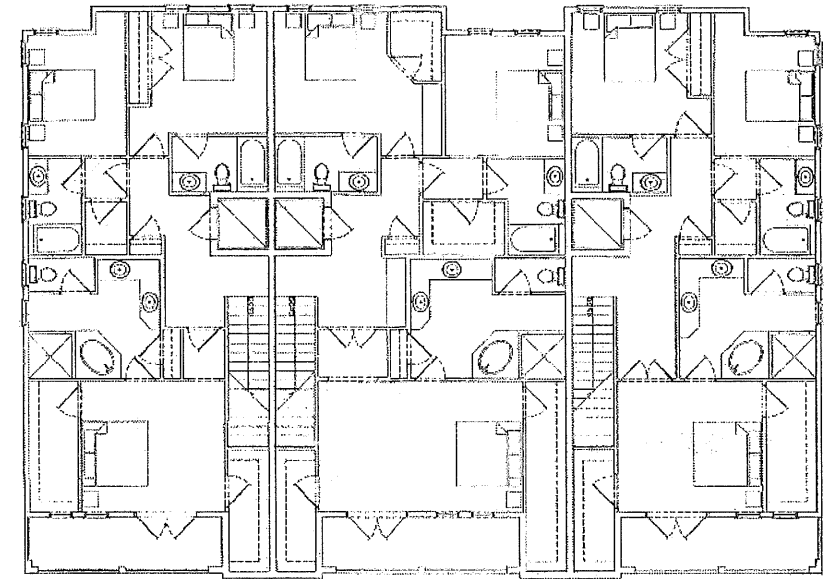
Check By: J. McHARRIS
Drawn By: J. McHARRIS
Scale: AS NOTED
Project No: CS-0024
Date: 01/26/06
A-1.1



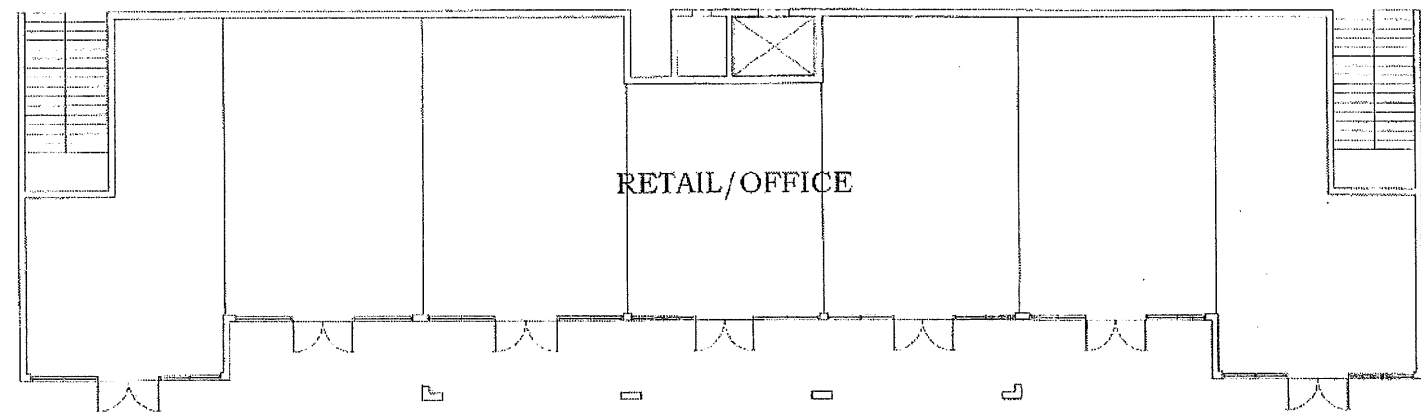
CONCEPT 1st FLOOR PLAN (A)
SCALE: 1/8"=1'-0"



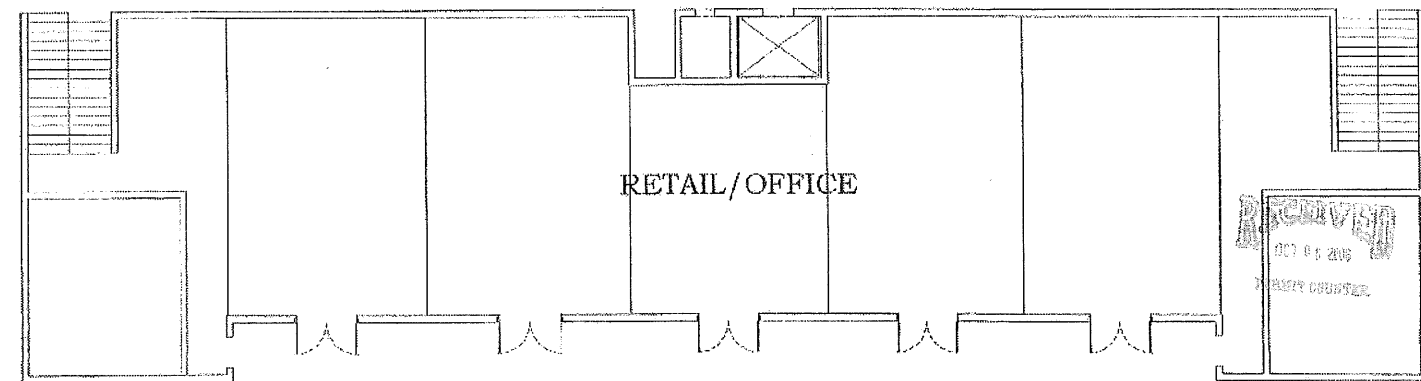
CONCEPT 2nd FLOOR PLAN (A)
SCALE: 1/8"=1'-0"



CONCEPT 3rd FLOOR PLAN (A)
SCALE: 1/8"=1'-0"



CONCEPT 1st FLOOR PLAN (A)
SCALE: 1/8"=1'-0"



CONCEPT 2nd FLOOR PLAN (A)
SCALE: 1/8"=1'-0" DCI 2006-00033



2500 ESTERO BLVD.
FORT MYERS BEACH, FL 33908
PHONE: (888) 248-4888
FAX: (888) 248-4888
WWW.MCHARRISDESIGN.COM

No.	Revised	Date	By	For
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				

2500 ESTERO BLVD.
CONCEPT A
2500 ESTERO BLVD.
FORT MYERS BEACH, FL 33908

Drawn by: JUDY MCHARRIS
Reviewed by: CYNTHIA GOODWIN
Date: 03/01/06
Title: A2-00033
Project No.: 05-0024

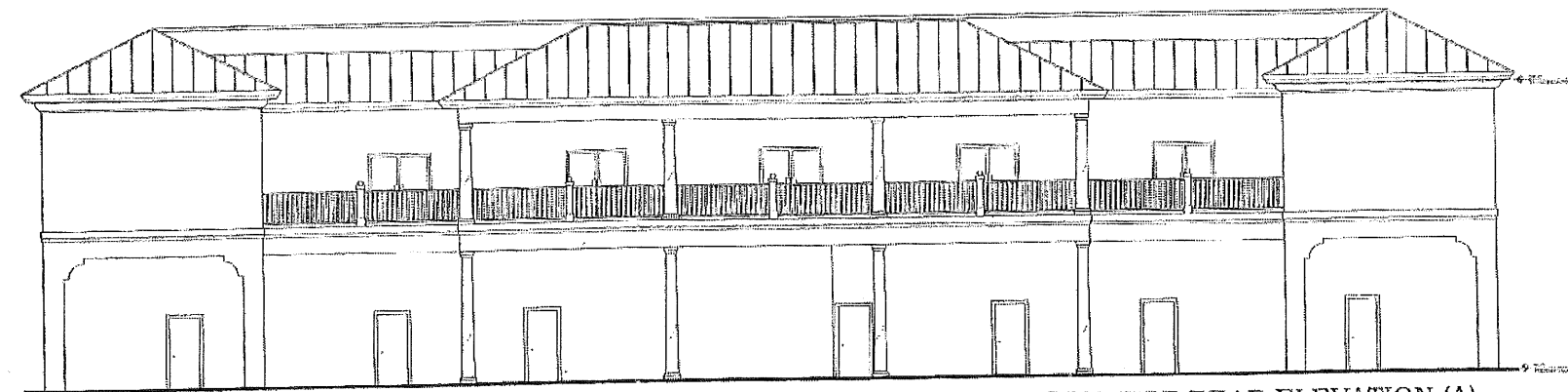
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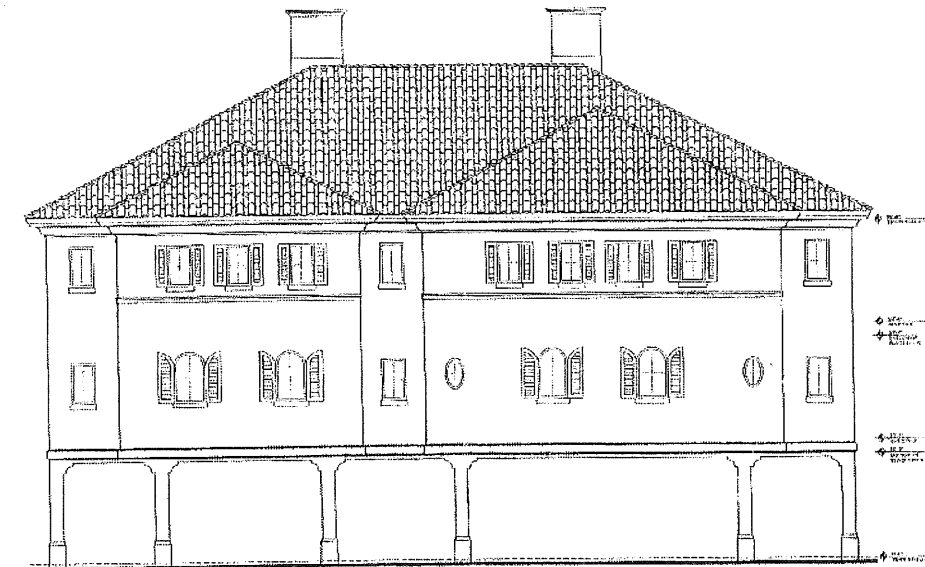
CONCEPT FRONT ELEVATION (A)
SCALE: 1/8"=1'-0"



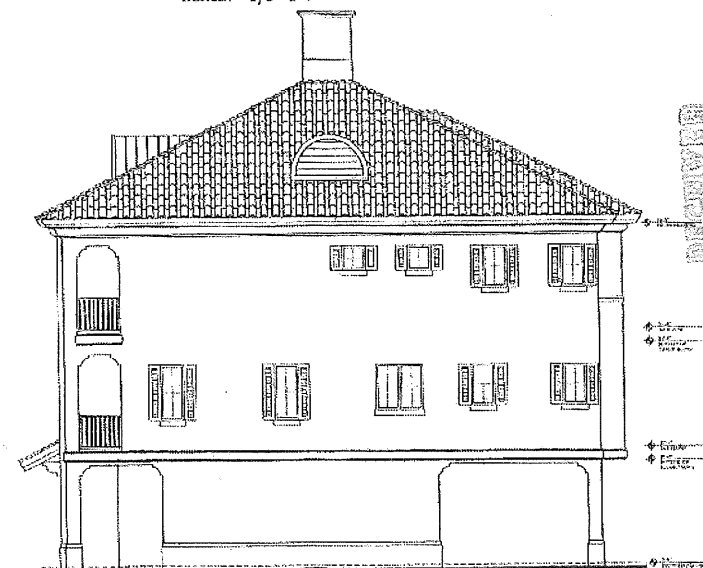
CONCEPT FRONT ELEVATION (A)
SCALE: 1/8"=1'-0"



CONCEPT REAR ELEVATION (A)
SCALE: 1/8"=1'-0"



CONCEPT REAR ELEVATION (A)
SCALE: 1/8"=1'-0"



CONCEPT SIDE ELEVATION (A)
SCALE: 1/8"=1'-0"



THESE PLANS WERE PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND I AM A LICENSED PROFESSIONAL ARCHITECT IN THE STATE OF FLORIDA. I CERTIFY THAT I AM THE DESIGNER OF THESE PLANS AND THAT I AM NOT PROVIDING THESE PLANS TO ANY OTHER PARTY WITHOUT MY WRITTEN CONSENT.

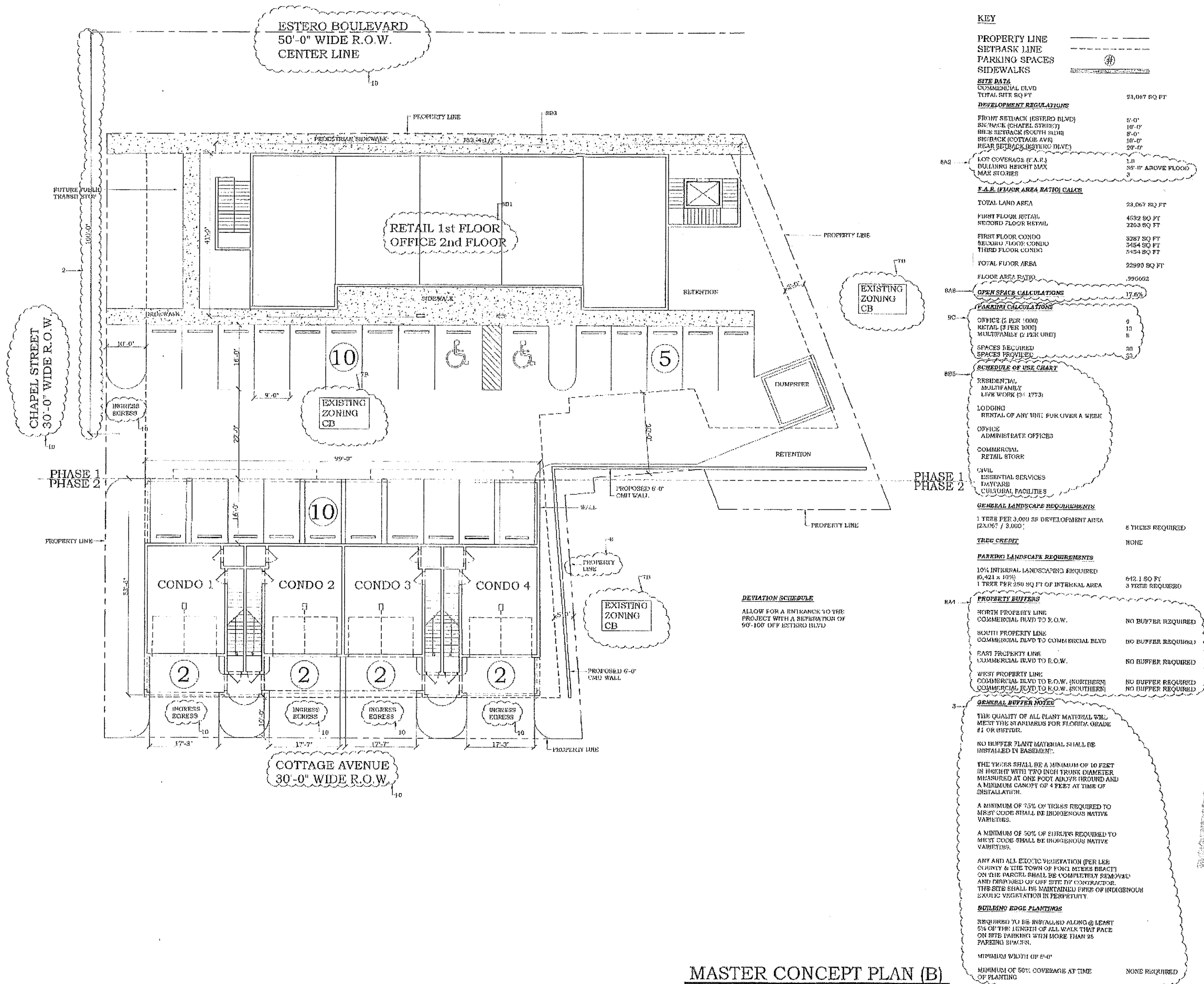
No.	Date	By	Scale
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2500 ESTERO
CONCEPT A
2500 ESTERO BLVD.
FORT MEERS BEACH, FL

Project Name and Address
2500 ESTERO BLVD.
FORT MEERS BEACH, FL
Project No. CS-0024

Architect
JOE MCHARRIS
Architect No. 10000
Scale
AS NOTED
Project No.
CS-0024

Sheet No.
A-3.1

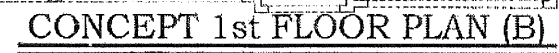
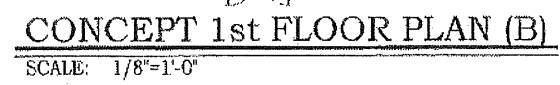


MASTER CONCEPT PLAN (B)

SCALE: 3/32"=1'-0"

DCI 2006-00033

McHARRIS PLANNING & DESIGN 8001 Highland Trade Bldg. Suite 100 Fort Myers, FL 33905 Phone: (239) 744-4882 Fax: (239) 744-4889 Mobile: (239) 744-4883	
Project No. 2500 ESTERO BLVD. CONCEPT B 2500 ESTERO BLVD. FORT MYERS BEACH, FL	
Check by: JULE REINHARDT Drawn by: JAMES H. HARRIS Scale: AS NOTED Project No. CS 0024	Date: 05-14-04 Date: 05-14-04 Date: 05-14-04 Date: 05-14-04
A-1.1	



A-2.1

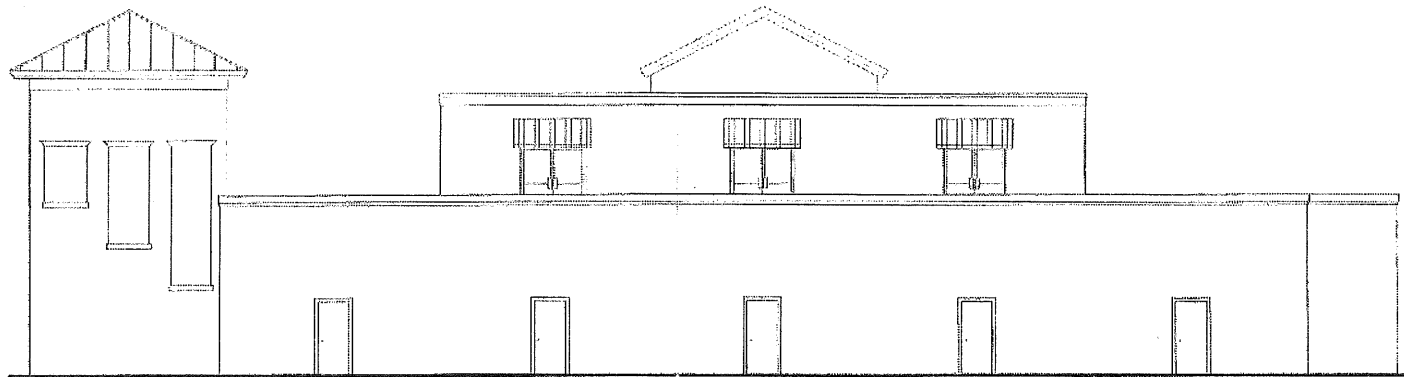
101-2006-00033



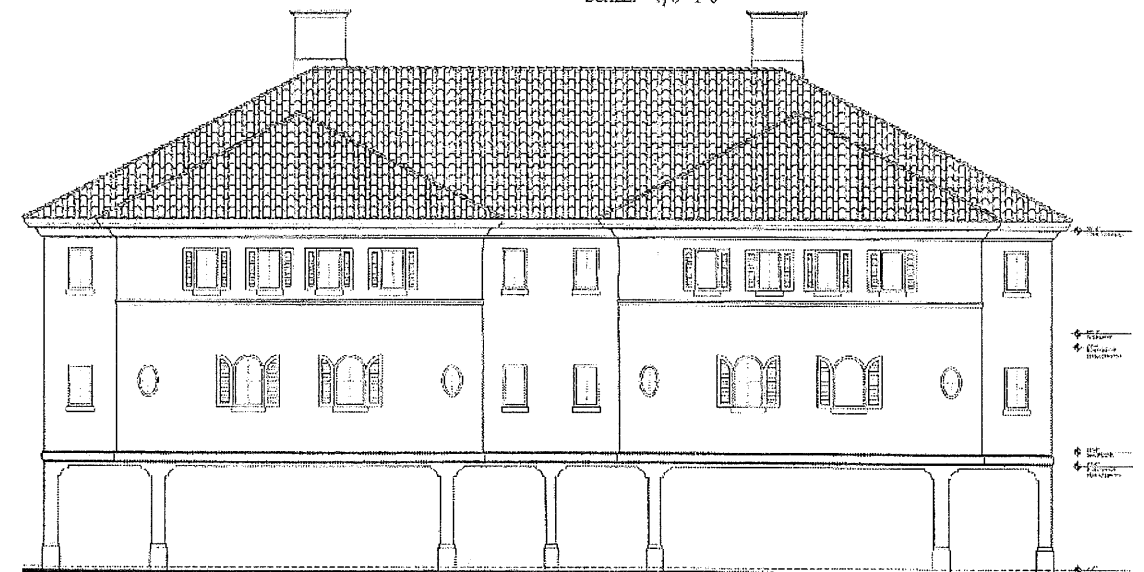
CONCEPT FRONT ELEVATION (B)
SCALE: 1/8"=1'-0"



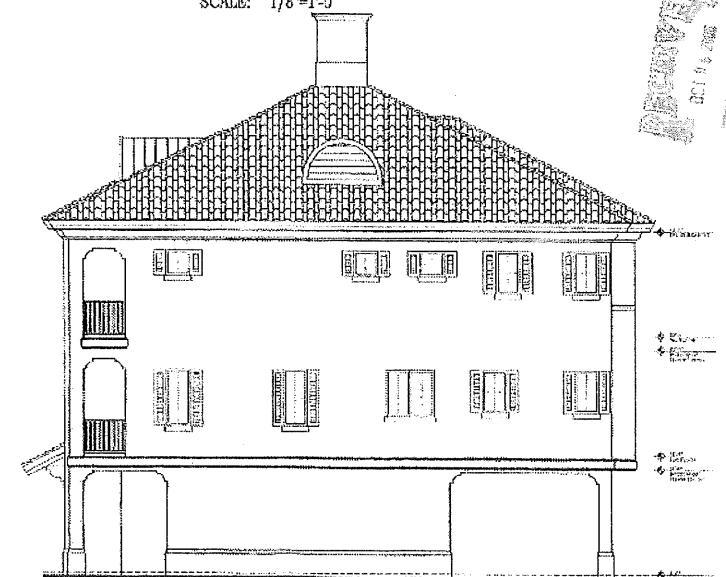
CONCEPT FRONT ELEVATION (B)
SCALE: 1/8"=1'-0"



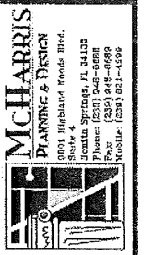
CONCEPT REAR ELEVATION (B)
SCALE: 1/8"=1'-0"



CONCEPT REAR ELEVATION (B)
SCALE: 1/8"=1'-0"



CONCEPT SIDE ELEVATION (B)
SCALE: 1/8"=1'-0"



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Rev.	Description	By	Date
1	ISSUED FOR PERMIT		
2	REVISIONS		
3			
4			

2500 ESTERO
CONCEPT B
2500 ESTERO BLVD.
FORT MYERS BEACH, FL

Check by: JOE M. BAEZ
Reviewed: CERO GONZALEZ
Approved: AD KUPFER
Drawing No: CS-0024

Sheet No: A-3.1

EMPIRE HOLDING CORPORATION
FORT MYERS BEACH, FLORIDA
BOUNDARY SURVEY

D.U.E.	DRAINAGE/UTILITY EASEMENT
IRR	IRRIGATION
WPP	WOOD POWER POLE
GUY	GUY ANCHOR WITH CABLE
CHP	OVERHEAD POWER
MBX	MAIL BOX
LP	LIGHT POLE
CB	CATCH BASIN
CONC	CONCRETE
MON	MONUMENT

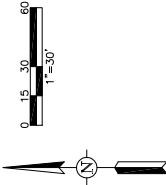
DATA COLLECTION FORM

MILLER GEOSPATIAL, LLC
YOUR LAND SURVEYING PARTNER

SURVEYOR	DGM
DRAWING BY	DGM
APPROVING	CAPE CORAL
DATE	10/24/2023

BOUNDARY SURVEY

PROJECT:	19-46-24-W3-01204-0100 2500 ESTERO BLVD. LOTS 10, 11, 12 & PART 13 SEAGRAPE SUBDIVISION	19-46-24-W3-01204-013A 2443 COTTAGE AVE. PART LOT 13 SEAGRAPE SUBDIVISION	19-46-24-W3-01302-000 2510 ESTERO BLVD LOT 2, BLAKE'S SUBDIVISION	19-46-24-W3-01307-0000 2518 ESTERO BLVD. LOT 1, BLAKE'S SUBDIVISION
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LEGAL DESCRIPTION:

LOTS 10-15, MEADOWS SUBDIVISION (PLAT BOOK 4, PAGE 17) AND LOTS 1 & 2, BLAKEY SUBDIVISION (PLAT BOOK 4, PAGE 44), ALL INFORMATION FROM THE OFFICIAL RECORDS OFFICE OF THE CLERK OF CIRCUIT COURT OF LEE COUNTY, FLORIDA.

SURVEYOR NOTES:

* BEARINGS SHOWN HEREON ARE GRID BEARINGS BASED UPON THE NORTH AMERICAN DATUM OF 1983. 1990 ADJUSTMENT (NAD83) FOR FLORIDA, EAST ZONE. DISTANCES SHOWN ARE GROUND DISTANCES MEASURED IN FEET. COORDINATES SHOWN ARE GRID COORDINATES. DATA BASED UPON DEPARTMENT OF NATURAL RESOURCES CONTROL MONUMENTS 64-18-426 AND 64-18-427. HAVING NAD83 GRID COORDINATES AS SHOWN.

** NO UNDERGROUND IMPROVEMENTS OR FOUNDATIONS WERE LOCATED UNDER THE SCOPE OF THIS SURVEY.

- NO UNDERGROUND IMPROVEMENTS OR COLLISIONS WERE COATED UNDER THE SCORE OF THIS SURVEY.

ELEVATIONS SHOWN HEREIN ARE REFERENCED TO THE NORTH AMERICAN VERTICAL DATUM OF 1980 AND 1985. ELEVATIONS ARE BASED UPON TESTS TO THE TRIPLE RISES THE MINIMUM CITY GLOBAL POSITIONING SYSTEM (GPS) CONTROL NETWORK.

DATES NOVEMBER 17, 2002, ZONE 18N, SHOW HIDDEN WERE SCALED FROM THE INDICATED J.P.M. MAP PANEL.

DATES NOVEMBER 17, 2002, ZONE 18N, SHOW HIDDEN WERE SCALED FROM THE INDICATED J.P.M. MAP PANEL.

- BOUNDARY INFORMATION SHOWN HEREIN IS BASED UPON THE RECORD PLAT AND LEGAL DESCRIPTION PROVIDED. NO SEARCH OF THE PUBLIC RECORD WAS PERFORMED BY THIS SURVEYOR. THERE MAY BE OTHER SETBACKS MAJOR DO NOT KNOWN TO

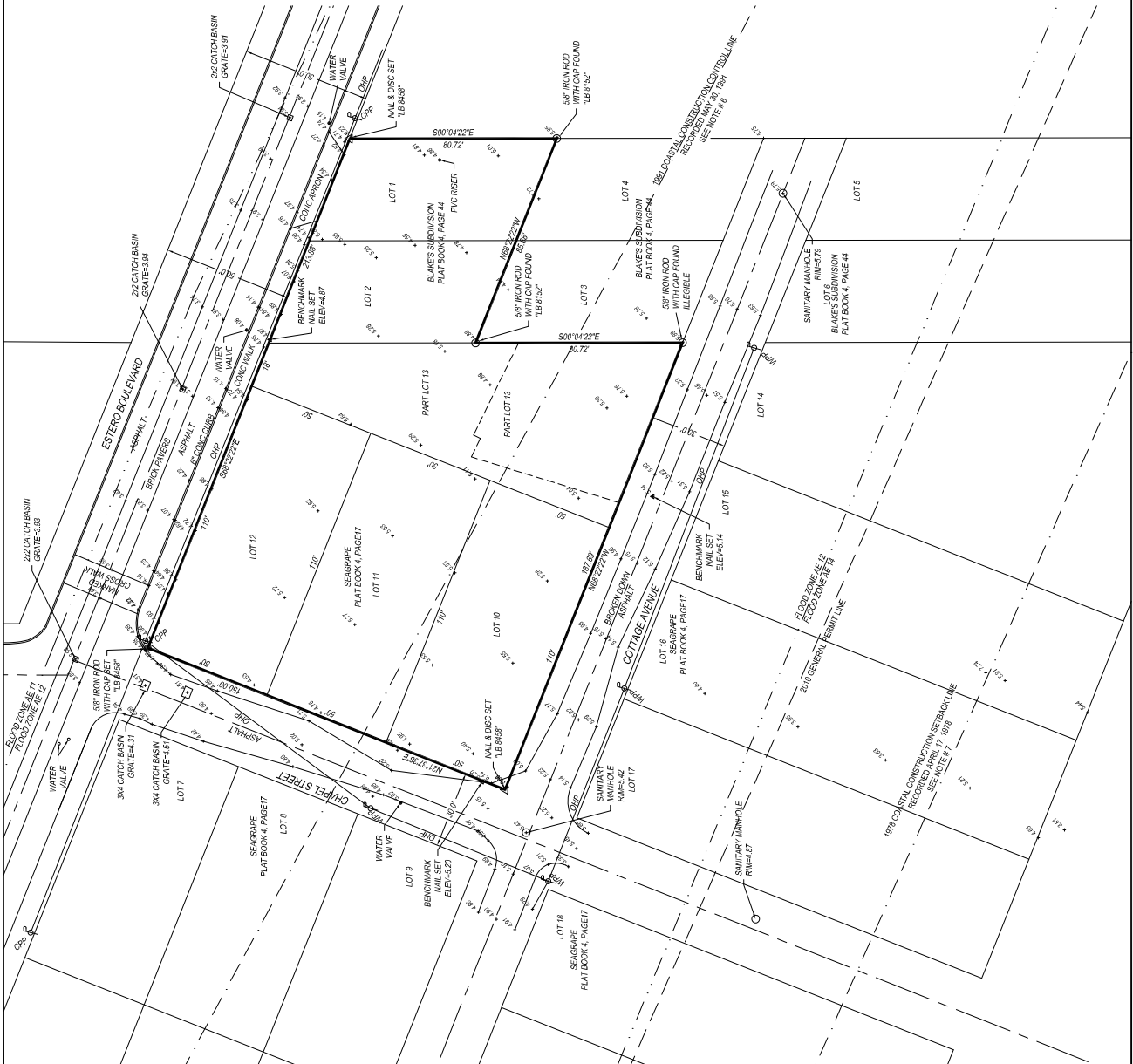
- THE 1991 COASTAL CONSTRUCTION CONTROL LINE SHOWN HEREON IS AS RECORDED IN PLAT BOOK 48, PAGE 30, AND FILED IN OFFICIAL RECORDS BOOK 2224, PAGES 1010 THROUGH 1041 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, ON MAY 30, 1991.

- THE 1978 COASTAL CONSTRUCTION SETBACK LINE SHOWN HEREON IS AS RECORDED BY ORDINANCE 16-3 RECORDED APRIL 17, 1978 IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA
- MEAN FISH WATER ELEVATION OF 0.26' (NAVD 1988) IS BASED ON A DETERMINATION OF THE FLORIDA DEPARTMENT OF

- THIS TIDAL WATER SURVEY COMPLIES WITH CHAPTER 177, PART III, FLORIDA STATUTES.

• THIS PARCEL CONTAINS 0.691 ACRES, OR 30,118 SQ. FT., MORE OR LESS.

- THIS PARCEL CONTAINS 0.6991 ACRES, OR 30,118 SQ. FT., MORE OR LESS.



HEREBY CERTIFY TO THE BEST OF MY KNOWLEDGE THAT THIS SURVEY OF THE HERON DESIGNATED LANDS IS A TRUE REPRESENTATION OF THE FIELD SURVEY MADE UNDER MY DIRECTION AND CONFORMS TO THE STANDARDS OF PRACTICE FOR PROFESSIONAL SURVEYORS AND MAPMAKERS AS OUTLINED IN

CERTIFIED TO:
EMPLOYEE HOLDING CORPORATION



DONALD G. MILLER, P.E.M.
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 6674

2500 Estero Blvd.



March 8, 2024

Air Photos: 2023 Hi-Res (3 inch)

HospitalLocations	School Locations
	
Library Locations	CCC_Parks

--- County Boundary
 Major Roads
 US 41
 Other Highways
 Other Roads
 I - 75

Parcels Near

1:1,600

0 75 150 300 ft

0 20 40 80 m

This map is NOT a legal land survey and should not be used or relied upon as such. No warranties, express or implied, are provided with the data, use, accuracy or interpretation.



Business Impact Estimate

This form should be included in the agenda packet for the item under which the proposed ordinance is to be considered and must be posted on the Town's website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference:

AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/ DENYING AN AMENDMENT TO THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING, PREVIOUSLY APPROVED BY RESOLUTION 07-28 FOR PARCELS LOCATED AT 2500 AND 2510 ESTERO BLVD., GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0120A.0100; 19-46-24-W3-01302.0000, TO ADD PARCELS 2518 ESTERO BLVD. AND 2543 COTTAGE AVENUE, GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-01301.0000; 19-46-24-W3-0120A.013A IN FORT MYERS BEACH;; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

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

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☒ The proposed ordinance is enacted to implement the following:

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

- a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
- b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
- c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or
- d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

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

1. Summary of the proposed ordinance (must include a statement of the public purpose, such as serving the public health, safety, morals and welfare):

The proposed ordinance is to allow an amendment to a commercial planned development proposed by the owner of the property.

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

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

There are unlikely to be direct compliance costs associated with the ordinance.

The ordinance does not impose any new charge or fee on businesses.

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

The Town will not likely incur additional costs.

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

One property owner will be impacted by this proposed ordinance.

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

[You may wish to include in this section the methodology or data used to prepare the Business Impact Estimate. For example: [Town/] staff solicited comments from businesses in the [Town] as to the potential impact of the proposed ordinance by contacting the chamber of commerce, social media posting, direct mail or direct email, posting on [own] website, public workshop, etc. You may also wish to include efforts made to reduce the potential fiscal impact on businesses. You may also wish to state here that the proposed ordinance is a generally applicable ordinance that applies to all persons similarly situated (individuals as well as businesses) and, therefore, the proposed ordinance does not affect only businesses).

1. **Request:**

Meeting Date: April 7, 2025

1. Second reading and public hearing of and ordinance entitled: AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING WITH CONDITIONS THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 2500, 2510 AND 2518 ESTERO BLVD. AND 2543 COTTAGE AVENUE, GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0120A.0100; 19-46-24-W3-01302.0000; 19-46-24-W3-01301.0000; 19-46-24-W3-0120A.013A IN FORT MYERS BEACH, TO ALLOW A MOBILE VENDOR/FOOD TRUCK PARK WITH SHARED PARKING; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

2. Request from Pelican Watch Condominium Association, Thomas F. and Debra Danford as managers and members of Coastal Cottages LLC, and Edwin T. French III, to have Intervenor Status.

Why the action is necessary:

The Town Council makes final decisions on rezoning requests.

What the action accomplishes:

Approval of the CPD will allow amendments to the existing CPD including the use of mobile/transient vendors for a food truck park.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

5. **Background:**

Applicant is requesting to amend the existing CPD RES#07-28 to replace the existing Schedule of Uses, Master Concept Plan and Conditions to allow for development of a food truck park with outdoor seating, consumption on premises (COP), and a commercial parking lot. This action will replace the previously approved "Option A" MCP for the CPD. This item was heard by the LPA on January 9th and was continued. The LPA voted 3-3 to deny the application, based on the goals and objectives of the Comprehensive Plan. The LPA then voted 3-3 to approve with conditions.

One member was absent from the meeting. As there was no majority of opinion the LPA choose the continue the meeting to February 11th.

Following the January 9th meeting the applicant made several changes to the MCP and list of conditions in order to address some of the concerns expressed by neighbors. The configuration of the service structure was situated closer to the single-family homes to better block noise.

The building was slightly increased in size to accommodate food service as well as beverage service. There is also an option to locate the comfort station closer to the parking lot for easier public access.

The LPA then reviewed the application with changes made to the MCP and approval conditions on February 11th, 2025. The LPA voted 4-3 to recommend the approval with conditions of the application. At that meeting, the applicant agreed that the hours of the mobile vending/food truck park will be 7am to 9pm with the commercial parking operating on the same schedule. Outdoor entertainment will end at 8pm. The full list of recommended conditions is included as an exhibit of the proposed ordinance.

At the March 3rd Town Council meeting, the request was heard for a 1st reading. Mayor Allers made a motion to move the request to a second reading. The motion was seconded by Councilperson Safford and was approved unanimously by the Town Council.

Following the 1st Town Council meeting the applicant revised the Master Concept Plan (altered buffers; increased structure size), Schedule of Deviations (Chapel St buffer deviations to accommodate TC request) and revised Proposed Conditions list. These new items have been included in this agenda packet. The Ordinance has been amended to include the additional deviation.

A separate request to expand the previously approved CPD boundaries to include 2518 Estero and 2543 Cottage Avenue was also moved to second reading by a unanimous vote of the Town Council.

Attachments:

1. Draft Ordinance 25-01 Estero Blvd Food Truck Park with 7 deviations
2. Deviations Request revised per TC comments
3. Applicant Proposed Conditions revised per TC comments
4. Staff Report 2500 Estero 3.20.25
5. Property Survey
6. Exhibit A: 07-28, Resolution 2500 Estero
7. Exhibit B: Master Concept Plan and Schedule of Uses
8. Exhibit B: Revised MCP per 1st TC comments
9. Exhibit C: Application
10. Exhibit D - Applicant Narrative
11. Exhibit E: Parking Analysis
12. Exhibit F: Revised Deviations Request from comment made at 3.3.35 Town Council Hearing
13. 2500 Estero Postcards
14. business-impact-estimate 2500 estero
15. 4.07.2025 Agenda Packet Docs in Opposition to CPD_Food Truck Park Case Nos. DCI Rezoning 20240137.1 and 2024137.2
16. KOB-CFC to Town of Fort Myers Beach Regarding Empire - Pelican Watch
17. KOB CFC to Town of Fort Myers Beach Regarding Affected - Pelican Watch

Financial Impact:

Unknown

6. Alternative Action

Approve with Conditions

7. Management Recommendations:

8. Recommended Approval:

Judith Frankel, Principal Planner
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 3/19/2025
Approved - 3/20/2025
Approved - 3/20/2025
Approved - 3/25/2025
Final Approval - 3/25/2025

ORDINANCE 25-01

AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING AMENDMENT WITH DEVIATIONS FOR THE PROPERTY LOCATED AT 2500, 2510 AND 2518 ESTERO BLVD. AND 2543 COTTAGE AVENUE, GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0120A.0100; 19-46-24-W3-01302.0000; 19-46-24-W3-01301.0000; 19-46-24-W3-0120A.013A IN FORT MYERS BEACH, TO ALLOW A MOBILE VENDOR/FOOD TRUCK PARK WITH SHARED PARKING; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, Empire Holding Corp. an Indiana Corporation as Trustee for Ann Trust, the owner, and The Neighborhood Company, as agents for the property located at 2500/2510/2518 Estero Blvd. & 2543 Cottage Ave., Ft Myers Beach, FL 33931, parcels generally identified as STRAP numbers 19-46-24-W3-0120A.0100; 19-46-24-W3-01302.0000; 19-46-24-W3-01301.0000; 19-46-24-W3-0120A.013A in the Town of Fort Myers Beach, filed applications to rezone the property from the CPD adopted in Resolution 07-28 with the expanded boundaries as adopted in Ordinance 25-xx, to a Mobile Vending Park with a Schedule of Uses and corresponding Master Concept Plan (MCP) with certain deviations to the Land Development Code (LDC) to include the use of Food Truck Park and Shared Parking Lot; and

WHEREAS, the subject property is a combination of four parcels located in the Boulevard Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on January 9th, 2025. One LPA member was absent and the LPA continued the hearing to February 11, 2025 due to a tie vote on a motion to approve the request with conditions and a tie vote on a motion to deny the request based on incompatibility with the neighborhood. ; and

WHEREAS, at the February 11th, 2025 Pelican Watch Condominium Association, Thomas F. and Debra Danford as managers and members of Coastal Cottages LLC, and Edwin T. French III, asked the LPA to grant them intervenor status, which was granted, and the LPA thereafter gave full and complete consideration of the request, recommendations by staff, the

documents in the record, and the testimony of all interested persons, including the intervenors as required by Section 34-85 of the Town Land Development Code; and

WHEREAS, at the February 11th, 2025 public hearing, the LPA found that the request is consistent with the comprehensive plan and the requirements of the LDC and voted to recommend approval with conditions; and

WHEREAS, on March 3rd, 2025 the Town Council received a request from Pelican Watch Condominium Association, Thomas F. and Debra Danford as managers and members of Coastal Cottages LLC, and Edwin T. French III, for intervenor status, which was granted, and thereafter held a first reading of the proposed Ordinance, with consideration given to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, including the intervenors, as required by Section 34-85 of the LDC; and

WHEREAS, the Town Council voted to have a second reading of the proposed Ordinance and a public hearing on this matter was advertised in the Fort Myers News-Press more than 10 days prior to the Town Council on March 15th, 2025; and

WHEREAS, at the April 7th, 2025 public hearing, the Town Council gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, including the intervenors, as required by Fort Myers Beach Land Development Code (LDC) Section 34- 85; and

WHEREAS, the Applicant has resolved and is current on any outstanding fees associated with notice, advertisement, and consulting services required by the Town; and

WHEREAS, a Business Impact Estimate has been prepared and is published on the Town's website; and

WHEREAS, with the following terms, conditions, and requirements which the LPA finds to be in the public health, safety, and welfare, all of which are in compliance with the comprehensive plan and the Land Development Code; and

WHEREAS, Exhibit B provides the Master Concept Plan and the schedule of uses for this CPD to be used during the permitting process; and

WHEREAS, Exhibit A provides the conditions of approval to be used during the permitting process; and

WHEREAS, the Town Council finds that this request to rezone the property from the CPD adopted in Resolution 07-28 to CPD with Master Concept Plan with six deviations to the LDC in order to develop a Mobile Vendor Park with a Shared Parking Lot; and

WHEREAS, the requested deviations from the LDC include:

Deviation #1

Relief from Section 10-285 that requires driveways to be located at least 250 feet from the centerline of a local street such as Chapel Street, to allow a distance of 100 feet from Estero Boulevard. Chapel Street is a local street that is maintained by the Town of Fort Myers Beach. The previous development on the site used this driveway as an access point and the proposed development will continue to use this driveway. The applicant is unable to meet the 250-foot separation distance, therefore the Town Council APPROVES this application with a condition that the property owner voluntarily donate a 5 foot easement along Estero Boulevard to the Town of Fort Myers Beach for roadway, utility, drainage and reasonably related purposes.

Deviation #2

Relief from LDC Section 10-285 that requires driveways to be located at least 250 feet from the centerline of the intersection of Estero Boulevard and Chapel Street and the driveway to Pelican Watch Condominiums. This will allow the existing driveway located on Estero Boulevard to remain approximately 210 feet from the Chapel Street/Estero intersection and 150 feet from the existing driveway to Pelican Watch Condominiums.

Deviation #3

Relief from LDC Section 34-706(d) which states that existing driveway and parking spaces shall be relocated from Estero Boulevard to allow for the existing access point to remain from Estero Boulevard into the property.

Deviation #4

Relief from the LDC Section 34-706(a) which requires that off-street parking lots be placed in side or rear yards. This deviation will allow the parking lot to be located along Chapel Street between Estero Boulevard and Cottage Avenue.

Deviation #5

Relief from LDC Section 34-2017, which requires high turnover parking lots to have a paved surface to allow for a crushed shell or lime rock surface.

Deviation #6

Relief from LDC Section 10-416(d)(2) Table 10-8, which requires a 15-foot-wide Type D buffer when the proposed parking and vehicle use area abuts a right-of-way or road easement to allow for a minimum 10-foot-wide buffer.

Deviation #7

Relief from LDC Section 10-416(d)(2) Table 10-8, which requires a 15-foot-wide Type D buffer when the proposed parking and vehicle use area abuts a right-of-way or road easement to allow for a minimum 5-foot-wide buffer.

WHEREAS, the Town Council considered all relevant factors and made the following formal findings before making its final decision on the requested rezone to a Commercial Planned Development (See LDC 34-85 and 34-216):

- a. The rezoning would carry out the policies and requirements of the Comprehensive Plan and Land Development Code.
- b. The Town Council carefully considered the testimony of the applicant, the recommendations of staff and of the local planning agency, and testimony from the

- public.
- c. The rezoning would be consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses in the Comprehensive Plan.
 - d. The rezoning would meet or exceed all performance and locational standards set forth for the proposed use.
 - e. Urban services are available and adequate to serve the proposed use.
 - f. The rezoning would protect, conserve, or preserve environmentally critical areas and natural resources.
 - g. The rezoning would be compatible with existing and planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
 - h. The rezoning would not place an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.
 - i. The rezoning, with the mitigating factors volunteered by the applicant and the special conditions imposed by the Town Council, is consistent with the Fort Myers Beach Comprehensive Plan, Land Development Code, and other applicable town ordinances or codes.
 - l. The proposed use or mix of uses is appropriate at the subject location.
 - m. Sufficient safeguards to the public interest are provided by the recommended special conditions to the master concept plan and by other applicable regulations.
 - n. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.

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

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

WHEREAS, the Town Council finds that this application to approve Ordinance 25-xx which is, **consistent/inconsistent** with the Town of Fort Myers Beach Comprehensive Plan and LDC and voted to **approve/approve with conditions/deny** the Application.

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

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

Section 2. The Town Council determines the Applicant **did** meet its burden of proof, that the request to approve Town of Fort Myers Beach’s Ordinance 25-xx and the conditions of approval for the commercial planned development zoning, **does/does not** meet the requirements of the Town Comprehensive Plan and LDC. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council **APPROVE/APPROVE WITH CONDITIONS/DENY** the requested application.

Section 3. Town Ordinance 25-XX is adopted and the schedule of uses and conditions of approval for the Property’s CPD set forth in Exhibit A and the attached Master Concept Plan in Exhibit B, attached hereto and incorporated herein by this reference are approved.

Section 4. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted LDC or Town Code provision, ordinance, or statute, the most restrictive shall apply.

Section 5. Any typographical errors that do not affect the intent of this Ordinance may be corrected with notice to and authorization of the Town Manager without further process.

Section 6. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 7. This Ordinance will take effect immediately upon adoption by the Town Council.

THE FOREGOING ORDINANCE was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a vote, the result was as follows:

DULY PASSED AND ADOPTED on this ____ day of _____ 2025.

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

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of _____ 2025.

Exhibits:

A-Conditions of Approval

B - Master Concept Plan (MCP) and Schedule of Use

Exhibit A: Conditions of Approval

These conditions were amended during the March 3rd, 2025 Town Council meeting.

Applicant additions in blue

Town Council changes in yellow

1. The development of "Option A", as approved and conditioned in resolution 07-28, will no longer be valid.
2. At the time of development order, the applicant must provide the following buffers:
 - a. Along Chapel Street (the west property line), a 10-foot-wide buffer with a minimum of 4 trees per 100 linear feet (6 trees) and a 3-foot-high hedge planted in a double staggered row.
 - b. Along the east property line that extends from Estero Boulevard a minimum 7.5-foot-wide buffer with a minimum of 10 trees per 100 linear feet and a 3-foot-high hedge planted in a double staggered row. **Trees should be 5-feet or greater at time of planting.**
 - c. Along the south and east property lines adjacent to 2553 and 2563 Cottage Avenue, a minimum 10-foot-wide buffer with 6-foot-high opaque fence, where applicable, with a minimum of 8 trees per 100 linear feet and a 3-foot-high hedge planted in a double staggered row planted on the outside of the fence.
 - d. Along Cottage Street (the south property line), a minimum 10-foot-wide buffer with **a 4-foot-high decorative fence,** a minimum of 8 trees per 100 linear feet and a 3-foot-high hedge planted in a double staggered row.

3. A maximum of 5 mobile vendor/transient merchant pads, in addition to a permanent service structure (maximum of 2500 sf), is permitted. Any additional mobile vendor pads not shown on the MCP shall require an Amendment to the CPD.
4. All mobile vendors will be associated with either food or merchandise. There shall be no cannabis or smoke/vape related merchandise vendors allowed.
5. Consumption on the premises will be limited to beer and wine only.
6. Hours of operation for the mobile vendor/transient merchants and outdoor seating area will be 7am to 9pm seven days a week. These hours do not include waste removal, deliveries or service to the facility, which may occur outside the hours of operation.
7. The parking lot will be available for use the same hours as the mobile vending park, 7am to 9pm seven days a week. Camping or sleeping in vehicles is prohibited.
8. All amplified sound will be controlled by the property owner/management staff and will not be permitted from any mobile vendor. Ambient music is permitted and will be no greater than 60 dB as measured in accordance with the Town's Noise Ordinance. Amplified live music and/or amplified live entertainment is only permitted within the main park support structure provided the structure is fully roofed with three enclosing walls from noon until 8 pm. Amplified live music and/or amplified live entertainment will be restricted to only solo and duo performers. No bands (3 or more performers) or drums/percussion unless approved through the Town's special event permitting process. If the Town through the code compliance/enforcement process determines sound to be in violation coming from the site, the owner/operator may lose the ability to have amplified live music and/or live amplified entertainment.
9. All sound generated on-site will be in compliance with the Fort Myers Beach Noise Ordinance, Article II, Chapter 14.
10. A publicly accessible "comfort station" consisting of restrooms, outdoor shower/foot rinse, hand washing and water fountain will either be integrated within the proposed main park support structure or as a stand-alone structure on-site.
11. Access to the "comfort station" will only be during the same hours of operation (7am-9pm) for the mobile vending park. Water service to the exterior showers and foot washing stations must be shut off and all restroom access locked to the public outside of the hours of operation.
12. Per Deviation #5, the Applicant may utilize a stabilized gravel/lime rock/crushed shell parking surface. If that option is chosen, the Applicant is required to use a grid/semi-pervious paver system to increase permeability and to aid in retaining materials on site in the parking lot area.
13. Mobile food vendors, outdoor seating, restrooms and any storage space must be located on an approved stabilized non-pervious or semi-pervious surface.
14. A temporary use permit must be obtained for any special event where additional vendors of any type and/or increased visitor numbers are expected, including but not limited to: festival; political rally; holiday celebration; or carnival. Special event permits are limited to 6 days per calendar year.
15. Mobile food vendors must provide evidence that all required permits, inspections, licensure, or other approvals as needed by either county, state, or federal agencies prior to operating within the town.

16. Liquid waste or grease must be disposed of at an approved location and may not be placed in tree pits, storm drains, or sanitary sewers, or onto sidewalks, streets, or other public or private space.
17. All mobile vendors shall be required to connect to onsite utilities. Generator use is only allowed when electrical service is disrupted or temporarily non-available due to designated disaster related events. The exercising of portable generators associated with mobile vendors for regular maintenance is prohibited on-site.
18. All mobile vendors and park facilities must comply with FEMA regulations. No temporary storage containers are permitted or other non-compliant structures. All mobile vendors will be required to evacuate the property and the site secured when evacuation orders are issued by Lee County Emergency Management or the Town of Fort Myers Beach. The removal of vendor vehicles and securing the site is the responsibility of the property owner. Vendors may not return until authorized by the Town and Lee County Sheriff's Office.
19. Restroom facilities must be provided based on maximum occupancy of the total seating area in conformance with the Florida Building Code.
20. All alcohol sales must be in conformance with state regulations.
21. A local development order is required prior to any development of the site, in accordance with this planned development approval and consistent with the approved MCP.
22. All state and local permits, including but not limited to right of way and stormwater permits must be applied for and received prior to site development.
23. All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131
24. Access to and from the property for mobile vendors only via the existing Estero Boulevard access point will not be allowed during typical peak season traffic times, which are 8 am – 11 am and 4 pm – 7 pm.
25. At the time of local development order approval, directional and restrictive vehicle access signage (e.g. NO THRU TRAFFIC) will be provided at the primary access, along Chapel Street and Cottage Avenue. The egress onto Chapel Street will be designed for right-out only.
26. At the time of local development order approval, on-street/right-of-way buffer landscape plantings, no parking signage and infrastructure (e.g. decorative post and rope/chain) will be provided to help eliminate illegally parked vehicles within the Chapel Street and Cottage Avenue rights-of-way abutting the subject property. The on-street/right-of-way buffer landscape area will vary in width based on the roadway configuration and consist of shrubs and trees complementary to the adjacent on-site landscaping; be maintained less than 36 inches high for shrubs; and will not violate vehicle visibility requirements.
27. Outdoor lighting: In no case may the illumination exceed 0.2 footcandles measured at the property line. The amount of illumination projected onto a residentially zoned property or use from another property may not exceed 0.0 footcandles measured at 10 feet from the property line onto the adjacent residential property. (NOTE: Current regulations allow 0.5 footcandles measured at the property line and 0.2 footcandles 10 feet from property onto residential property.)

28. Proper site management, including site cleanliness and proper waste removal is the responsibility of the property owner/manager and any violations will be issued to the site ownership for remediation and not to individual vendors.
29. A trip generation study must be provided at the time of the development order application to evaluate that the proposed development does not further impact the surrounding transportation network than what was approved under the 2008 Traffic Impact Statement. Additionally, the applicant should consider a "Right Turn Only" direction sign at the parking lot egress point to direct customers back to Estero Boulevard.
- ~~The Applicant must prepare an Operational Compliance Plan (OCP) to be approved by the Town Manager or designee at the time of development order approval. This plan shall include the requirement to provide a quarterly compliance report submitted by the Property Owner/Management for review by Town Staff and, as needed, to meet with Town Staff to ensure compliance with the CPD conditions and applicable code for the first 2 years of operation.~~
30. Applicant must provide a Parking Operation Plan to accommodate short-term parking needs of food vendors.

The Conditions of Approval listed above are reorganized below for clarity and should be accepted into the final ordinance in the manner below.

Standard Regulatory Conditions

1. The development of "Option A", as approved and conditioned in resolution 07-28, will no longer be valid.
2. All mobile vendors and park facilities must comply with FEMA regulations. No temporary storage containers are permitted or other non-compliant structures. All mobile vendors will be required to evacuate the property and the site secured when evacuation orders are issued by Lee County Emergency Management or the Town of Fort Myers Beach. The removal of vendor vehicles and securing the site is the responsibility of the property owner. Vendors may not return until authorized by the Town and Lee County Sheriff's Office.
3. Mobile food vendors must provide evidence that all required permits, inspections, licensure, or other approvals as needed by either county, state, or federal agencies prior to operating within the town.
4. Restroom facilities must be provided based on maximum occupancy of the total seating area in conformance with the Florida Building Code.
5. All alcohol sales must be in conformance with state regulations.
6. A local development order is required prior to any development of the site, in accordance with this planned development approval and consistent with the approved MCP.
7. All state and local permits, including but not limited to right of way and stormwater permits must be applied for and received prior to site development.
8. All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131
9. Liquid waste or grease must be disposed of at an approved location and may not be placed in tree pits, storm drains, or sanitary sewers, or onto sidewalks, streets, or other public or private space.

10. All sound generated on-site will be in compliance with the Fort Myers Beach Noise Ordinance, Article II, Chapter 14, unless otherwise stated in the conditions of approval.

Site Conditions

31. At the time of the development order, the applicant must provide the following buffers:
 - a. Along Chapel Street (the west property line), a 10-foot-wide buffer with a minimum of 4 trees per 100 linear feet (6 trees) and a 3-foot-high hedge planted in a double staggered row.
 - b. Along the east property line that extends from Estero Boulevard a minimum 7.5-foot-wide buffer with a minimum of 10 trees per 100 linear feet and a 3-foot-high hedge planted in a double staggered row. Trees should be 5-feet or greater at time of planting.
 - c. Along the south and east property lines adjacent to 2553 and 2563 Cottage Avenue, a minimum 10-foot-wide buffer with 6-foot-high opaque fence, where applicable, with a minimum of 8 trees per 100 linear feet and a 3-foot-high hedge planted in a double staggered row planted on the outside of the fence.
 - d. Along Cottage Street (the south property line), a minimum 10-foot-wide buffer with a 4-foot-high decorative fence, a minimum of 8 trees per 100 linear feet and a 3-foot-high hedge planted in a double staggered row.
32. A maximum of 5 mobile vendor/transient merchant pads, in addition to a permanent service structure (maximum of 2500 sf), is permitted. Any additional mobile vendor pads not shown on the MCP shall require an Amendment to the CPD.
33. A publicly accessible “comfort station” consisting of restrooms, outdoor shower/foot rinse, hand washing and water fountain will either be integrated within the proposed main park support structure or as a stand-alone structure on-site.
34. Per Deviation #5, the Applicant may utilize a stabilized gravel/lime rock/crushed shell parking surface. If that option is chosen, the Applicant is required to use a grid/semi-pervious paver system to increase permeability and to aid in retaining materials on site in the parking lot area.
35. Mobile food vendors, outdoor seating, restrooms and any storage space must be located on an approved stabilized non-pervious or semi-pervious surface.
36. All mobile vendors shall be required to connect to onsite utilities. Generator use is only allowed when electrical service is disrupted or temporarily non-available due to designated disaster related events. The exercising of portable generators associated with mobile vendors for regular maintenance is prohibited on-site.
37. At the time of local development order approval, directional and restrictive vehicle access signage (e.g. NO THRU TRAFFIC) will be provided at the primary access, along Chapel Street and Cottage Avenue. The egress onto Chapel Street will be designed for right-out only.
38. At the time of local development order approval, on-street/right-of-way buffer landscape plantings, no parking signage and infrastructure (e.g. decorative post and rope/chain) will be provided to help eliminate illegally parked vehicles within the Chapel Street and Cottage Avenue rights-of-way abutting the subject property. The on-street/right-of-way buffer landscape area will vary in width based on the roadway configuration and consist of shrubs and trees complementary to the adjacent

on-site landscaping; be maintained less than 36 inches high for shrubs; and will not violate vehicle visibility requirements.

39. Outdoor lighting: In no case may the illumination exceed 0.2 footcandles measured at the property line. The amount of illumination projected onto a residentially zoned property or use from another property may not exceed 0.0 footcandles measured at 10 feet from the property line onto the adjacent residential property. (NOTE: Current regulations allow 0.5 footcandles measured at the property line and 0.2 footcandles 10 feet from property onto residential property.)

Operational Conditions

1. All mobile vendors will be associated with either food or merchandise. There shall be no cannabis or smoke/vape related merchandise vendors allowed.
2. Consumption on the premises will be limited to beer and wine only.
3. Hours of operation for the mobile vendor/transient merchants and outdoor seating area will be 7am to 9pm seven days a week. These hours do not include waste removal, deliveries or service to the facility, which may occur outside the hours of operation.
4. The parking lot will be available for use the same hours as the mobile vending park, 7am to 9pm seven days a week. Camping or sleeping in vehicles is prohibited.
5. Access to the “comfort station” will only be during the same hours of operation (7am-9pm) for the mobile vending park. Water service to the exterior showers and foot washing stations must be shut off and all restroom access locked to the public outside of the hours of operation.
6. All amplified sound will be controlled by the property owner/management staff and will not be permitted from any mobile vendor. Ambient music is permitted and will be no greater than 60 dB as measured in accordance with the Town’s Noise Ordinance. Amplified live music and/or amplified live entertainment is only permitted within the main park support structure provided the structure is fully roofed with three enclosing walls from noon until 8 pm. Amplified live music and/or amplified live entertainment will be restricted to only solo and duo performers. No bands (3 or more performers) or drums/percussion unless approved through the Town’s special event permitting process. If the Town through the code compliance/enforcement process determines sound to be in violation coming from the site, the owner/operator may lose the ability to have amplified live music and/or live amplified entertainment.
7. A temporary use permit must be obtained for any special event where additional vendors of any type and/or increased visitor numbers are expected, including but not limited to: festival; political rally; holiday celebration; or carnival. Special event permits are limited to 6 days per calendar year.
8. Access to and from the property for mobile vendors only via the existing Estero Boulevard access point will not be allowed during typical peak season traffic times, which are 8 am – 11 am and 4 pm – 7 pm.
9. Proper site management, including site cleanliness and proper waste removal is the responsibility of the property owner/manager and any violations will be issued to the site ownership for remediation and not to individual vendors.
10. A trip generation study must be provided at the time of the development order application to evaluate that the proposed development does not further impact the surrounding transportation network than what was approved under the 2008 Traffic Impact Statement. Additionally, the applicant should

consider a “Right Turn Only” direction sign at the parking lot egress point to direct customers back to Estero Boulevard.

11. Applicant must provide a Parking Operation Plan to accommodate short-term parking needs of food vendors.



**2500 ESTERO BOULEVARD
COMMERCIAL PLANNED DEVELOPMENT (CPD)
Planned Development Amendment**

SECTION F: SCHEDULE OF DEVIATIONS AND JUSTIFICATIONS

DEVIATION #1 is from Section 10-285 that requires driveways to be located at least 250 feet from the centerline of a local street such as Chapel Street, to allow a distance of 100 feet from Estero Boulevard. Chapel Street is a local street that is maintained by the Town of Fort Myers Beach. The previous development on the site used this driveway as an access point and the proposed development will continue to use this driveway. The applicant is unable to meet the 250 foot separation distance, therefore the Town Council **APPROVES** this application with a condition that the property owner voluntarily donate a 5 foot easement along Estero Boulevard to the Town of Fort Myers Beach for roadway, utility, drainage and reasonably related purposes.

(PRIOR APPROVED AND TO REMAIN)

DEVIATION #2 seeks relief from LDC Section 10-285 that requires driveways to be located at least 250 feet from the centerline of the intersection of Estero Boulevard and Chapel Street and the driveway to Pelican Watch Condominiums. This will allow the existing driveway located on Estero Boulevard to remain approximately 210 feet from the Chapel Street/Estero intersection and 150 feet from the existing driveway to Pelican Watch Condominiums.

Justification: LDC Section 10-285, Table 10-1 states that when a street or accessway is constructed or improved, it must be spaced a minimum distance from all other streets or accessways. Estero Boulevard is classified as a major street, requiring streets and accessways to be spaced 250 feet from centerline to centerline. The site design maintains the existing access/curb cut from Estero Boulevard. This existing access/curb cut aligns with the entrance into the Chapel by the Sea Presbyterian Church directly to the north, across Estero Boulevard. This area of Estero Boulevard contains a turn lane allowing motorists to safely maneuver turns from both directions off of Estero Boulevard both into the subject property as well as the property to the north across Estero Boulevard.



As depicted on the Master Concept Plan ~~Option "B"~~, this CPD amendment proposes to maintain the existing access from Estero Boulevard as a restricted and controlled access for mobile vendors/transient merchants delivery and removals only. All other vehicular traffic will gain access to the site from the Chapel Street location, south of the intersection of Estero Boulevard with Chapel Street. The location of the access into the parking area creates an improved traffic flow directing traffic away from Estero Boulevard.

The continued use of the existing Estero Boulevard access, that will be controlled and restricted to the delivery and removal of mobile vendors/transient merchants equipment, supports the intent of LDC Sec. 10-285 which is to provide as much connection separation as possible while protecting the health, safety, and welfare of island residents and visitors.

DEVIATION #3 seeks relief from LDC Section 34-706(d) which states that existing driveway and parking spaces shall be relocated from Estero Boulevard to allow for the existing access point to remain from Estero Boulevard into the property.

Justification: As shown on the proposed Master Concept Plan, ~~Option "B"~~, the only access from Estero Boulevard is to be an existing access point/curb cut which is located directly across from the Chapel by the Sea Presbyterian Church access. The site was previously designed with an additional access from Estero Boulevard located on Lot 12. Through the new configuration, the traffic wanting to access the development will be directed to the entrance at Chapel Street, thereby removing one existing driveway from Estero Boulevard.

The site configuration as shown on the proposed Master Concept Plan ~~-Option "B"~~ allows the removal of one access from Estero Boulevard while still allowing limited access for the delivery and removal of mobile vendor/transient merchant equipment. The new proposed configuration of the site reduces conflicts on Estero Boulevard and redirects traffic along Chapel Street thus supporting the intent of LDC Section 34-706(d). The granting of this deviation will not be injurious to the health, safety and welfare of the island's residents and visitors.



DEVIATION #4 seeks relief from the LDC Section 34-706(a) which requires that off-street parking lots be placed in side or rear yards. This deviation will allow the parking lot to be located along Chapel Street between Estero Boulevard and Cottage Avenue.

Justification: The proposed CPD Amendment provides a Master Concept Plan "~~Option B~~" which is for the use of a mobile vendor/transient merchant park with additional public parking to a beach front access. The subject property has three street frontages, it is bounded by Estero Boulevard to the north, Chapel Street to the west and Cottage Avenue to the south, therefore, it is not possible to locate the proposed off-street parking in a side or rear yard. The MCP is designed with the proposed off-street parking to be located on the west side of the property with vehicular access from Chapel Street. Although the off-street parking is not located in a true side or rear yard, the configuration of the site provides access to the site from Chapel Street and removes the primary access from Estero Boulevard.

The proposed mobile vendor/transient merchant area and 10' buffer with a 6' high decorative fence, will provide separation from the adjacent residential multi-family property to the east. While 10' buffers and the rights-of-way for Chapel Street and Cottage Avenue will provide separation from other residential multi-family properties to the west and south. This site design is appropriately located to provide excess off-street parking to be used by the public for access to the Chapel Street Public Beach Access #26, which can be reached via a short walk along Chapel Street. Due to the configuration of the property, the granting of this deviation will allow the applicant to develop the property in a manner that will benefit the island, its residents and visitors through providing much needed parking close to its public beach access.

DEVIATION #5 seeks relief from LDC Section 34-2017, which requires high turnover parking lots to have a paved surface to allow for a stabilized gravel/lime rock/crushed shell parking surface. ~~crushed shell or lime rock surface.~~

Justification: The proposed use of a mobile vendor/transient merchant park with public parking is not proposed to be the "permanent" use of the property but will allow the applicant a source of income until such time as the island recovery has stabilized and the market will support the development of Option "A" on the subject property. As such, the applicant is requesting relief from LDC Sec. 34-2017 to allow a high turnover parking lot to be developed with a crushed shell or lime rock surface. The use of a crushed shell or lime rock surface will provide a stabilized area for parking with low maintenance and efficient drainage. Crushed shell and lime rock parking areas are currently used throughout Fort Myers Beach and other coastal areas as a means to provide a more natural environment. Based on the above justification, the granting of this deviation from LDC Sec. 34-2017 will not be injurious to the neighborhood or negatively



impact the overall health, safety and welfare of the island or its residents.

DEVIATION #6 seeks relief from LDC Section 10-416(d)(2) Table 10-8, which requires a 15-foot-wide Type D buffer when the proposed parking and vehicle use area abuts a right-of-way or road easement to allow for a minimum 10-foot-wide buffer –

Justification: The Master Concept Plan, ~~Option “B”~~ proposes a minimum 10-foot-wide buffer for a portion of the property containing the parking area abutting the Estero Boulevard right-of-way. This is a minor 5-foot reduction from the required 15 feet and is consistent with the prior buffering condition under Resolution #07-28 allowing for 10 foot-wide buffers for areas abutting rights-of-way. The proposed 10-foot-wide buffer will contain a minimum of 10 trees per 100 linear feet, which is an enhancement of an additional 5 trees per 100 linear feet or a doubling of the number of trees normally required in this buffer area; ~~and a minimum 3-foot-high hedge planted in a double staggered row, and bicycle parking areas, which is an enhancement of an additional 5 trees per 100 linear feet or a doubling of the number of trees normally required in this buffer area.~~ The additional trees will provide and ensure a positive and appealing aesthetic along the boulevard, support the goal of framing Estero Boulevard, create a hospitable environment for pedestrians and still achieve the purpose and intent of the buffer between parking areas and the right-of-way. The granting of this deviation will not be injurious to the health, safety and welfare of the island’s residents and visitors.

DEVIATION #7 seeks relief from LDC Section 10-416(d)(2) Table 10-8, which requires a 15-foot-wide Type D buffer when the proposed parking and vehicle use area abuts a right-of-way or road easement to allow for a minimum 5-foot-wide buffer.

The Master Concept Plan proposes a minimum 5-foot-wide buffer for a portion of the property abutting the Chapel Street right-of-way. This deviation is requested based on review by the town council to have the applicant evaluate the site design to reduce the initially conditioned and approved (Ord. No. 07-28) 10-foot-wide buffer along Chapel Street in order to allow for additional buffering (10 foot to 12.5 foot buffers) along the eastern property line abutting the Pelican Watch pool/amenity deck/parking area and open space area. The proposed 5-foot-wide buffer along Chapel Street will now contain a minimum of 10 trees per 100 linear feet, which is an enhancement of an additional 5 trees per 100 linear feet or a doubling of the number of trees normally required in this buffer area and a minimum 3-foot-high hedge. The additional trees will provide and ensure a positive and appealing aesthetic along the street and still supports the purpose and intent of the buffer between parking areas and the right-of-way. The granting of this deviation will not be injurious to the health, safety and welfare of the island’s residents and visitors.

PROPOSED CONDITIONS – Town Council 2nd Reading 4/7/25:

1. The development of “Option A”, as approved and conditioned in resolution 07-28, will no longer be valid.
2. At the time of development order, the applicant must provide the following buffers:
 - a. Along a portion of Estero Boulevard, a minimum 10-foot-wide buffer. This buffer will provide a minimum of 10 trees per 100 linear feet and a minimum 3-foot-high hedge planted in a double-staggered row. This buffer area may incorporate pedestrian access and a maximum of three (3) bicycle parking areas.
 - ~~a-b.~~ Along Chapel Street (the west property line), a ~~105~~-foot-wide buffer with a minimum of ~~4~~ 10 trees per 100 linear feet (~~6 trees~~) and a single 3-foot-high hedge row-planted in a double staggered row.
 - ~~b-c.~~ Along the east property line that extends from Estero Boulevard to the proposed park support structure, a minimum 10-foot-wide buffer. From the proposed park support structure and abutting the neighboring pool/amenity and parking area, a minimum 7.5-foot-wide buffer a minimum 12.5-foot-wide buffer. This buffer area will provide ~~with~~ a minimum of 10 trees per 100 linear feet, a minimum of 12 feet tall at time of planting and a 3-foot-high hedge planted in a double staggered row, and allow for a maximum 3-foot-wide sidewalk to access the structure.
 - ~~c-d.~~ Along the south and east property lines adjacent to 2553 and 2563 Cottage Avenue, a minimum 10-foot-wide buffer with 6-foot-high opaque fence, where applicable, with. This buffer will provide a minimum of 8 trees per 100 linear feet, a minimum of 12 feet tall at time of planting, and a 3-foot-high hedge planted in a double staggered row planted on the outside of the fence, and allow for a maximum 3-foot-wide sidewalk to access the structure.
 - ~~d-e.~~ Along Cottage Street (the south property line), a minimum 10-foot-wide buffer. This buffer will provide ~~with~~ a 4-foot-high decorative fence, a minimum of 8 trees per 100 linear feet, a minimum of 12 feet tall at time of planting, and a 3-foot-high hedge planted in a double staggered row.
3. A maximum of 5 mobile vendor/transient merchant pads, in addition to a permanent service structure (maximum of ~~2500-3000~~ sf), is permitted. Any additional mobile vendor pads not shown on the MCP shall require prior Town approval.
4. All mobile vendors will be associated with either food or merchandise. There shall be no cannabis or smoke/vape related merchandise vendors allowed.
5. Consumption on the premises will be limited to beer and wine only.
6. Hours of operation for the mobile vendor/transient merchants and outdoor seating area will be 7am to ~~9pm-10pm~~ seven days a week. These hours do not include waste removal, deliveries or service to the facility, which may occur outside the hours of operation.
7. The parking lot will be available for use the same hours as the mobile vending park, 7am to ~~9pm~~ 10pm seven days a week. Camping or sleeping in vehicles is prohibited.
8. All amplified sound will be controlled by the property owner/management staff and will not be permitted from any mobile vendor. Ambient music is permitted and will be no greater than 60 dB as measured in accordance with the Town’s Noise Ordinance. Amplified live music and/or amplified live entertainment is only permitted within the main park support structure provided the structure is

fully roofed with three enclosing walls. ~~from noon until 8 pm~~. Amplified live music and/or amplified live entertainment will be restricted to only solo and duo performers a maximum of 4 days per week and 6 hours per day between noon and 8pm. No bands (3 or more performers) or drums/percussion unless approved through the Town's special event permitting process. If the Town through the code compliance/enforcement process determines sound to be in violation coming from the site, the owner/operator may lose the ability to have amplified live music and/or live amplified entertainment (per the agreed upon OCP). See condition #29.

9. All sound generated on-site will be in compliance with the Fort Myers Beach Noise Ordinance, Article II, Chapter 14.
10. A publicly accessible "comfort station" consisting of restrooms, outdoor shower/foot rinse, hand washing and water fountain will either be integrated within the proposed main park support structure or as a stand-alone structure on-site. Access to the "comfort station" will only be during the same hours of operation (7am-~~9pm~~10pm) for the mobile vending park. Water service to the exterior showers and foot washing stations must be shut off and all restroom access locked to the public outside of the hours of operation.
11. Per Deviation #5, the Applicant may utilize a stabilized gravel/lime rock/crushed shell parking surface. If that option is chosen, the Applicant is required to use a grid/semi-pervious paver system to increase permeability and to aid in retaining materials on site in the parking lot area.
12. Mobile food vendors, outdoor seating, restrooms and any storage space must be located on an approved stabilized non-pervious or semi-pervious surface.
- ~~13.~~ A temporary use permit must be obtained for any special event where additional vendors of any type and/or increased visitor numbers are expected, including but not limited to: festival; political rally; holiday celebration; or carnival.
- ~~13.~~14. No more than six (6) special event permits per calendar year may be issued in association with this property.
- ~~14.~~15. Mobile food vendors must provide evidence that all required permits, inspections, licensure, or other approvals as needed by either county, state, or federal agencies prior to operating within the town.
- ~~15.~~16. Liquid waste or grease must be disposed of at an approved location and may not be placed in tree pits, storm drains, or sanitary sewers, or onto sidewalks, streets, or other public or private space.
- ~~16.~~17. All mobile vendors shall be required to connect to onsite utilities. Generator use is only allowed when electrical service is disrupted or temporarily non-available due to designated disaster related events. The exercising of portable generators associated with mobile vendors for regular maintenance is prohibited on-site.
- ~~17.~~18. All mobile vendors and park facilities must comply with FEMA regulations. No temporary storage containers are permitted or other non-compliant structures. All mobile vendors will be required to evacuate the property and the site secured when evacuation orders are issued by Lee County Emergency Management or the Town of Fort Myers Beach. The removal of vendor vehicles and securing the site is the responsibility of the property owner. Vendors may not return until authorized by the Town and Lee County Sheriff's Office.
- ~~18.~~19. Restroom facilities must be provided based on maximum occupancy of the total seating area in conformance with the Florida Building Code.
- ~~19.~~20. All alcohol sales must be in conformance with state regulations.

- ~~20-21.~~ A local development order is required prior to any development of the site, in accordance with this planned development approval and consistent with the approved MCP.
- ~~21-22.~~ All state and local permits, including but not limited to right of way and stormwater permits must be applied for and received prior to site development.
- ~~22-23.~~ All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131
- ~~23-24.~~ Access to and from the property for mobile vendors only via the Estero Boulevard access point will not be allowed during typical peak season traffic times, which are 8 am – 11 am and 4 pm – 7 pm.
- ~~24-25.~~ At the time of local development order approval, directional and restrictive vehicle access signage (e.g. NO THRU TRAFFIC) will be provided at the primary access, along Chapel Street and Cottage Avenue. The egress onto Chapel Street will be designed for right-out only.
- ~~25-26.~~ At the time of local development order approval, on-street/right-of-way buffer landscape plantings, no parking signage and infrastructure (e.g. decorative post and rope/chain) will be provided to help eliminate illegally parked vehicles within the Chapel Street and Cottage Avenue rights-of-way abutting the subject property. The on street/right-of-way buffer landscape area will vary in width based on the roadway configuration and consist of shrubs and trees complementary to the adjacent on-site landscaping; be maintained less than 36 inches high for shrubs; and will not violate vehicle visibility requirements.
- ~~26-27.~~ Outdoor lighting: In no case may the illumination exceed 0.2 footcandles measured at the property line. The amount of illumination projected onto a residentially zoned property or use from another property may not exceed 0.0 footcandles measured at 10 feet from the property line onto the adjacent residential property. (NOTE: Current regulations allow 0.5 footcandles measured at the property line and 0.2 footcandles 10 feet from property onto residential property.)
- ~~27-28.~~ Proper site management, including site cleanliness and proper waste removal is the responsibility of the property owner/manager and any violations will be issued to the site ownership for remediation and not to individual vendors.
- ~~28-29.~~ A trip generation study must be provided at the time of the development order approval to evaluate that the proposed development does not further impact the surrounding transportation network than what was approved under the 2008 Traffic Impact Statement. ~~Additionally, the applicant should consider a "Right Turn Only" direction sign at the parking lot egress point to direct customers back to Estero Boulevard.~~
- ~~29.~~ The Applicant must prepare an Operational Compliance Plan (OCP) to be approved by the Town Manager or designee at the time of development order approval. This plan shall include the requirement to provide a quarterly compliance report submitted by the Property Owner/Management for review by Town Staff and, as needed, to meet with Town Staff to ensure compliance with the CPD conditions and applicable code for the first 2 years of operation.



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT

TYPE OF CASE: Commercial Planned Development Amendment

CASE NUMBER: DCI Rezoning 20240137.2

CASE NAME: Mobile Vending/Food Truck Park

LPA

HEARING DATE: February 11th, 2025

1st TOWN COUNCIL

HEARING DATE: March 3rd, 2025

2nd TOWN COUNCIL

HEARING DATE: April 7th, 2025

STAFF

RECOMMENDATION: Approval with conditions

**PREPARED/
SUBMITTED BY:** Judith Frankel, AICP/Jason Smalley, Senior Planner

I. APPLICATION SUMMARY

Applicant/Owner: Empire Holding Corp. TR for Ann Trust/Neighborhood Company

Request: Amend the existing CPD RES#07-28 to provide for a Master Concept Plan, Schedule of Uses and Conditions of operation with 7 deviations, to allow for development of a mobile vending/food truck park with outdoor seating, consumption on premises and a commercial parking lot.

Subject property: See attached Survey and Master Concept Plan

Physical Address: 2500/2510/2518 Estero Blvd. & 2543 Cottage Ave

STRAP #: 19-46-24-W3-0120A.0100; 19-46-24-W3-01302.0000;
19-46-24-W3-01301.0000; 19-46-24-W3-0120A.013A

FLU: Boulevard

Zoning: CPD/Commercial Boulevard/Residential Multi-family

Adjacent zoning and land uses:

North:	INSTITUTIONAL (IN) Boulevard
South:	RESIDENTIAL MULTIFAMILY (RM) Boulevard
East:	COMMERCIAL BOULEVARD (CB) Boulevard
West:	RESIDENTIAL MULTIFAMILY (RM) Boulevard

II. BACKGROUND AND ANALYSIS

Background:

The applicant, Neighborhood Company on behalf of the property owner Empire Holding Corp, is requesting to expand the CPD boundaries approved by Resolution 07-28 (under a separate Ordinance) and a new Master Concept Plan (MCP) for development. The existing CPD consists of a 0.52+ acre parcel (at 2500 and 2510 Estero Blvd.) with a maximum of 23,067 square feet, consisting of 9,952 square feet of commercial and office plus (3) three dwelling units to be developed as either 3 multi-family or 3 live/work units with a total of 13,115 square feet in two (2) buildings, not to exceed a maximum building height of 40 feet above base flood elevation/3 stories and an FAR of 1.0. The CPD approved by Resolution 07-28 allowed "Option A" as a part of the Master Concept Plan. The site was not developed.

Since the approval of the original CPD in 2007, the owner has purchased two abutting parcels located at 2518 Estero and 2543 Cottage Avenue. These lots each contained a single-family home. Both homes were destroyed by Hurricane Ian in 2022. Under a separate ordinance, the applicant is requesting an extension of the CPD boundaries to include these two additional properties. This would increase the CPD boundary area to a total of +/- 0.691 acres.

Through the ordinance presented here, the applicant is requesting to invalidate the prior approved schedule of uses, MCP, and site development regulations known as "Option A" and replace it with a new schedule of uses and MCP as a mid-term use of the site within the proposed expanded boundaries. The proposed MCP would include mobile vendors/transient merchants with outdoor seating/entertainment/recreation area, consumption on premises (COP) for beer and wine, and a commercial parking lot in the schedule of uses.

Historically, the property located at 2500 Estero Boulevard was home to several restaurants over time such as The Holmes House, Smitty's on the Beach and the Mucky

Duck. The last restaurant use was removed in 2005 with that portion of the site remaining vacant.

Analysis:

The site is located in the designated “Civic Complex” neighborhood and with a “Boulevard” land use designation in the Comprehensive Plan. The Boulevard land use category permits a maximum 1.5 F.A.R. LDC Section 34-953, states that building placement, size, design, and all other property development regulations in a CPD zoning district shall be the same as for the CB zoning district for CPDs that are not primarily lodging. The CB zoning district permits a maximum FAR of 1.0. The proposed redevelopment will be well below that maximum, which is compliant with Town regulations.

Ordinance 96-14 allows “transient merchants” to operate within the Town and provides guidelines for the permitting of such business. However, Florida State Statute 509.102 preempts the Town from requiring local permitting in addition to a “mobile food dispensing vehicle” license from the Florida Department of Business and Professional Regulation. All relevant requirements must still be maintained, such as Lee County health department certification, but the provision of the permitting under the ordinance is not applicable. A food truck is an approved use in commercial zoning districts in Fort Myers Beach.

The proposed MCP depicts improvements to the site to provide layout containing a mobile vendor/transient merchant park with outdoor seating/entertainment/ recreation area and a commercial parking lot. The concept site is designed for five (5) improved pads with utility hookups for mobile vendors/transient merchants, a public comfort station and a permanent support structure with food/beverage service (2500 SF maximum in the 3.3.35 version and revised to 3000Sf ahead of the 2nd Town Council hearing), which will surround an outdoor seating, entertainment, and recreation area. Additional outdoor seating is also proposed along Estero Boulevard to further activate the public realm. The proposed mobile vendor/transient merchant park will provide island residents and visitors an opportunity to access a destination for socialization near the beach.

The Town of Fort Myers Beach Land Development Code (LDC) does not provide specific parking requirements for a mobile vendor/transient merchant park. LDC section 34-2020(d)(2)h provided minimum parking requirements for restaurants which is the category closest to mobile vendor/food truck use. The minimum parking requirement is 8 spaces per 1,000 sf. A typical food truck is approximately 8 feet wide by 20 feet long or 160 sf. This is 800 sf of restaurant space in addition to a small beverage service structure. If the square footage of the entire outdoor space is used (estimated 15,000 sf) an unreasonable 120 parking spaces would be necessary and this does not appear to be the

intent of the LDC. Staff has determined that LDC does not provide a useful measure for calculating parking in this case.

The applicant has researched neighboring jurisdiction parking regulations and found the typical parking requirement is three (3) spaces per mobile vendor/transient merchant and 1 parking space per 15 seats.

- Bonita Spring: "Parking will be provided at three spaces per mobile food vendor, plus one additional parking space per 15 seats."
- Fort Myers: "A minimum of three parking spaces per food truck is required..."

Based on the plan of 5 vendor spaces, proposed permanent structure, and the assumption of approximately 75 seats, a reduction of one parking space for a four (4) bike parking rack, the applicant is proposing 30 parking spaces dedicated to the mobile vending/food truck park use and permanent support structure with food/beverage service (2500 SF maximum). There are a total of 45 parking spaces provided in total. The 15 remaining parking spaces are proposed to be used as commercial parking for beach goers. The applicant has not requested a deviation for parking as the LDC does not provide requirements for this type of use. The most similar use is restaurants which requires 8 spaces per 1,000 sf. The food truck park is approximately 10,000 sf which would mean at least 80 parking spaces, which is not appropriate for this use.

Requested Schedule of Uses

RESIDENTIAL:

- DWELLING UNIT:
 - MULTI-FAMILY
 - LIVE/WORK PURSUANT TO LDC SECTION 34-1773

LODGING:

- RENTAL OF ANY PERMITTED DWELLING UNIT TO A SINGLE FAMILY FOR PERIODS OF ONE WEEK OR LONGER PURSUANT TO SECTION LDC 34- 2391 THROUGH 34-2410.

OFFICE:

- ADMINISTRATIVE OFFICES

COMMERCIAL:

- RETAIL:
 - RETAIL STORE, SMALL (LESS THAN 5,000 SQUARE FEET)
- FOOD SERVICE/RESTAURANT/ BAR
- MOBILE VENDOR/TRANSIENT MERCHANTS WITH OUTDOOR SEATING,

ENTERTAINMENT, RECREATION AREAS AS INDICATED ON THE MASTER CONCEPT PLAN

- OUTDOOR SERVICE AND CONSUMPTION ON PREMISES WITHIN THE DESIGNATED AREA AS INDICATED ON MASTER CONCEPT PLAN
- COMMERCIAL PARKING LOT

CIVIC:

- ESSENTIAL SERVICES
- DAYCARE CENTER, ADULT OR CHILD (BY ADMINISTRATIVE APPROVAL)
- CULTURAL FACILITIES (BY ADMINISTRATIVE APPROVAL)

Neighborhood Compatibility:

The subject property is located approximately 1.07 miles from Times Square and is southwest of the area known as the Civic Center of Fort Myers Beach. The properties are located on the southside of Estero Boulevard; north of Cottage Avenue; and to the east of Chapel Street. The project is surrounded by vacant commercial properties as well as single and multifamily residential properties.

The proposed hours of operation for the mobile vendor/transient merchants and outdoor seating area will be 7am to 9 pm seven days a week. Any outdoor entertainment will be permitted until 8 pm and located within the permanent support structure as depicted on the proposed MCP. There are 31 proposed conditions for approval of this application. These restrictions along with the buffer and landscape plantings will help to minimize sound carrying over to the surrounding properties. The proposed development is a reduction in intensity of land use as compared to the existing CPD MCP.

III. Requested Deviations

The Applicant requests the following deviations consistent with LDC section 34-212(3) and 34-932(b).

- **DEVIATION #1** is from LDC Section 10-285 that requires driveways to be located at least 250 feet from the centerline of a local street such as Chapel Street, to allow a distance of 100 feet from Estero Boulevard. Chapel Street is a local street that is maintained by the Town of Fort Myers Beach. The previous development on the site used this driveway as an access point and the proposed development will continue to use this driveway. The applicant is unable to meet the 250-foot separation distance, therefore the Town Council approved this application with a condition that the property owner voluntarily donate a 5 foot easement along Estero Boulevard to the Town of Fort Myers Beach for roadway, utility, drainage and reasonably related purposes. **(PRIOR APPROVED AND TO REMAIN)**

Staff Response: There is insufficient distance from Estero Blvd. to Cottage Avenue to allow compliance with this code section. This deviation is necessary to allow access to the site.

- **DEVIATION #2** seeks relief from LDC Section 10-285 that requires driveways to be located at least 250 feet from the centerline of the intersection of Estero Boulevard and Chapel Street and the driveway to Pelican Watch Condominiums. This will allow the existing driveway located on Estero Boulevard to remain approximately 210 feet from the Chapel Street/Estero intersection and 150 feet from the existing driveway to Pelican Watch Condominiums.

Applicant Justification: LDC Section 10-285, Table 10-1 states that when a street or accessway is constructed or improved, it must be spaced a minimum distance from all other streets or accessways. Estero Boulevard is classified as a major street, requiring streets and accessways to be spaced 250 feet from centerline to centerline. The site design maintains the existing access/curb cut from Estero Boulevard. This existing access/curb cut aligns with the entrance into the Chapel by the Sea Presbyterian Church directly to the north, across Estero Boulevard. This area of Estero Boulevard contains a turn lane allowing motorists to safely maneuver turns from both directions off of Estero Boulevard both into the subject property as well as the property to the north across Estero Boulevard. As depicted on the Master Concept Plan this CPD amendment proposes to maintain the existing access from Estero Boulevard as a restricted and controlled access for mobile vendors/transient merchants delivery and removals only. All other vehicular traffic will gain access to the site from the Chapel Street location, south of the intersection of Estero Boulevard with Chapel Street. The location of the access into the parking area creates an improved traffic flow directing traffic away from Estero Boulevard. The continued use of the existing Estero Boulevard access, that will be controlled and restricted to the delivery and removal of mobile vendors/transient merchants' equipment, supports the intent of LDC Sec. 10-285 which is to provide as much connection separation as possible while protecting the health, safety, and welfare of island residents and visitors.

Staff Response: Applicant should provide site signage indicating the access location for the public. Parking lot access from Cottage Avenue would be a nuisance to the homeowners on that street. Parking lot access from Estero Blvd. would burden the flow of traffic on that road. The location of Chapel Street is the most appropriate for this site configuration. See conditions 24 and 25.

- **DEVIATION #3** seeks relief from LDC Section 34-706(d) which states that existing driveway and parking spaces shall be relocated from Estero Boulevard to allow for the existing access point to remain from Estero Boulevard into the property.

Applicant Justification: As shown on the proposed Master Concept Plan, the only access from Estero Boulevard is to be an existing access point/curb cut which is located directly across from the Chapel by the Sea Presbyterian Church access. The site was previously designed with additional access from Estero Boulevard located on Lot 12. Through the new configuration, the traffic wanting to access the development will be directed to the entrance at Chapel Street, thereby removing one existing driveway from Estero Boulevard. The site configuration as shown on the proposed Master Concept Plan allows the removal of one access from Estero Boulevard while still allowing limited access for the delivery and removal of mobile vendor/transient merchant equipment. The new proposed configuration of the site reduces conflicts on Estero Boulevard and redirects traffic along Chapel Street thus supporting the intent of LDC Section 34- 706(d). The granting of this deviation will not be injurious to the health, safety and welfare of the island's residents and visitors.

Staff Response: This access must be restricted to use by the mobile not for the general public or service/delivery vehicles. Applicant should provide site signage indicating the restricted use and installing gating to restrict access during operation hours. Gate should be located a minimum of 20 feet from the property boundary to avoid issue of vehicle stacking on Estero Boulevard.

- **DEVIATION #4** seeks relief from the LDC Section 34-706(a) which requires that off-street parking lots be placed in side or rear yards. This deviation will allow the parking lot to be located along Chapel Street between Estero Boulevard and Cottage Avenue.

Applicant Justification: The proposed CPD Amendment provides a Master Concept Plan which is for the use of a mobile vendor/transient merchant park with additional public parking to a beach front access. The subject property has three street frontages, it is bounded by Estero Boulevard to the north, Chapel Street to the west and Cottage Avenue to the south, therefore, it is not possible to locate the proposed off-street parking in a side or rear yard. The MCP is designed with the proposed off-street parking to be located on the west side of the property with vehicular access from Chapel Street. Although the off-street parking is not located in a true side or rear yard, the configuration of the site provides access to the site from Chapel Street and removes the primary access from Estero Boulevard. The proposed mobile vendor/transient merchant area and 10' buffer with a 6' high decorative fence, will provide separation from the adjacent residential multi-family property to the east. While 10' buffers and the rights-of-way for Chapel Street and Cottage Avenue will

provide separation from other residential multifamily properties to the west and south. This site design is appropriately located to provide excess off-street parking to be used by the public for access to Chapel Street Public Beach Access #26, which can be reached via a short walk along Chapel Street. Due to the configuration of the property, the granting of this deviation will allow the applicant to develop the property in a manner that will benefit the island, its residents and visitors through providing much needed parking close to its public beach access.

Staff Response: The proposed MCP configuration with parking along Estero Blvd. is appropriate to accommodate additional parking spaces for the commercial parking lot. However, the deviation would not be necessary if only the parking area of the mobile vendor/food truck park was provided. The commercial parking may provide increased accessibility to Beach Access #26 although parking rates are not known at this time. It should be noted that the LPA should confirm or deny that the applicant suggested parking calculation is appropriate.

- **DEVIATION #5** seeks relief from LDC Section 34-2017, which requires high turnover parking lots to have a paved surface to allow for a crushed shell or lime rock surface.

Applicant Justification: The proposed use of a mobile vendor/transient merchant park with public parking is not proposed to be the “permanent” use of the property but will allow the applicant a source of income until such time as the island recovery has stabilized and the market will support other development on the subject property. As such, the applicant is requesting relief from LDC Sec. 34-2017 to allow a high turnover parking lot to be developed with a crushed shell or lime rock surface. The use of a crushed shell or lime rock surface will provide a stabilized area for parking with low maintenance and efficient drainage. Crushed shell and lime rock parking areas are currently used throughout Fort Myers Beach and other coastal areas as a means to provide a more natural environment. Based on the above justification, the granting of this deviation from LDC Sec. 34-2017 will not be injurious to the neighborhood or negatively impact the overall health, safety and welfare of the island or its residents.

Staff Response: Staff recommends that the applicant utilize a gravel/crushed shell stabilization grid paver system to increase permeability and to aid in retaining materials on site in the parking lot area. Mobile vendors, outdoor seating, restrooms and any storage space must be located on an approved stabilized non-pervious surface.

- **DEVIATION #6** seeks relief from LDC Section 10-416(d)(2) Table 10-8, which requires a 15-foot-wide Type D buffer when the proposed parking and vehicle use area abuts a right-of-way or road easement to allow for a minimum 10-foot-wide buffer.

Applicant Justification: The Master Concept Plan, proposes a minimum 10-foot-wide buffer for a portion of the property containing the parking area abutting the Estero Boulevard right-of-way. This is a minor 5-foot reduction from the required 15 feet and is consistent with the prior buffering condition under Resolution #07-28 allowing

10 foot-wide buffers for areas abutting rights-of-way. The proposed 10-foot-wide buffer will contain a minimum of 8 trees per 100 linear feet and a minimum 3-foot-high hedge planted in a double staggered row, which is an enhancement of an additional 5 trees per 100 linear feet or a doubling of the number of trees normally required in this buffer area. The additional trees will provide and ensure a positive and appealing aesthetic along the boulevard, support the goal of framing Estero Boulevard, create a hospitable environment for pedestrians and still achieve the purpose and intent of the buffer between parking areas and the right-of-way. The granting of this deviation will not be injurious to the health, safety and welfare of the island's residents and visitors.

Staff Response: The proposed double staggered hedges at a height of 3-feet should block headlights from parked cars from infiltrating the rights-of-way. The additional trees will provide shade for the public sidewalks as well as for the parked vehicles.

- **DEVIATION #7** seeks relief from LDC Section 10-416(d)(2) Table 10-8, which requires a 15-foot-wide Type D buffer when the proposed parking and vehicle use area abuts a right-of-way or road easement to allow for a minimum 5-foot-wide buffer.

Applicant Justification: The Master Concept Plan proposes a minimum 5-foot-wide buffer for a portion of the property abutting the Chapel Street right-of-way. This deviation is requested based on review by the town council to have the applicant evaluate the site design to reduce the initially conditioned and approved (Ord. No. 07-28) 10-foot-wide buffer along Chapel Street in order to allow for additional buffering (10 foot to 12.5 foot buffers) along the eastern property line abutting the Pelican Watch pool/amenity deck/parking area and open space area. The proposed 5-foot-wide buffer along Chapel Street will now contain a minimum of 10 trees per 100 linear feet, which is an enhancement of an additional 5 trees per 100 linear feet or a doubling of the number of trees normally required in this buffer area and a minimum 3-foot-high hedge. The additional trees will provide and ensure a positive and appealing aesthetic along the street and still supports the purpose and intent of the buffer between parking areas and the right-of-way. The granting of this deviation will not be injurious to the health, safety and welfare of the island's residents and visitors.

Staff Response: This deviation is necessary to allow the reduced buffer along Chapel and provide greater buffer on the Pelican Watch Property Boundary.

IV. FINDINGS AND CONCLUSIONS

LDC Sec. 34-85(b) and (c) and 34-216(2) sets forth the required considerations and findings for the approval of a rezoning:

LDC Sec. 34-85 (b) Considerations. In reaching its decision, the town council shall consider the following, whenever applicable:

- (1) Whether there exists an error or ambiguity which must be corrected.

Staff response: No errors or ambiguities exist.

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

Staff response: The site was vacant prior to Hurricane Ian. The redevelopment of the site makes the requests appropriate. Mobile Vendor/Food Truck Parks are growing in popularity, and this use is not directly addressed in the LDC, which makes the CPD process appropriate to resolve any potential conflicts with this new use.

(3) The impact of a proposed change on the intent of this chapter.

Staff response: No impact on the intent of this chapter will occur, although the LPA may desire to consider additional regulation to govern this use in the future.

(4) The testimony of any applicant.

(5) The recommendation of staff and of the local planning agency.

(6) The testimony of the public.

(7) Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.

Staff response: The density and intensity request are consistent with the Town of Fort Myers Beach Comprehensive Plan. The proposed mobile vendor/food truck park will program a space that has been vacant for many years preceding Hurricane Ian. It is, by its scale, pedestrian-oriented for the existing neighbors and the several newly approved development projects in nearby locations as addressed in Goal 7. Also, the location is accessible from LeeTran service and a reasonable distance from the downtown zoning district on bicycle. Mobile Vendors/Food Truck operators, in general, are small business owners who may add to Fort Myers Beach “small-town” character as addressed in Goal 4. The outdoor nature of the proposed development lends itself to integration with the public realm as addressed in Policy 4-A-2. The following policies are addressed by the applicant in the project narrative:

1. Policy 4-C-3:
2. Policies 4-B-5 and 4-C-3
3. Policy 4-C-4:
4. Policy 4-C-8:
5. Policy 4-E-1: The proposed redevelopment of the property will be well below the allowed intensity (FAR 1.0) as approved in Resolution 07-28 prior to the natural disaster (Hurricane Ian).
6. Policy 7-D-3 Alternate Travel Mode

(8) Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.

Staff response: The proposed development will be required to meet performance standards set forth in 34-2031 and 34-2032.

(9) Whether urban services are, or will be, available and adequate to serve a proposed land use change.

Staff response: The urban services exist in this location.

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

Staff response: The request will have no impact on designated environmentally critical areas and natural resources. The request does not include any revision to the environmentally critical areas.

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

Staff response: Staff finds the request compatible with the surrounding land uses. The potential for nuisance is minimized through provided buffers as well as several staff recommended conditions for approval. These suggested conditions include limited hours of operation to reduce the potential for noise nuisance to surrounding properties.

(12) Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.

Staff response: The current request is less intense than the previously approved MCP and should not place an undue burden on transportation services.

(13) For planned development rezonings, see § 34-216 for additional considerations

LDC Sec. 34-85 (c) Findings: Before granting any rezoning, the town council shall find that the requested zoning district complies with:

(1) The Fort Myers Beach Comprehensive Plan.

Staff response: The proposed uses and requested deviations for the CPD comply with the Comprehensive Plan.

(2) This chapter.

Staff response: The proposed uses comply with this chapter except in regards to the deviations.

(3) Any other applicable town ordinances or codes.

Staff response: The proposed request complies with the town ordinances and codes, except in regard to the deviations.

(4) For planned development rezonings, see § 34-216 of this chapter for additional findings

LDC Sec. 34-216(b)(2) The recommendation made to the town council must be supported by the guidelines set forth in [§ 34-85](#) of this chapter. In addition, the findings must address whether the following criteria can be satisfied:

a. The proposed use or mix of uses is appropriate at the subject location;

Staff response: The proposed mix of uses is appropriate in this location, as it is in the Boulevard Future land use. The expanded boundary area (under separate ordinance), additions to the Schedule of Uses and the MCP are appropriate. The Mobile Vendor/Food Truck Park concept with commercial parking area is not directly anticipated in the Comprehensive Plan or LDC but is not in conflict with either regulation.

b. Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations;

Staff response: Sufficient safeguards are provided for the public interest through required buffering at the property boundaries. Additionally, staff have suggested several conditions to further safeguard the public.

c. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development;

Staff response: All conditions are related to the impacts on the public interest.

d. The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:

1. Policies 4-B-4 and 4-C-3 on commercial uses in the "mixed residential" category.

Staff response: Not applicable.

2. Policies 4-B-5 and 4-C-3 on commercial rezonings in the "boulevard" category.

Staff response: The mobile vendor/food truck park contributes to the pedestrian character of the town and the "Boulevard" future land use category. The proposal is sensitive to the surrounding residential uses.

3. Policy 4-C-4 on building heights taller than the standard height limit.

Staff response: No additional height is requested.

4. Policy 4-C-8 on density transfers.

Staff response: Not applicable.

5. Policy 4-E-1 on pre-disaster build back.

Staff response: Not applicable.

6. Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts.

Staff response: There are no anticipated adverse traffic impacts

Findings for Deviation Requests:

Per Sec. 34-216(4) all deviations must be approved, approved with modification, or rejected based upon a finding that:

a. Each item enhances the achievement of the objectives of the planned development; and

Staff response: The requested deviations are related to an efficient functioning of the MCP.

b. The general intent of this chapter to protect the public health, safety and welfare will be preserved and promoted;

Staff response: The proposed deviations preserve public health.

c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and

Staff response: The deviations are not a detriment to the public interest. Additional conditions are recommended for MCP.

d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.

Staff response: The deviations are consistent with the comprehensive plan

V. RECOMMENDATION

Staff finds that the CPD with deviations meets the criteria set forth in Sec. 34-85(b) and (c) and 34-216(2) of the LDC. If the LPA finds that the applicant proposed parking calculations, based on other local regulations, is appropriate, staff recommends **approval with conditions** of DCI20240137. The recommended conditions are listed below and are intended to reduce the potential for nuisance to the neighboring residential parcels.

Proposed Conditions of Approval

These conditions were amended during the March 3rd, 2025 Town Council meeting and may be further amended during the 2nd hearing. A reorganized version of the list is provided as an exhibit to the Ordinance.

Applicant additions in blue **Town Council changes in yellow**

1. The development of “Option A”, as approved and conditioned in resolution 07-28, will no longer be valid.
2. At the time of development order, the applicant must provide the following buffers:
 - a. Along Chapel Street (the west property line), a 10-foot-wide buffer with a minimum of 4 trees per 100 linear feet (6 trees) and a 3-foot-high hedge planted in a double staggered row.
 - b. Along the east property line that extends from Estero Boulevard a minimum 7.5-foot-wide buffer with a minimum of 10 trees per 100 linear feet and a 3-foot-high hedge planted in a double staggered row. **Trees should be 5-feet or greater at time of planting.**
 - c. Along the south and east property lines adjacent to 2553 and 2563 Cottage Avenue, a minimum 10-foot-wide buffer with 6-foot-high opaque fence, where applicable, with a minimum of 8 trees per 100 linear feet and a 3-foot-high hedge planted in a double staggered row planted on the outside of the fence.
 - d. Along Cottage Street (the south property line), a minimum 10-foot-wide buffer with **a 4-foot-high decorative fence,** a minimum of 8 trees per 100 linear feet and a 3-foot-high hedge planted in a double staggered row.

3. A maximum of 5 mobile vendor/transient merchant pads, in addition to a permanent service structure (maximum of 2500 sf), is permitted. Any additional mobile vendor pads not shown on the MCP shall require an Amendment to the CPD.
4. All mobile vendors will be associated with either food or merchandise. There shall be no cannabis or smoke/vape related merchandise vendors allowed.
5. Consumption on the premises will be limited to beer and wine only.
6. Hours of operation for the mobile vendor/transient merchants and outdoor seating area will be 7am to 9pm seven days a week. These hours do not include waste removal, deliveries or service to the facility, which may occur outside the hours of operation.
7. The parking lot will be available for use the same hours as the mobile vending park, 7am to 9pm seven days a week. Camping or sleeping in vehicles is prohibited.
8. All amplified sound will be controlled by the property owner/management staff and will not be permitted from any mobile vendor. Ambient music is permitted and will be no greater than 60 dB as measured in accordance with the Town's Noise Ordinance. Amplified live music and/or amplified live entertainment is only permitted within the main park support structure provided the structure is fully roofed with three enclosing walls from noon until 8 pm. Amplified live music and/or amplified live entertainment will be restricted to only solo and duo performers. No bands (3 or more performers) or drums/percussion unless approved through the Town's special event permitting process. If the Town through the code compliance/enforcement process determines sound to be in violation coming from the site, the owner/operator may lose the ability to have amplified live music and/or live amplified entertainment.
9. All sound generated on-site will be in compliance with the Fort Myers Beach Noise Ordinance, Article II, Chapter 14.
10. A publicly accessible "comfort station" consisting of restrooms, outdoor shower/foot rinse, hand washing and water fountain will either be integrated within the proposed main park support structure or as a stand-alone structure on-site. Access to the "comfort station" will only be during the same hours of operation (7am-9pm) for the mobile vending park. Water service to the exterior showers and foot washing stations must be shut off and all restroom access locked to the public outside of the hours of operation.
11. Per Deviation #5, the Applicant may utilize a stabilized gravel/lime rock/crushed shell parking surface. If that option is chosen, the Applicant is required to use a grid/semi-pervious paver system to increase permeability and to aid in retaining materials on site in the parking lot area.

12. Mobile food vendors, outdoor seating, restrooms and any storage space must be located on an approved stabilized non-pervious or semi-pervious surface.
13. A temporary use permit must be obtained for any special event where additional vendors of any type and/or increased visitor numbers are expected, including but not limited to: festival; political rally; holiday celebration; or carnival. **Special event permits are limited to 6 days per calendar year.**
14. Mobile food vendors must provide evidence that all required permits, inspections, licensure, or other approvals as needed by either county, state, or federal agencies prior to operating within the town.
15. Liquid waste or grease must be disposed of at an approved location and may not be placed in tree pits, storm drains, or sanitary sewers, or onto sidewalks, streets, or other public or private space.
16. All mobile vendors shall be required to connect to onsite utilities. Generator use is only allowed when electrical service is disrupted or temporarily non-available due to designated disaster related events. The exercising of portable generators associated with mobile vendors for regular maintenance is prohibited on-site.
17. All mobile vendors and park facilities must comply with FEMA regulations. No temporary storage containers are permitted or other non-compliant structures. All mobile vendors will be required to evacuate the property and the site secured when evacuation orders are issued by Lee County Emergency Management or the Town of Fort Myers Beach. The removal of vendor vehicles and securing the site is the responsibility of the property owner. Vendors may not return until authorized by the Town and Lee County Sheriff's Office.
18. Restroom facilities must be provided based on maximum occupancy of the total seating area in conformance with the Florida Building Code.
19. All alcohol sales must be in conformance with state regulations.
20. A local development order is required prior to any development of the site, in accordance with this planned development approval and consistent with the approved MCP.
21. All state and local permits, including but not limited to right of way and stormwater permits must be applied for and received prior to site development.
22. All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131
23. Access to and from the property for mobile vendors only via the existing Estero Boulevard access point will not be allowed during typical peak season traffic times, which are 8 am – 11 am and 4 pm – 7 pm.

24. At the time of local development order approval, directional and restrictive vehicle access signage (e.g. NO THRU TRAFFIC) will be provided at the primary access, along Chapel Street and Cottage Avenue. **The egress onto Chapel Street will be designed for right-out only.**
25. At the time of local development order approval, on-street/right-of-way buffer landscape plantings, no parking signage and infrastructure (e.g. decorative post and rope/chain) will be provided to help eliminate illegally parked vehicles within the Chapel Street and Cottage Avenue rights-of-way abutting the subject property. The on-street/right-of-way buffer landscape area will vary in width based on the roadway configuration and consist of shrubs and trees complementary to the adjacent on-site landscaping; be maintained less than 36 inches high for shrubs; and will not violate vehicle visibility requirements.
26. Outdoor lighting: In no case may the illumination exceed 0.2 footcandles measured at the property line. The amount of illumination projected onto a residentially zoned property or use from another property may not exceed 0.0 footcandles measured at 10 feet from the property line onto the adjacent residential property. (NOTE: Current regulations allow 0.5 footcandles measured at the property line and 0.2 footcandles 10 feet from property onto residential property.)
27. Proper site management, including site cleanliness and proper waste removal is the responsibility of the property owner/manager and any violations will be issued to the site ownership for remediation and not to individual vendors.
28. A trip generation study must be provided at the time of the development order application to evaluate that the proposed development does not further impact the surrounding transportation network than what was approved under the 2008 Traffic Impact Statement. **Additionally, the applicant should consider a "Right Turn Only" direction sign at the parking lot egress point to direct customers back to Estero Boulevard.**

The Applicant must prepare an Operational Compliance Plan (OCP) to be approved by the Town Manager or designee at the time of development order approval. This plan shall include the requirement to provide a quarterly compliance report submitted by the Property Owner/Management for review by Town Staff and, as needed, to meet with Town Staff to ensure compliance with the CPD conditions and applicable code for the first 2 years of operation.

29. Applicant must provide a Parking Operation Plan to accommodate short-term parking needs of food vendors.

V. EXHIBITS

A – Resolution 07-28 and MCP "Option A"

B1 – Mobile Vending/Food Truck MCP and Schedule of Uses – Revised 1.28.25

B2 – Revised MCP based on Town Council Comments from 3.3.25

C – Application

D - Applicant Narrative – Revised 12-10-24

E – Parking Analysis

F – Revised Deviations Request from comment made at 3.3.35 Town Council Hearing

EMPIRE HOLDING CORPORATION
FORT MYERS BEACH, FLORIDA
BOUNDARY SURVEY

DRAINAGE/UTILITY EXCAVATION	D.U.E.
IRRIGATION	IRR
WOOD POWER POLE	WPP
GUY ANCHOR WITH CABLE	GUY
OVERHEAD POWER	ONP
MAIL BOX	MBX
LIGHT POLE	LP
CATCH BASIN	CB
CONCRETE	CONC
MONUMENT	MON

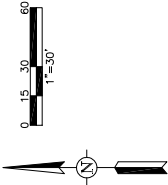
23154 BOUND.SWG

SURVEYOR	DGM
DRAWING BY:	DGM
APPROVER:	CAPE CORAL
DATE	10/24/2023
QUESTIONS	

BOUNDARY SURVEY

PROJECT:

19-46-24-W5-G-0123A-0100	SEAGRAPE SUBDIVISION
2500 ESTERO BLVD.	
LOTS 10, 11, 12 & PART 13	
SEAGRAPE SUBDIVISION	
19-46-24-W5-G-0123A-013A	SEAGRAPE SUBDIVISION
2443 COTTAGE AVE.	
PART LOT 13	
19-46-24-W5-G-0132Z-0000	SEAGRAPE SUBDIVISION
2510 ESTERO BLVD	
LOT 2, BLAKE'S SUBDIVISION	
19-46-24-W5-G-0130I-0000	SEAGRAPE SUBDIVISION
2518 ESTERO BLVD.	
LOT 1, BLAKE'S SUBDIVISION	



LEGAL DESCRIPTION:

LOTS 10-15, SEAGRAPE SUBDIVISION (PLAT BOOK 4, PAGE 17) AND LOTS 1 & 2, BLACKS SUBDIVISION (PLAT BOOK 4, PAGE 40), ALL INFORMATION FROM THE OFFICIAL RECORDS OFFICE OF THE CLERK OF CIRCUIT COURT OF LEE COUNTY, FLORIDA.

SURVEYOR NOTES:

- BEARINGS SHOWN HEREON ARE GRID BEARINGS BASED UPON THE NORTH AMERICAN DATUM OF 1983. 1990 ADJUSTMENT (NAD83/90) FLORIDA EAST ZONE. DISTANCES SHOWN ARE GROUND DISTANCES MEASURED IN FEET. COORDINATES SHOWN ARE GRID COORDINATES. DATUM BASED UPON DEPARTMENT OF NATURAL RESOURCES CONTROL MONUMENTS 84-74-02 AND 84-74-27 HAVING NAD83/90 GRID COORDINATES AS SHOWN.
- NO UNDERGROUND IMPROVEMENTS OR FOUNDATIONS WERE LOCATED UNDER THE SCOPE OF THIS SURVEY.

NO UNDERGROUND MEASUREMENTS OR FOUNDATIONS WERE LOCATED UNDER THE SCOPE OF THIS SURVEY. ELEVATIONS SHOWN HEREIN ARE REFERENCED TO THE NORTH AMERICAN VERTICAL DATUM OF 1985 (NAVD 85). ELEVATIONS ARE BASED UPON TESTS TO THE IMPULSED TEST METHOD USING A GRAVITY CONTROL SYSTEM (GCS) CONTROL NETWORK. THE FOLLOWING LIST OF POINTS AND ZONES ARE BASED ON FIELD CLOUDS INSTRUCTION DATE MAY 1997 (050404), DATED NOVEMBER 17, 2002. ZONE 1000 (DOWN) IS FORMED FROM THE INDICATED LOCAL MAP PANEL.

BOUNDARY INFORMATION SHOWN HEREIN IS BASED UPON THE RECORD FILE AND A LEGAL DESCRIPTION PROVIDED. NO SEARCH OF RECORDS WAS PERFORMED BY THIS SURVEYOR. THERE BE OTHER LEGAL RECORDS (ACQUISIT) NOT AMOUNT TO THIS SURVEY.

- BOUNDARY INFORMATION SHOWN HEREON IS BASED UPON THE RECORD PLAT AND LEGAL DESCRIPTION PROVIDED. NO SEARCH OF THE PUBLIC RECORD WAS PERFORMED BY THIS SURVEYOR. THERE MAY BE OTHER SETBACKS AND/OR EASEMENTS NOT KNOWN TO THIS SURVEYOR.

- THE 1991 COASTAL CONSTRUCTION CONTROL LINE SHOWN HEREON IS AS RECORDED IN PLAT BOOK 48, PAGE 30, AND FILED IN OFFICIAL RECORDS BOOK 2224, PAGES 1010 THROUGH 1041 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA ON MAY 30, 1991.

- THE 1978 COASTAL CONSTRUCTION SETBACK LINE SHOWN HEREON IS AS RECORDED BY ORDINANCE 76-3 RECORDED APRIL 17, 1978
IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA

- MEAN HIGH WATER ELEVATION OF 0.26 (NAVD 1988) IS BASED ON A DETERMINATION OF THE FLORIDA DEPARTMENT OF ENVIRONMENTAL AGENCY.
- THIS TIDAL WATER SURVEY COMPLIES WITH CHAPTER 177, PART II, FLORIDA STATUTES.

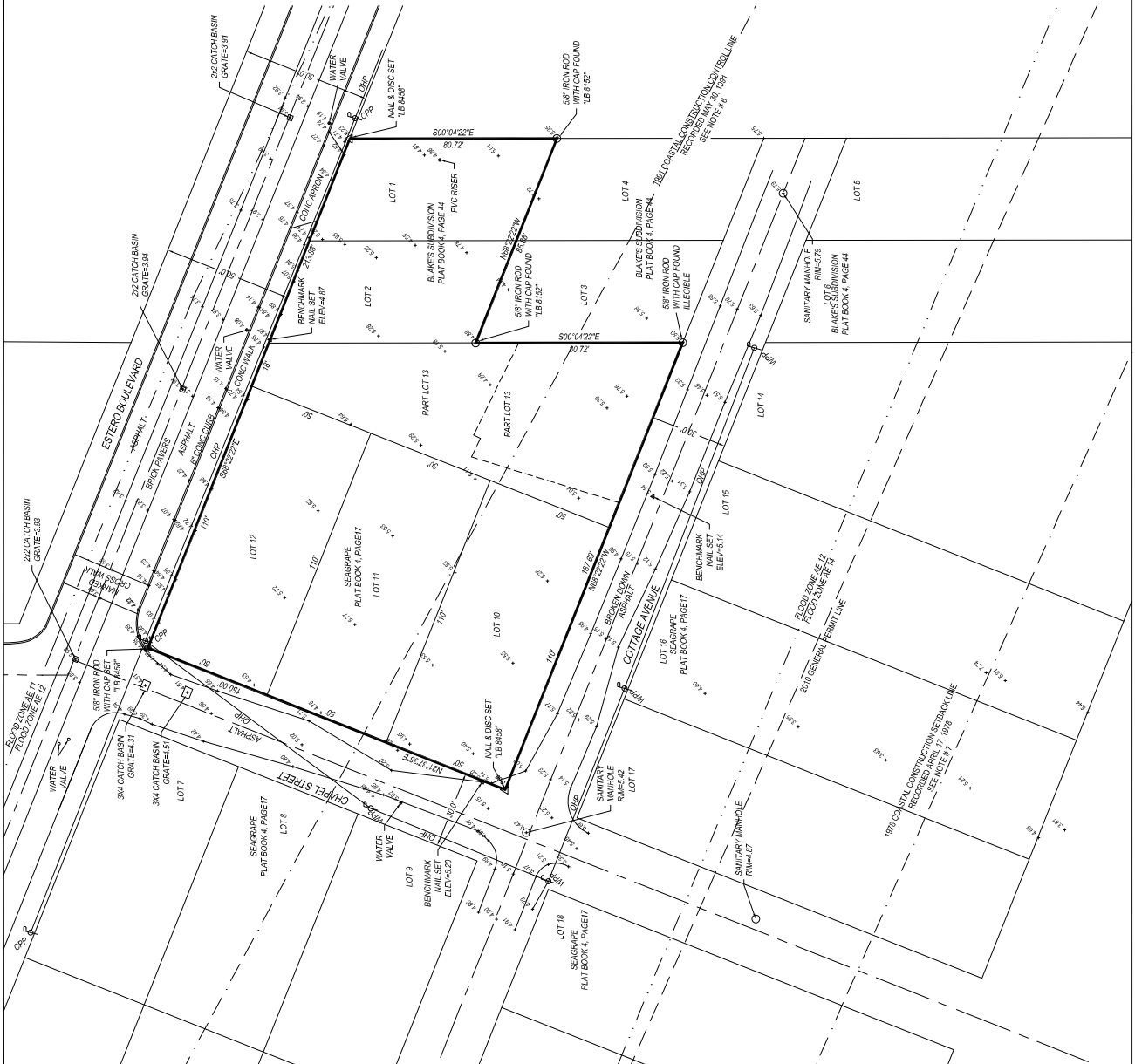
* THIS PARCEL CONTAINS 0.691 ACRES, OR 30,118 SQ. FT., MORE OR LESS.

HEREBY CERTIFY TO THE BEST OF MY KNOWLEDGE THAT THIS SURVEY OF THE HERON DESIGNATED LANDS IS A TRUE REPRESENTATION OF THE FIELD SURVEY MADE UNDER MY DIRECTION AND CONFORMS TO THE STANDARDS OF PRACTICE FOR PROFESSIONAL SURVEYORS AND MAPMAKERS AS OUTLINED IN

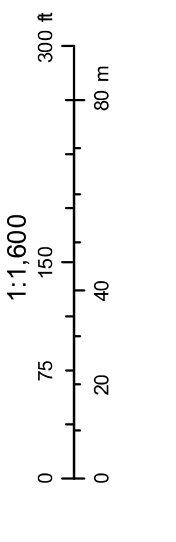
CERTIFIED TO:
EMPIRE HOLDING CORPORATION

Tom Clarke

DONALD G. MILLER, P.E.M.
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 6674



2500 Estero Blvd. Property Location Map



March 8, 2024

Air Photos: 2023 Hi-Res (3 inch)

HospitalLocations

Library Locations

School Locations

CCC_Parks

County Boundary

Major Roads

Medium

I - 75

Parcels Near

US 41

Other Highways

Other Roads

This map is NOT a legal land survey and should not be used or relied upon as such. No warranties, express or implied, are provided with the data, use, accuracy or interpretation.

Page 206 of 810

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 07-28

WHEREAS, McHarris Planning and Design (Applicant) has requested the Town Council rezone an approximately .52+/- acres from Commercial Boulevard (CB) to Commercial Planned Development (CPD) to allow the development of commercial, offices and residential multi-family units at 2500 Estero Boulevard; and

WHEREAS, Applicant has proposed two (2) options to the Town of Fort Myers Beach for consideration in the aforesaid application; and

WHEREAS, Option "A" as presented by Applicant offers a maximum of 23,067 square feet, consisting of 9,952 square feet of commercial and office plus three (3) residential units with a total of 13,115 square feet in two (2) buildings, not to exceed a maximum building height of 40 feet above base flood elevation/3 stories; and

WHEREAS, Option "B" as presented by Applicant offers a maximum of 22,990 square feet that consists of 6,795 square feet of commercial and office and four (4) residential units with a total of 16,195 square feet in two (2) buildings not to exceed a height of 35 feet above base flood elevation/3 stories; and

WHEREAS, the subject property is located at 2500 Estero Blvd, Fort Myers Beach, FL 33931(follow Estero Blvd South to 2500), in S19-T46S-R24E, in Fort Myers Beach, Lee County, FL; and

WHEREAS, Applicant has indicated the property's current STRAP numbers are 19-46-24-W3-0120A.0100 and 19-46-24-W3-01302.0000 with the legal description set forth on Exhibit "A" which is attached hereto and hereby incorporated by reference; and

WHEREAS, a public hearing was legally advertised and held before the Local Planning Agency (LPA) on June 19, 2007, at which time the LPA recommended that the Town Council approve the Applicant's request, with three (3) members recommending Option A and three (3) members recommending Option B, with the approval subject to various conditions as set forth more fully in the LPA Resolution 2007-13; and

WHEREAS, the Town Council gave full and complete consideration to recommendations of staff, the LPA resolution, the documents in the file, and the testimony of all interested persons.

IT IS HEREBY RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA as follows:

The Town Council hereby **APPROVES Option A and DISAPPROVES Option B** to rezone the subject property from CB and RC to CPD, subject to the nine (9) conditions and one deviation set forth with specificity below.

A. CONDITIONS AND DEVIATIONS

A. CONDITIONS

1. The development of this project must be consistent with the six (6) page Master Concept Plan entitled "2500 Estero," stamped received October 6, 2006, except as modified by the conditions below. This development must comply with all requirements of the LDC at time of local Development Order Approval, except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.

2. The following limits apply to the project and uses:

The project is limited to a maximum of 23,067 square feet and a maximum of 3 dwelling units of 13,115 square feet

a. **Schedule of Uses**

Residential

Dwelling Unit:

Multi-family - maximum of 3 units

Live/work pursuant to LDC Section 34-1773 - maximum of 3 units

Lodging

Rental of any permitted dwelling unit to a single family for periods of one week or longer pursuant to Section LDC 34-2391 through 34-2410

Office

Administrative Offices

Retail

Retail Store, small (less than 5,000 square feet)

Civic

Essential Services

Daycare center, adult or child (by Administrative Approval)

Cultural Facilities (by Administrative Approval)

b. **Site Development Regulations**

Minimum Lot Size: 23,067.00± Square Feet or 0.52 ± acres

Minimum Lot Width: 160 feet along Estero Boulevard

Minimum Lot Depth: 150± feet along Chapel Street

Minimum Lot Width: 119± feet along Cottage Street

Minimum Setbacks:

Street: 5 feet (Estero Boulevard)

10 feet (Chapel Street)

10 feet (Cottage Street)

Side: 5 feet

Floor Area Ratio (FAR): 1.0

Maximum Height: 40 feet above base flood elevation /3 stories

3. At the time of Development Order, the applicant must provide the following buffers:

Along Chapel Street (the west property line), a 10 foot wide buffer with a minimum of 4 trees per 100 linear feet (6 trees) and a 3 foot high hedge planted in a double staggered row.

Along the east property line that extends from Estero Boulevard for a distance of 100± feet, a 5 foot wide buffer with a minimum of 4 trees per 100 linear feet (4 trees) and a 3 foot high hedge planted in a double staggered row.

Along the southeast property lines that depicts a 6 foot high wall, a 3 foot high hedge planted in a double staggered row to be planted on the outside of the wall.

Along Cottage Avenue,(the south property line), a 10 foot wide buffer with a minimum of 4 trees per 100 linear feet (4 trees) and a 3 foot high hedge planted in a double staggered row to be planted in between the driveways to the residential units.

4. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the Fort Myers Beach Land Development Code ("LDC") may be required to obtain a local development order.
5. The local development order must be in compliance with LDC Section 14-71 through 14-79 regarding sea turtle lighting.
6. Approval of this zoning request does not give the Developer an undeniable right to receive local development order approval. Future development order approvals must satisfy the requirements of the Fort Myers Beach Comprehensive Plan ("Plan").
7. Development of this property must comply with all of the requirements of the LDC at the time of local development order approval, except as may be granted by deviations approved as part of this planned development.
8. Prior to local development order approval, the construction plans must indicate that pervious pavement and exfiltration will be incorporated throughout the project to maximize the overall stormwater management capacity.
9. Prior to local development order approval, the project developer will partner with the Town to coordinate survey, site preparation, and infrastructure improvements for the project with the Town's plans for work in the adjacent public rights-of-way.

B. DEVIATION

Deviation #1 is from Section 10-285 that requires driveways to be located at least 250 feet from the centerline of a local street such as Chapel Street, to allow a distance of 100 feet from Estero Boulevard. Chapel Street is a local

street that is maintained by Town of Fort Myers Beach. The previous development on the site used this driveway as an access point and the proposed development will continue to use this driveway. The applicant is unable to meet the 250 foot separation distance, therefore the Town Council **APPROVES** this application with a condition that the property owner voluntary donate a 5 foot easement along Estero Boulevard to the Town of Fort Myers Beach for roadway, utility, drainage and reasonably related purposes.

FINDINGS AND CONCLUSIONS

Based upon the presentations by Applicant, staff, and other interested parties at the hearing, and review of the application and the standards for planned development zoning approval, the Town Council makes the following findings and conclusions:

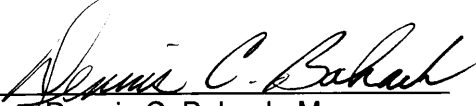
1. The requested rezoning to the Commercial Planned Development (CPD) zoning district, as conditioned **DOES** comply with:
 - a. The Plan;
 - b. LDC Chapter 34;
 - c. all other applicable Town ordinances and codes; and
 - d. the following additional requirements for planned development zoning requests:
 - i. Policies 4-B-5 and 4-C-3 on commercial and residential uses in the "Boulevard" future land use category; and
 - ii. Policy 4-C-5 on maximum residential densities for properties; and
 - iii. Policy 4-C-4 on maximum height limitations; and
 - iv. Policy 4-E-4 on flood proofing of commercial buildings.
2. The proposed use or mix of uses, as conditioned above, **IS** appropriate at the subject location.
3. Sufficient safeguards to the public interest **ARE** provided by the recommended conditions to the concept plan or by other applicable regulations.
4. All recommended conditions **ARE** reasonably related to the impacts on the public's interest created by or expected from the proposed development.
5. As to the requested deviation, as conditioned:
 - a. Each item **DOES** enhance the achievement of the objectives of the planned development; and
 - b. The general intent of LDC Chapter 34 to protect the public health, safety, and welfare **WILL** be preserved and promoted; and
 - c. Each deviation **DOES** operate to the benefit, or at least not to the detriment, of the public interest; and

- d. Each deviation **IS** consistent with the Fort Myers Beach Comprehensive Plan.

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

Dennis C. Boback, Mayor	<u>aye</u>
Larry Kiker, Vice Mayor	<u>aye</u>
Herb Acken	<u>aye</u>
Charles Meador, Jr.	<u>aye</u>
William Shenko, Jr.	<u>aye</u>

DULY PASSED AND ADOPTED THIS 13TH DAY OF AUGUST, 2007, BY THE
TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

By: 
Dennis C. Boback, Mayor

Approved as to legal sufficiency:

ATTEST:

By: 
Anne Dalton, Esquire
Town Attorney

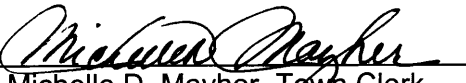
By: 
Michelle D. Mayher, Town Clerk

EXHIBIT (A 1/2)

LAND SURVEY

LOT 2, **BLAKES SUBDIVISION**, ACCORDING TO THE MAP OR PLAT THEREOF ON FILE AND RECORDED IN PLAT BOOK 4, PAGE 44, AND LOTS 10, 11, 12, AND PART OF LOT 13, BLOCK A, **SEAGRAPE SUBDIVISION**, ACCORDING TO THE MAP OR PLAT THEREOF ON FILE AND RECORDED IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT IN PLAT BOOK 4, PAGE 17, ALL IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 13, BLOCK A: THENCE N 68°32'41"W, FOR A DISTANCE OF 67.20 FEET TO THE POINT OF BEGINNING; THENCE N 68°32'41"W, ALONG THE NORTH RIGHT OF WAY LINE OF COTTAGE AVENUE (30' WIDE) FOR A DISTANCE OF 119.95 FEET TO THE SOUTHWESTERLY CORNER OF SAID LOT 10; THENCE N 21°27'19"E, FOR A DISTANCE OF 150.00 FEET, ALONG THE EASTERLY RIGHT-OF-WAY LINE OF CHAPEL STREET, (30' WIDE), FOR A DISTANCE OF 150.00 FEET TO THE NORTHWESTERLY PROPERTY CORNER OF SAID LOT 12; THENCE S 68°32'41"E, ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF ESTERO BOULEVARD (50' WIDE), FOR A DISTANCE OF 160.59 FEET TO THE NORTHEASTERLY CORNER OF SAID LOT 2; THENCE S 00°00'00"E, ALONG THE EAST LINE OF SAID LOT 2, FOR A DISTANCE OF 100.00 FEET TO THE SOUTHEASTERLY CORNER OF SAID LOT 2; THENCE N 68°32'41"W, FOR A DISTANCE OF 42.94 FEET; THENCE N 00°00'00"W, FOR A DISTANCE OF 10.45 FEET; THENCE N 72°57'20"W, FOR A DISTANCE OF 27.81 FEET; THENCE S 17°02'40"W, FOR A DISTANCE OF 3.61 FEET; THENCE N 72°57'20"W, FOR A DISTANCE OF 7.68 FEET; THENCE S 17°02'40"W, FOR A DISTANCE OF 60.50 FEET TO THE POINT OF BEGINNING, CONTAINING 23.067 SQUARE FEET, MORE OR LESS.

SUBJECT TO EASEMENTS AND RESTRICTIONS ON FILE IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA

**ATTORNEY'S
REAL ESTATE
LAND SURVEYING
INC.**

1930 PARK MEADOWS DRIVE
SUITE 9
FORT MYERS, FLORIDA
(239) 277-7330
(239) 277-7332 FAX

RECEIVED
JAN 04 2007

COMMUNITY DEVELOPMENT
REC'D SECOND PLAT

Applicant's Legal Checked
by CS 1/5/07

LARRY GARDNER, SURVEYOR AND MAPPER #4294
NOT VALID WITHOUT EMBOSSED SEAL

JOB NUMBER: 05-1430A1

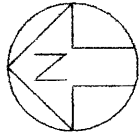
LAND SURVEY

LOT 2, **BLACKSBURG SUBDIVISION**, ACCORDING TO THE MAP OR PLAT THEREOF ON FILE AND RECORDED IN PLAT BOOK 44, PAGE 44. AND LOTS 10, 11, 12, AND PART OF LOT 13, BLOCK A, **SEABARGE SUBDIVISION**, ACCORDING TO THE MAP OR PLAT THEREOF ON FILE AND RECORDED IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT IN PLAT BOOK 4, PAGE 17, ALL IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 13, BLOCK "A", THENCE N 68°32'41" W. FOR A DISTANCE OF 67.20 FEET TO THE POINT OF BEGINNING; THENCE N 68°32'41" W. ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF COTTAGE AVENUE (30' WIDE) FOR A DISTANCE OF 119.95 FEET TO THE SOUTHERLY CORNER OF SAID LOT 10; THENCE N 21°17'19" E. FOR A DISTANCE OF 50.00 FEET ALONG THE NORTHEASTERLY RIGHT-OF-WAY LINE OF COTTAGE AVENUE (30' WIDE) TO THE SOUTHERLY CORNER OF SAID LOT 10; THENCE S 68°32'41" W. ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF COTTAGE AVENUE (30' WIDE) FOR A DISTANCE OF 160.59 FEET TO THE NORTHEASTLY CORNER OF SAID LOT 2; THENCE S 00°00'00" E. ALONG THE EAST LINE OF SAID LOT 2, FOR A DISTANCE OF 100.00 FEET TO THE SOUTHEASTLY CORNER OF SAID LOT 2; THENCE N 68°32'41" W. FOR A DISTANCE OF 42.90 FEET TO THE POINT OF BEGINNING; THENCE N 68°32'41" W. FOR A DISTANCE OF 10.45 FEET TO THE POINT OF BEGINNING; THENCE N 21°17'19" E. FOR A DISTANCE OF 50.01 FEET TO THE POINT OF BEGINNING; THENCE S 68°32'41" W. FOR A DISTANCE OF 60.50 FEET TO THE POINT OF BEGINNING.

THE PROPERTY SHOWN HEREON IS LYING IN ZONE A12
OF THE NATIONAL FLOOD INSURANCE PROGRAM. ELEVATION - 14'

PROPERTY ADDRESS: BOULEVARD
22500/2510 ESTERO
FORT MYERS BEACH, FLORIDA



SCALE 1 INCH = 50 FEET

50
Applicant's Legal Checked
by (65) 1/5/18

DATE: AUGUST 1 2005

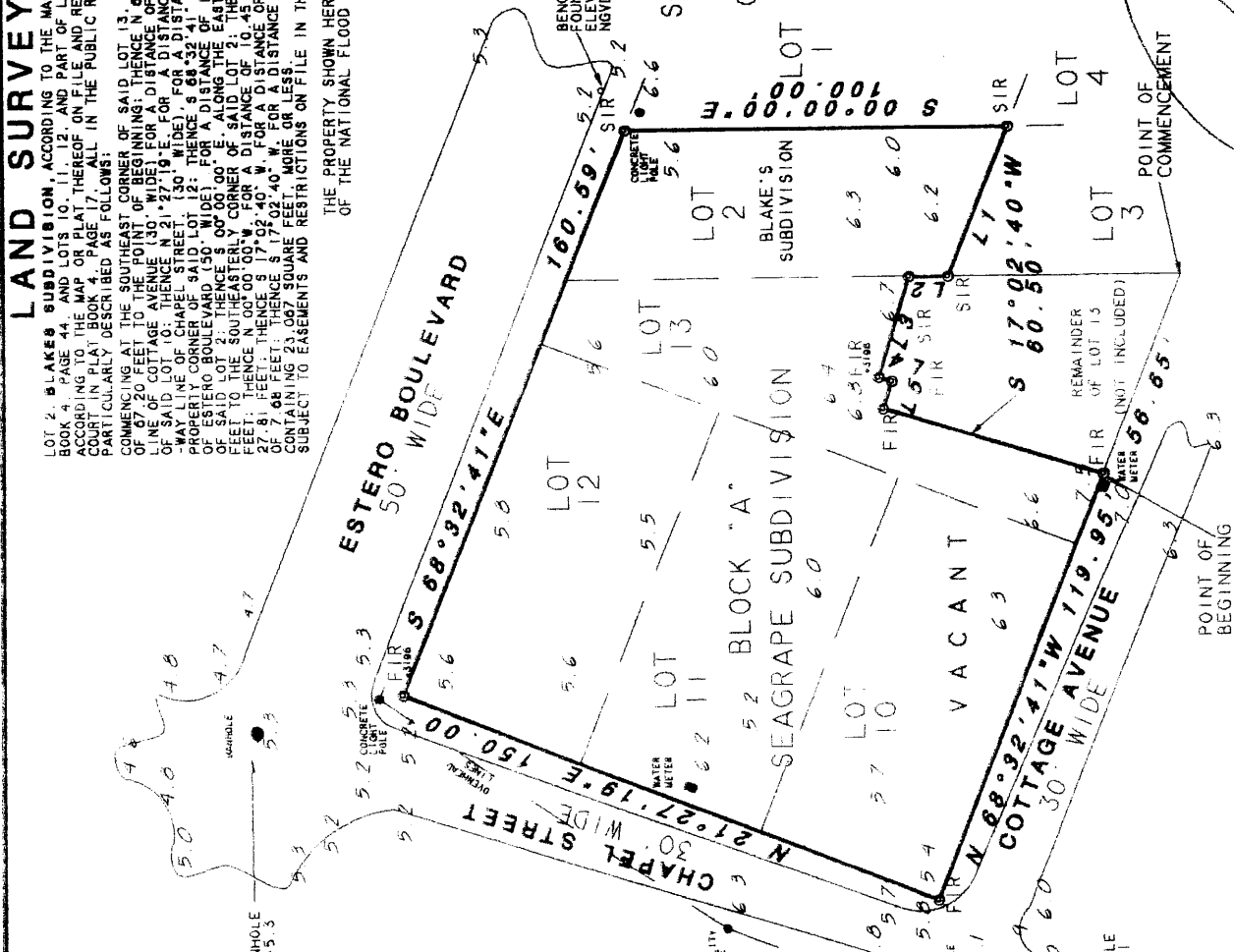
THIS SURVEY IS HEREBY CERTIFIED AS MEETING THE MINIMUM TECHNICAL STANDARDS AS SET FORTH BY THE FLORIDA BOARD OF SURVEYORS AND MAPPERS PURSUANT TO CHAPTER 177, FLORIDA STATUTES, CHAPTER 472, FLORIDA STATUTES AND CHAPTER 0816, FAC AND IS CORRECT ACCORDING TO THE BEST OF MY KNOWLEDGE AND BELIEF. THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A CERTIFIED TITLE REPORT AND IS NOT A CERTIFICATION OF TITLE.

ZONING OR PROGRAM FOR ENCUMBRANCES, THE ORIGINAL SURVEY WAS MADE IN ACCORDANCE WITH THE ORIGINAL SURVEYING ACT OF THE FLORIDA LICENSED SURVIVOR ENGINEERS ACT OF 1935.

THIS DRAFTING, SKETCH, PLOAT OR MAP IS FOR INFORMATION PURPOSES ONLY AND IS NOT VALID. NO COPIES SHALL BE MADE WITHOUT WRITTEN AUTHORIZATION.

L. LARR GARDNER, SURVEYOR AND MAPPER #4294
NOT VALID WITHOUT EMBOSSED SEAL

JOB NUMBER: 05-1430



L I N E	B E A R I N G	D I S T A N C E
L 1	N 68°52'.41"W	42.94'
L 2	N 00°00'.00"E	10.45'
L 3	N 72°07'.20"W	27.81'
L 4	S 17°02'.40"W	9.61'
L 5	N 72°57'.20"W	7.88'

BENCHMARK
RIM OF MANHOLE
ELEVATION-5.3
NGVD 1929

SURVEYOR'S NOTES:

- 111FIR - FOUND 1/2" IRON ROD
UNLESS SHOWN OTHERWISE.
2) THE EAST LINE IS ASSUMED TO BEAR AS SHOWN.
3) SIR - SET 1/2" IRON ROD #LB594.
4) ELEVATIONS SHOWN THUS: 4.
REFER TO NGVD 1929 AND ARE
RELATIVE TO BENCHMARK SHOWN.

THIS SURVEY IS CERTIFIED TO:
2500 ESTERO BOULEVARD, L.L.C.,
BANK LEUMI, USA,
RUTHERFORD MULHALL, P.A.,
CHICAGO TITLE INSURANCE

1947

COMMUNITY DEVELOPMENT
RECORDING FLOOR

REVISION:

WROTE NEW LEGAL 1-4-07

CERTIFICATIONS 8/29/2005

FILE DISK: AUG 05-1987

CREW: LEWIS/RICE/RODRIGUEZ

ATTORNEY'S

REAL ESTATE

LAND SURVEYING

INC.
BACK WINDOWS BELIVE

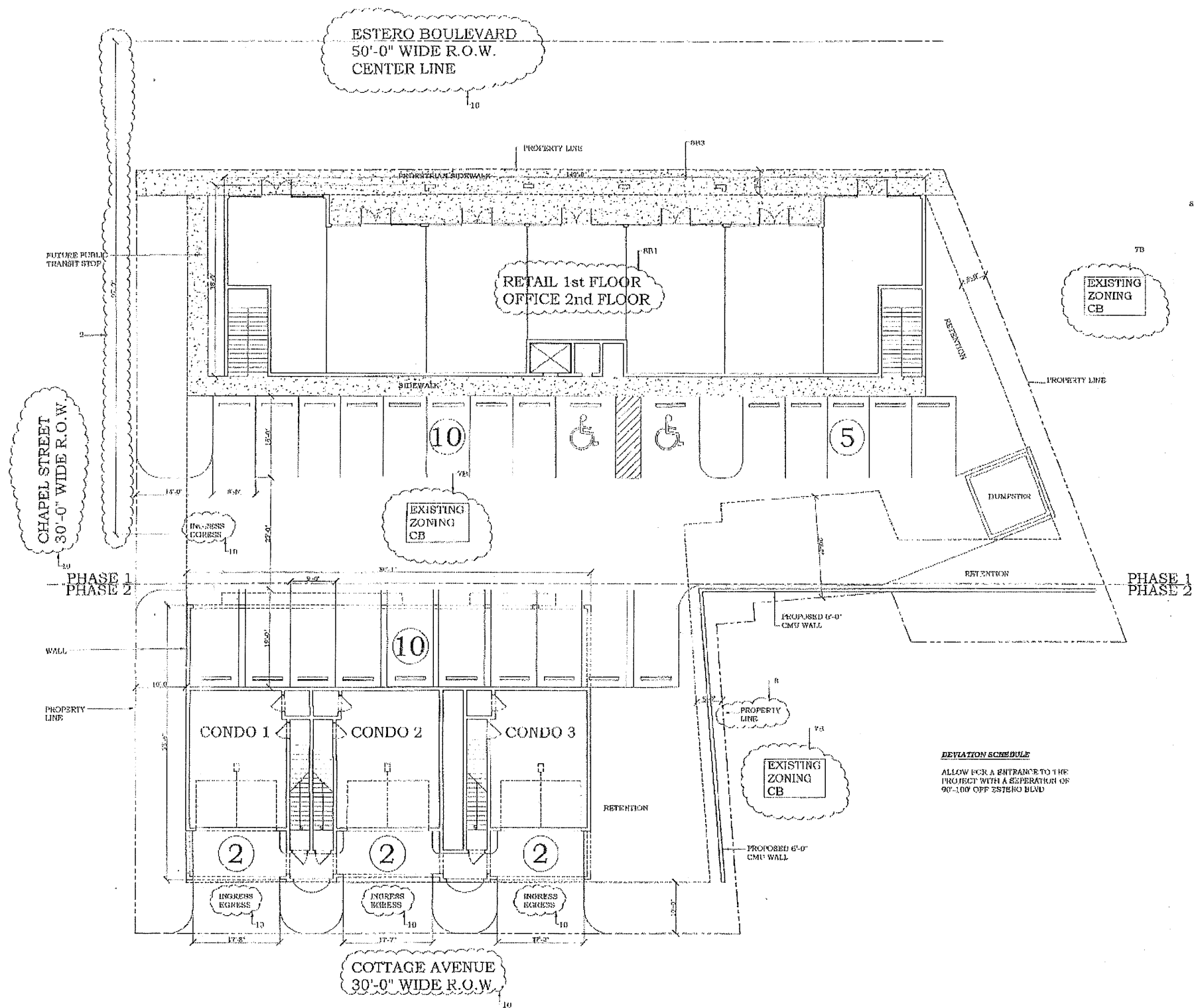
1930 PARK MEADOWS DRIVE
SUITE 9

FORT MYERS, FLORIDA

10001 377 7992 FAX
(299) 211-1330

12301 21121332 188

Page 213 of 810



MASTER CONCEPT PLAN (A)

SCALE: 3/32"=1'-0"

KEY

PROPERTY LINE
SETRASK LINE
PARKING SPACES
SIDEWALKS

SITE DATA

COMMERCIAL BLVD
TOTAL SITE SQ FT 23,067 SQ FT

DEVELOPMENT REGULATIONS

FROM SETBACK (ESTERO BLVD) 5'-0"
SETBACK (CHAPEL STREET) 10'-0"
SIDE SETBACK (SOUTH SIDE) 5'-0"
SETBACK (COTTAGE AVE) 10'-0"
REAR SETBACK (ESTERO BLVD) 20'-0"

LOT COVERAGE (P.A.R.) 1.0
BUILDING HEIGHT MAX 40'-0" ABOVE FLOOD
MAX STORIES 5

F.A.R. (FLOOR AREA RATIO) CALC

TOTAL LAND AREA 23,067 SQ FT
FIRST FLOOR RETAIL 5,189 SQ FT
SECOND FLOOR RETAIL 4,793 SQ FT
FIRST FLOOR CONDO 4,244 SQ FT
SECOND FLOOR CONDO 4,411 SQ FT
THIRD FLOOR CONDO 4,420 SQ FT
TOTAL FLOOR AREA 23,067 SQ FT

FLOOR AREA RATIO

1

OPEN SPACE CALCULATIONS

17.1%

PARKING CALCULATIONS

OFFICE (2 PER 1000) 10
RETAIL (3 PER 1000) 15
MULTIFAMILY (2 PER UNIT) 5
SPACES REQUIRED 31
SPACES PROVIDED 31

SCHEDULE OF USE CHART

RESIDENTIAL
MULTIFAMILY
LIVE WORK (34-1723)
LODGING
RENTAL OF ANY UNIT FOR OVER A WEEK
OFFICE
ADMINISTRATIVE OFFICES
COMMERCIAL
RETAIL STORE
CIVIL
ESSENTIAL SERVICES
DAYCARE
CULTURAL FACILITIES

GENERAL LANDSCAPE REQUIREMENTS

1 TREE PER 3,000 SF DEVELOPMENT AREA
(23,067 / 3,000) 8 TREES REQUIRED

TREE CREDIT

NONE

PARKING LANDSCAPE REQUIREMENTS

10% INTERNAL LANDSCAPING REQUIRED
(6,421 x 10%) 642.1 SQ FT
1 TREE PER 250 SQ FT OF INTERNAL AREA 3 TREES REQUIRED

PROPERTY BUFFERS

NORTH PROPERTY LINE
COMMERCIAL BLVD TO R.O.W. NO BUFFER REQUIRED
SOUTH PROPERTY LINE
COMMERCIAL BLVD TO COMMERCIAL BLVD NO BUFFER REQUIRED
EAST PROPERTY LINE
COMMERCIAL BLVD TO R.O.W. NO BUFFER REQUIRED
WEST PROPERTY LINE
COMMERCIAL BLVD TO R.O.W. (NORTHERN) NO BUFFER REQUIRED
COMMERCIAL BLVD TO R.O.W. (SOUTHERN) NO BUFFER REQUIRED

GENERAL BUFFER NOTES

THE QUALITY OF ALL PLANT MATERIAL WILL MEET THE STANDARDS FOR FLORIDA GRADE #1 OR BETTER.

NO BUFFER PLANT MATERIAL SHALL BE INSTALLED IN BASEMENT.

THE TREES SHALL BE A MINIMUM OF 10 FEET IN HEIGHT WITH TWO INCH TRUNK DIAMETER MEASURED AT ONE FOOT ABOVE GROUND AND A MINIMUM CANOPY OF 4 FEET AT TIME OF INSTALLATION.

A MINIMUM OF 75% OF TREES REQUIRED TO MEET CODE SHALL BE INDIGENOUS NATIVE VARIETIES.

A MINIMUM OF 50% OF SHRUBS REQUIRED TO MEET CODE SHALL BE INDIGENOUS NATIVE VARIETIES.

ANY AND ALL EXOTIC VEGETATION (PER LEE COUNTY & THE TOWN OF FORT MYERS BEACH) ON THE PARCEL SHALL BE COMPLETELY REMOVED AND DISPOSED OF OFF SITE BY CONTRACTOR. THE SITE SHALL BE MAINTAINED FREE OF INDIGENOUS EXOTIC VEGETATION IN PERMANENCY.

BUILDING EDGE PLANTINGS

REQUIRED TO BE INSTALLED ALONG & LEAST 5% OF THE LENGTH OF ALL WALK THAT FACE ON SITE PARKING WITH MORE THAN 25 PARKING SPACES.

MINIMUM WIDTH OF 5'-0"

MINIMUM OF 50% COVERAGE AT TIME OF PLANTING NONE REQUIRED



NO.	DATE	DESCRIPTION	BY	CHKD
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2				
3				
4				
5				

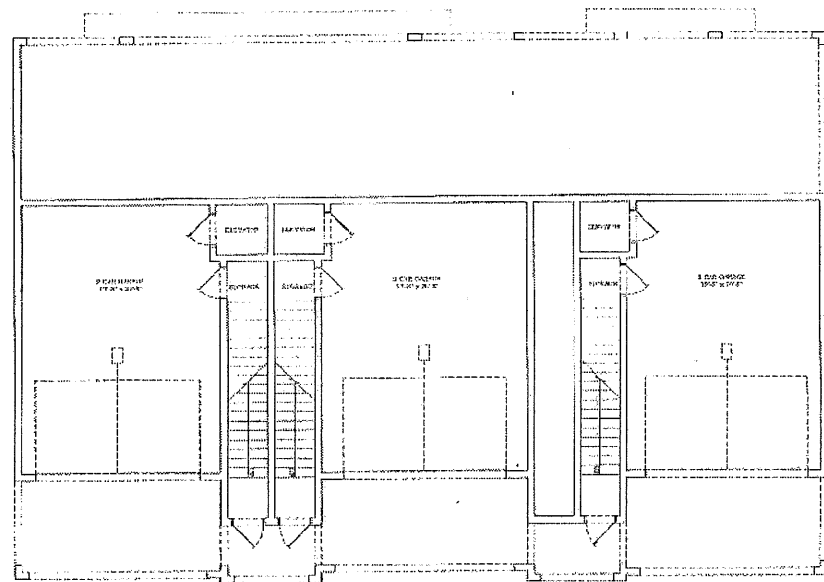
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1				
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3				
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2500 ESTERO
CONCEPT A
2500 ESTERO BLVD.
FORT MYERS BEACH, FL

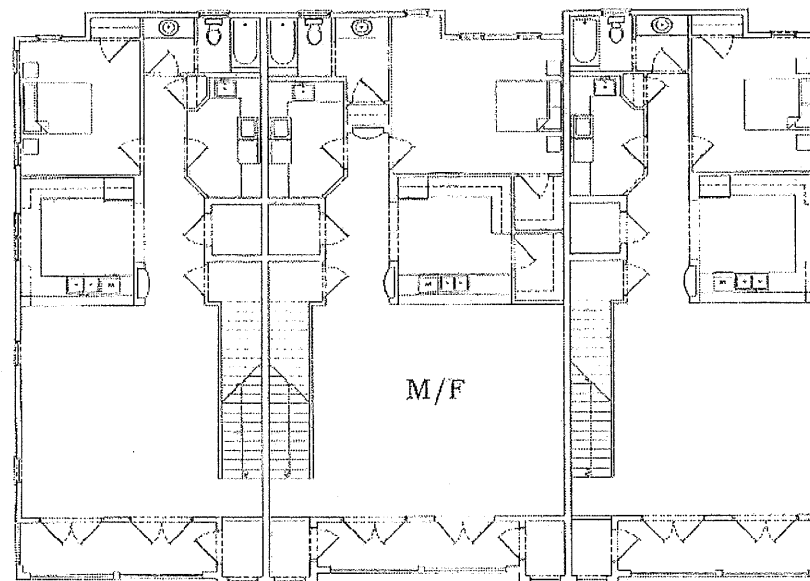
Check By: JOE MARRAS
Drawn By: CHRISTOPHER
Scale: AS NOTED
Project No: CS-0024

DATE: 01/26/2006
A-1.1

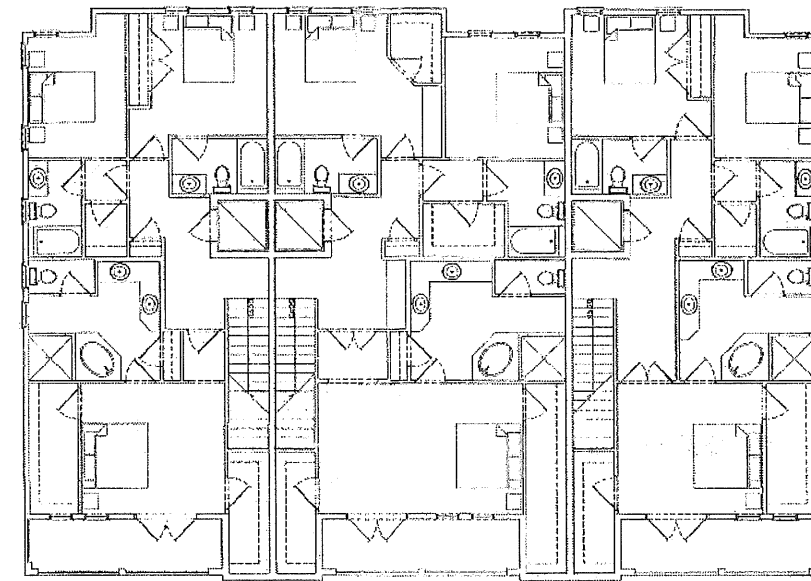
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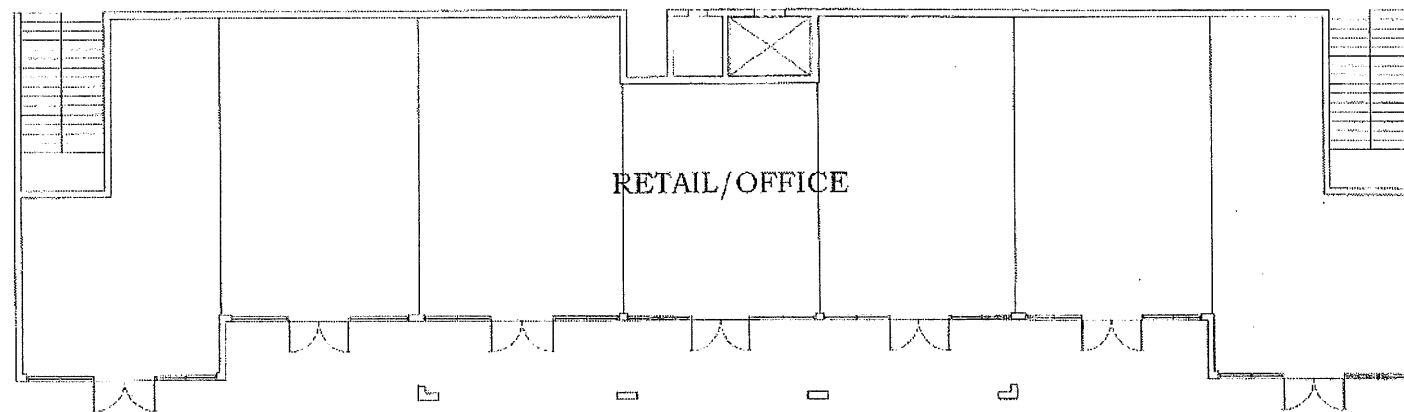
CONCEPT 1st FLOOR PLAN (A)
SCALE: 1/8"=1'-0"



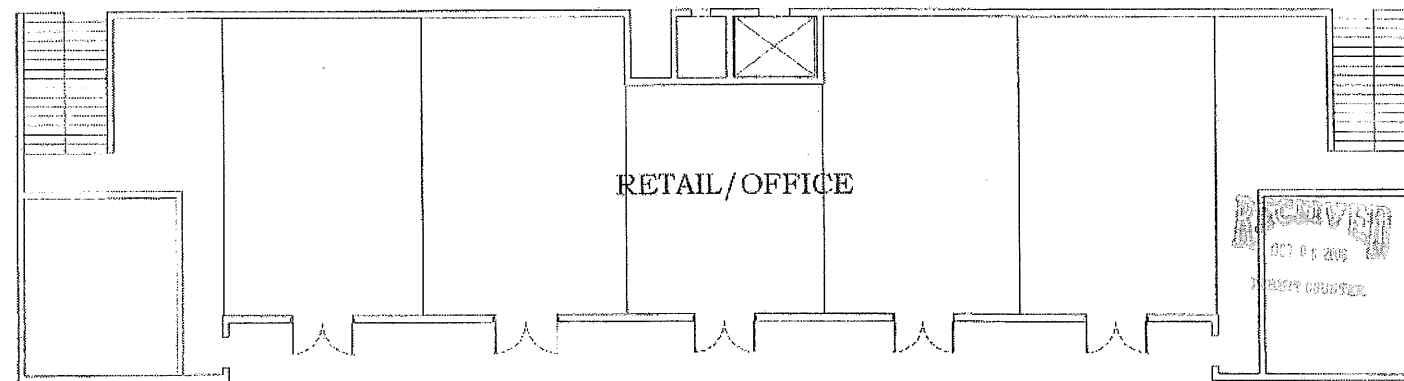
CONCEPT 2nd FLOOR PLAN (A)
SCALE: 1/8"=1'-0"



CONCEPT 3rd FLOOR PLAN (A)
SCALE: 1/8"=1'-0"



CONCEPT 1st FLOOR PLAN (A)
SCALE: 1/8"=1'-0"



CONCEPT 2nd FLOOR PLAN (A)
SCALE: 1/8"=1'-0" DCI 2006-00033



NOT TO SCALE
FOR INFORMATION ONLY
THIS PLAN IS A CONCEPTUAL DESIGN
AND IS NOT A FINAL DESIGN
IT IS NOT TO BE USED FOR CONSTRUCTION
OR FOR ANY OTHER PURPOSE
WITHOUT THE WRITTEN PERMISSION
OF MCHARRIS PLANNING & DESIGN
INC.

No.	Revised	Date	By	Date
1				
2				
3				
4				
5				

2500 ESTERO
CONCEPT A
2500 ESTERO BLVD.
FORT MYERS BEACH, FL

Drawn by: JUDY MCHARRIS
Reviewed by: CYNTHIA GOODWIN
Date: 03 JUL 03
Title: 03-0024

A-2.1



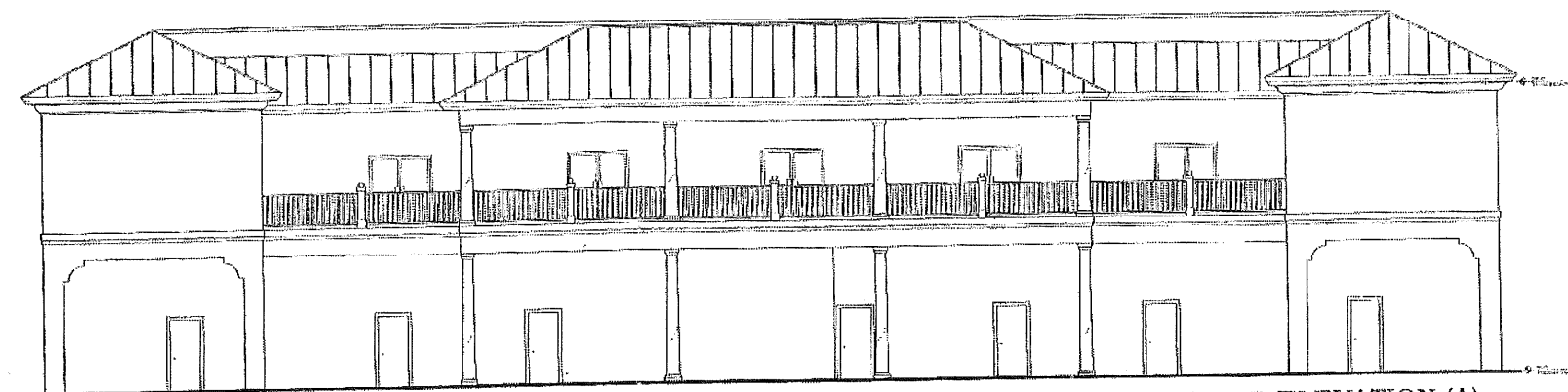
CONCEPT FRONT ELEVATION (A)

SCALE: 1/8"=1'-0"



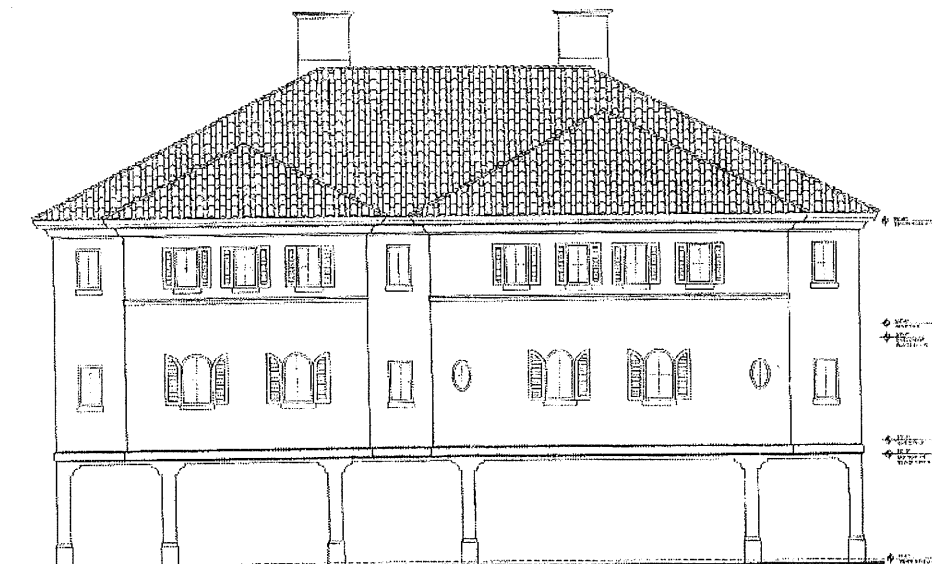
CONCEPT FRONT ELEVATION (A)

SCALE: 1/8"=1'-0"



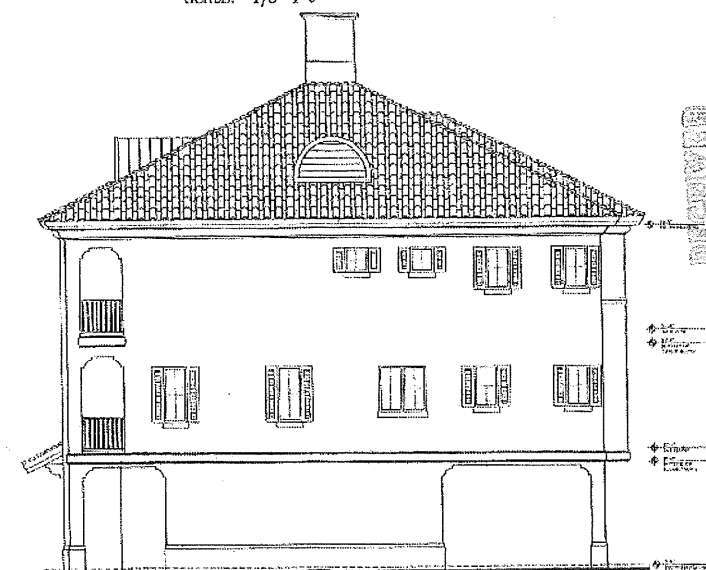
CONCEPT REAR ELEVATION (A)

SCALE: 1/8"=1'-0"



CONCEPT REAR ELEVATION (A)

SCALE: 1/8"=1'-0"



CONCEPT SIDE ELEVATION (A)

SCALE: 1/8"=1'-0"

001 2006-00033



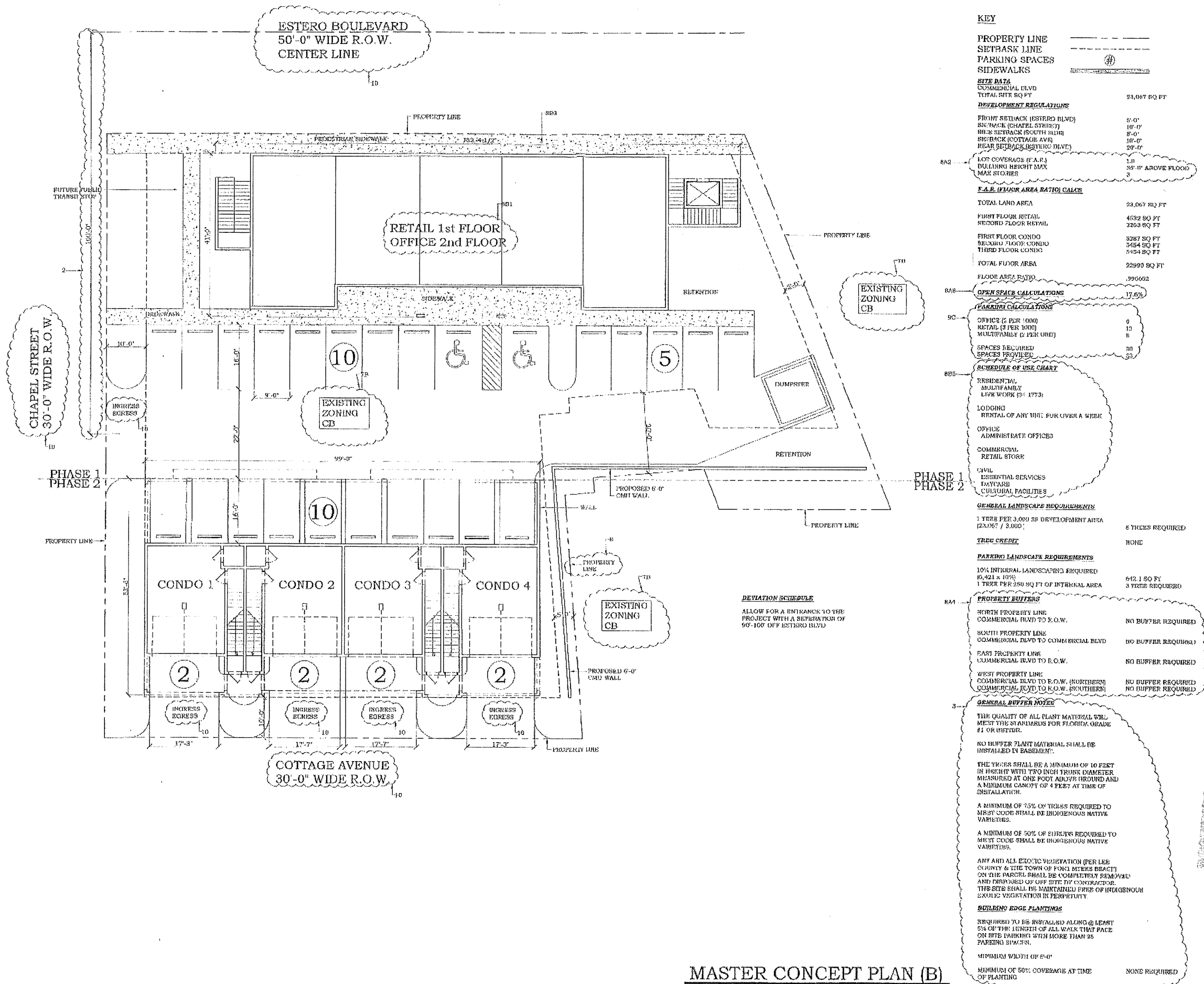
THESE PLANS ARE PREPARED BY MCHARRIS PLANNING & DESIGN, INC. FOR THE PROJECT DESCRIBED HEREIN. THEY ARE NOT TO BE USED FOR ANY OTHER PROJECT WITHOUT THE WRITTEN CONSENT OF MCHARRIS PLANNING & DESIGN, INC. ANY REUSE OR MODIFICATION OF THESE PLANS WITHOUT THE WRITTEN CONSENT OF MCHARRIS PLANNING & DESIGN, INC. IS PROHIBITED. MCHARRIS PLANNING & DESIGN, INC. ACCEPTS NO LIABILITY FOR ANY ERRORS OR OMISSIONS IN THESE PLANS.

NO.	REVISION	DATE	BY	CHKD.
1				
2				
3				
4				

2500 ESTERO
CONCEPT A
2500 ESTERO BLVD.
FORT MEERS BEACH, FL

Project Name and Address
2500 ESTERO BLVD.
FORT MEERS BEACH, FL 33435
Project No. CS-0024

Scale: AS NOTED
Sheet: A-3.1

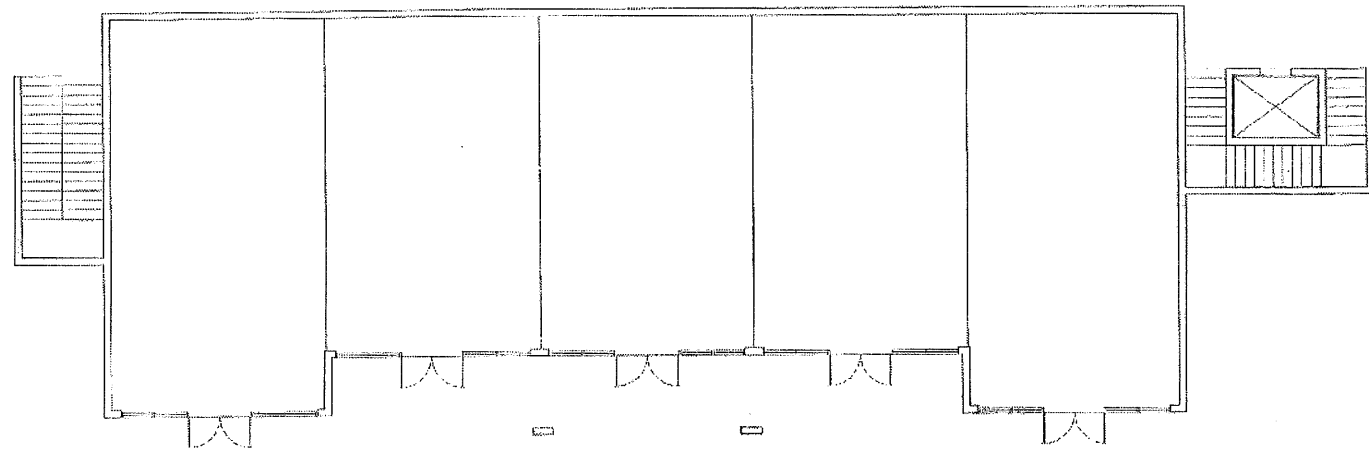


MASTER CONCEPT PLAN (B)

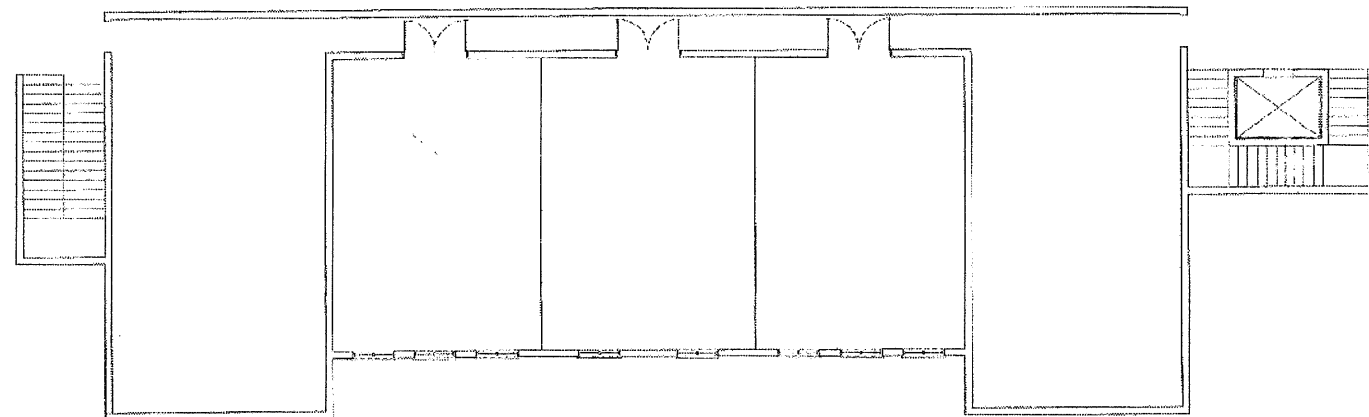
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DCI 2006-00033

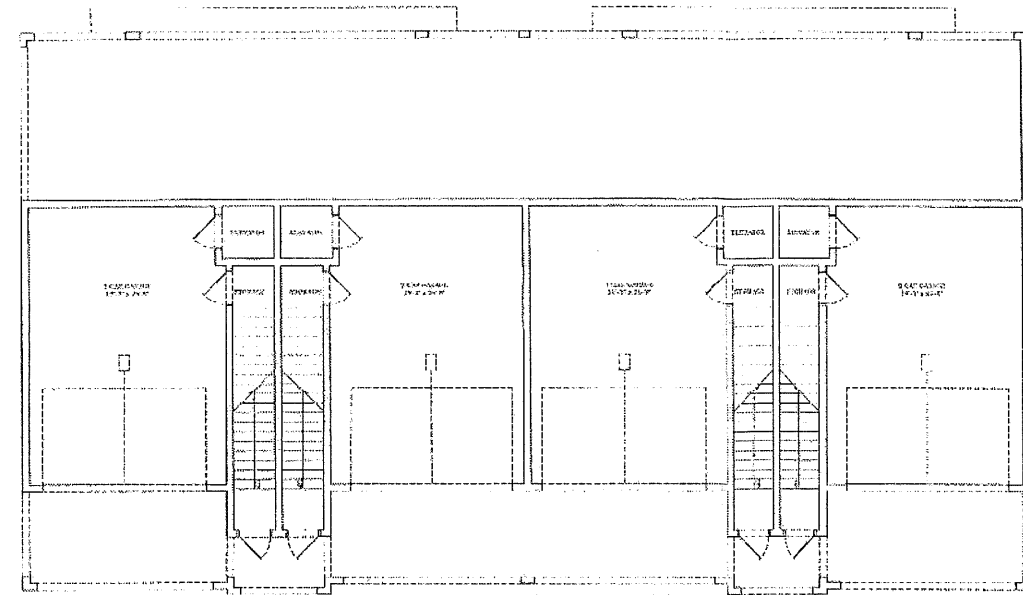
McHARRIS PLANNING & DESIGN 8001 Highland Trade Bldg. Suite 1 Fort Myers, FL 33905 Phone: (239) 744-4882 Fax: (239) 744-4889 Mobile: (239) 744-4883	
Project Name: 2500 ESTERO BLVD. CONCEPT B Address: 2500 ESTERO BLVD. City: FORT MYERS BEACH, FL	
Check by: JULE REINHARDT Drawn by: JULE REINHARDT Scale: AS NOTED Project No: CS 0024	Date: 05-14-06 Date: 05-14-06 Date: 05-14-06 Date: 05-14-06
A-1.1	



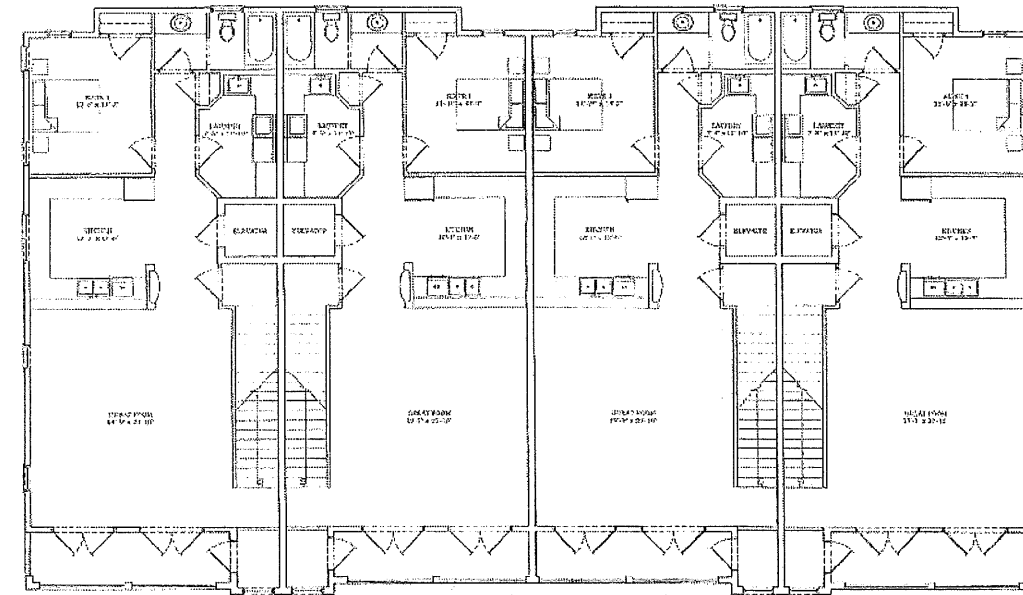
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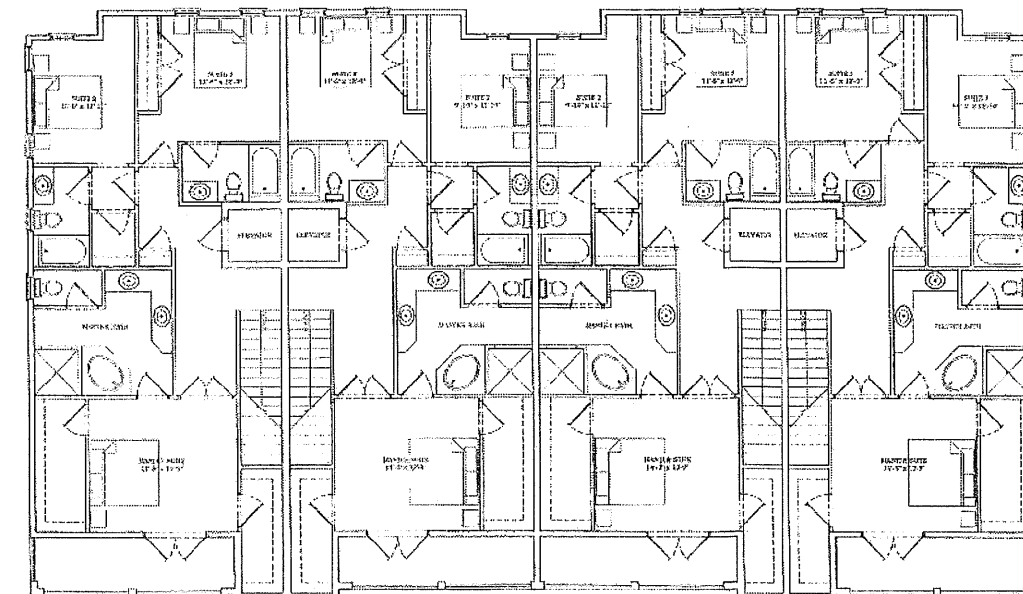
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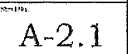
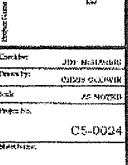
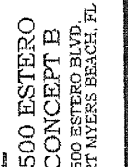
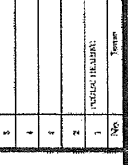
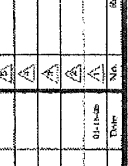
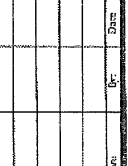
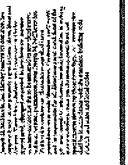
CONCEPT 1st FLOOR PLAN (B)



CONCEPT 2nd FLOOR PLAN (B)



CONCEPT 3rd FLOOR PLAN (B)
SCALE: 1/8"=1'-0"



2006-00033

2500 ESTERO
CONCEPT B
2500 ESTERO BLVD.
FORT MYERS BEACH, FL

DATE: 07/11/06
DRAWN BY: JIM MCHARRIS
CHECKED BY: JIM MCHARRIS
DATE: 07/11/06
PROJECT NO.: C5-0024

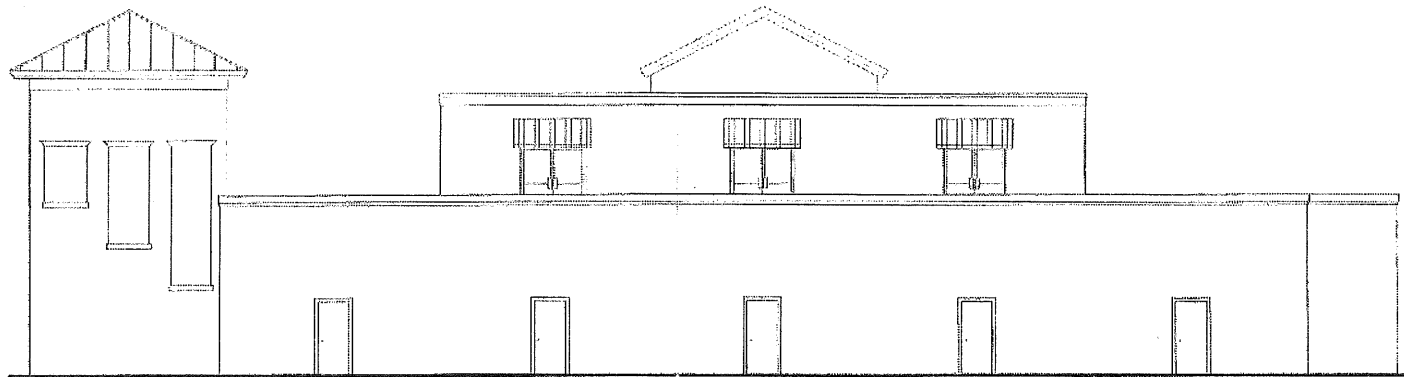
A-2.1



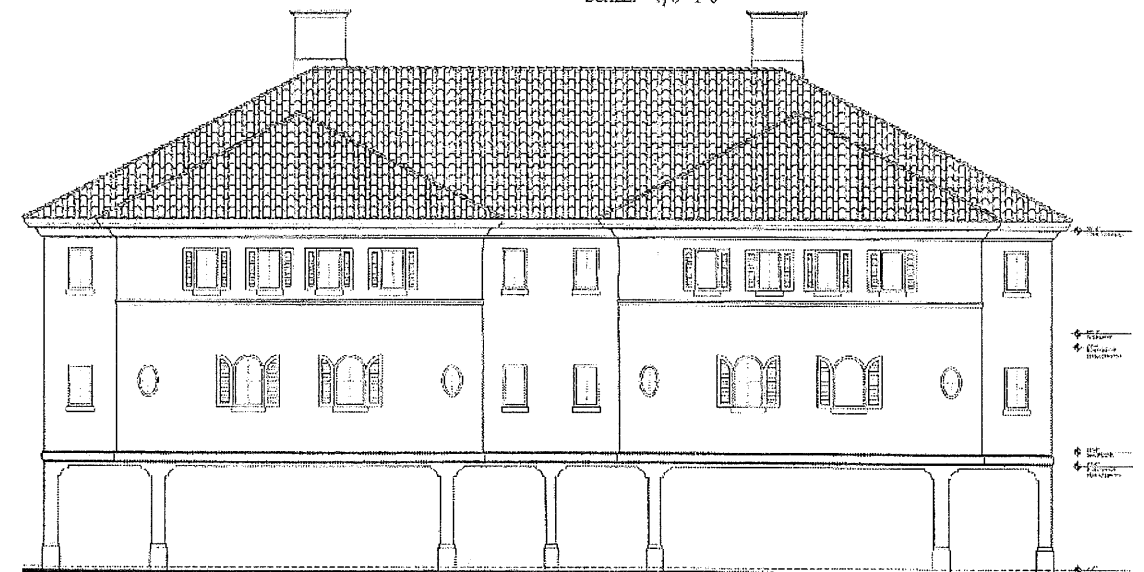
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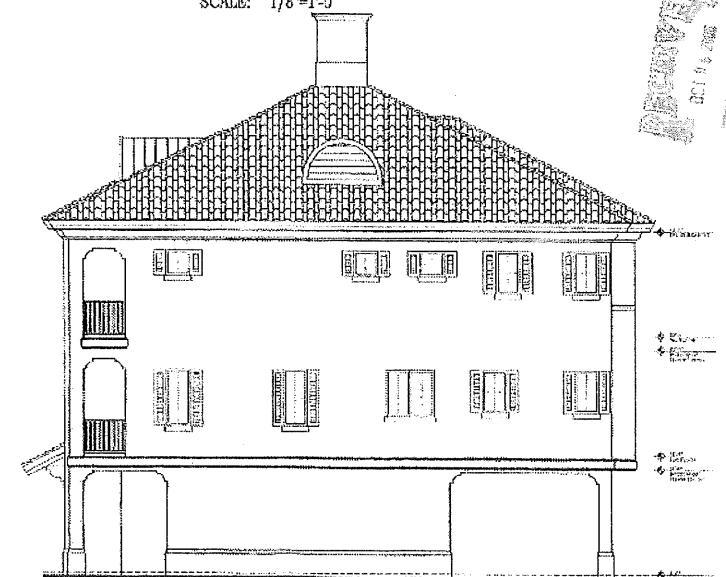
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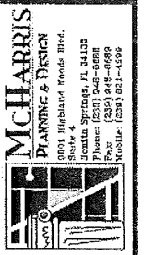
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SCALE: 1/8"=1'-0"



CONCEPT REAR ELEVATION (B)
SCALE: 1/8"=1'-0"



CONCEPT SIDE ELEVATION (B)
SCALE: 1/8"=1'-0"



McHarris Planning & Design
1001 Highway 100, Suite 100
Fort Myers, FL 33901
Phone: (813) 441-1111
Fax: (813) 441-1112
Web: www.mcharris.com

Rev	Description	By	Date
1	Initial Design	AM	01/11/06
2	Revised Design	AM	01/11/06
3	Final Design	AM	01/11/06

2500 ESTERO
CONCEPT B
2500 ESTERO BLVD.
FORT MYERS BEACH, FL

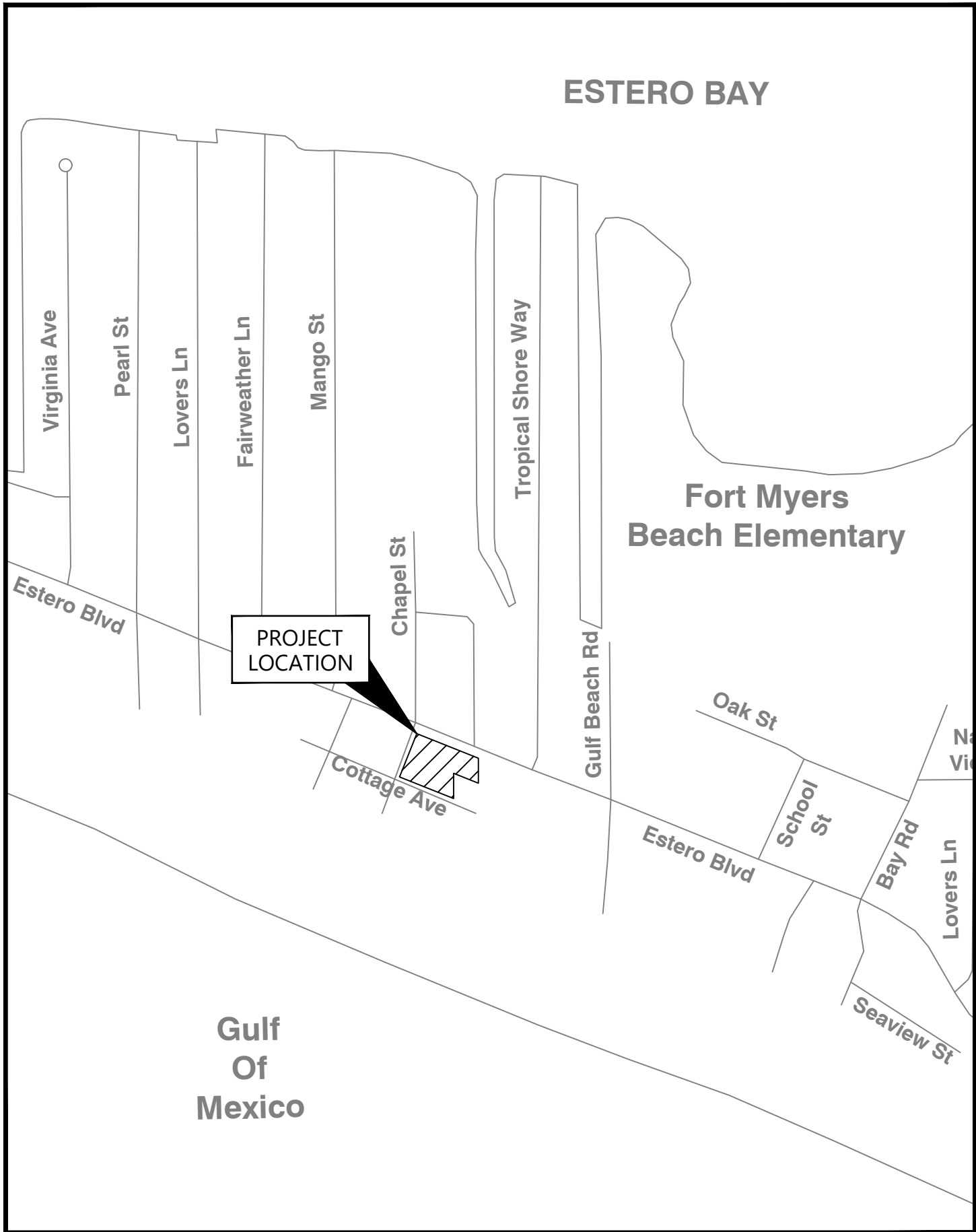
Check by: JOE M. BAEZ
Reviewed: CERO GONZALEZ
Approved: AM RUPP
Drawing No: CS-0024

A-3.1

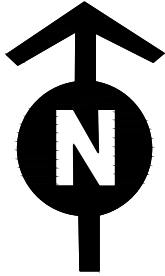
MASTER CONCEPT PLAN FOR

2500 ESTERO CPD

SECTION 19, TOWNSHIP 46S, RANGE 24E,
FORT MYERS BEACH, FLORIDA



VICINITY MAP
N.T.S.



SITE LOCATION MAP
N.T.S.

PREPARED BY:



5618 WHISPERING WILLOW WAY
FORT MYERS, FL 33908

PREPARED FOR:

EMPIRE HOLDING CORPORATION

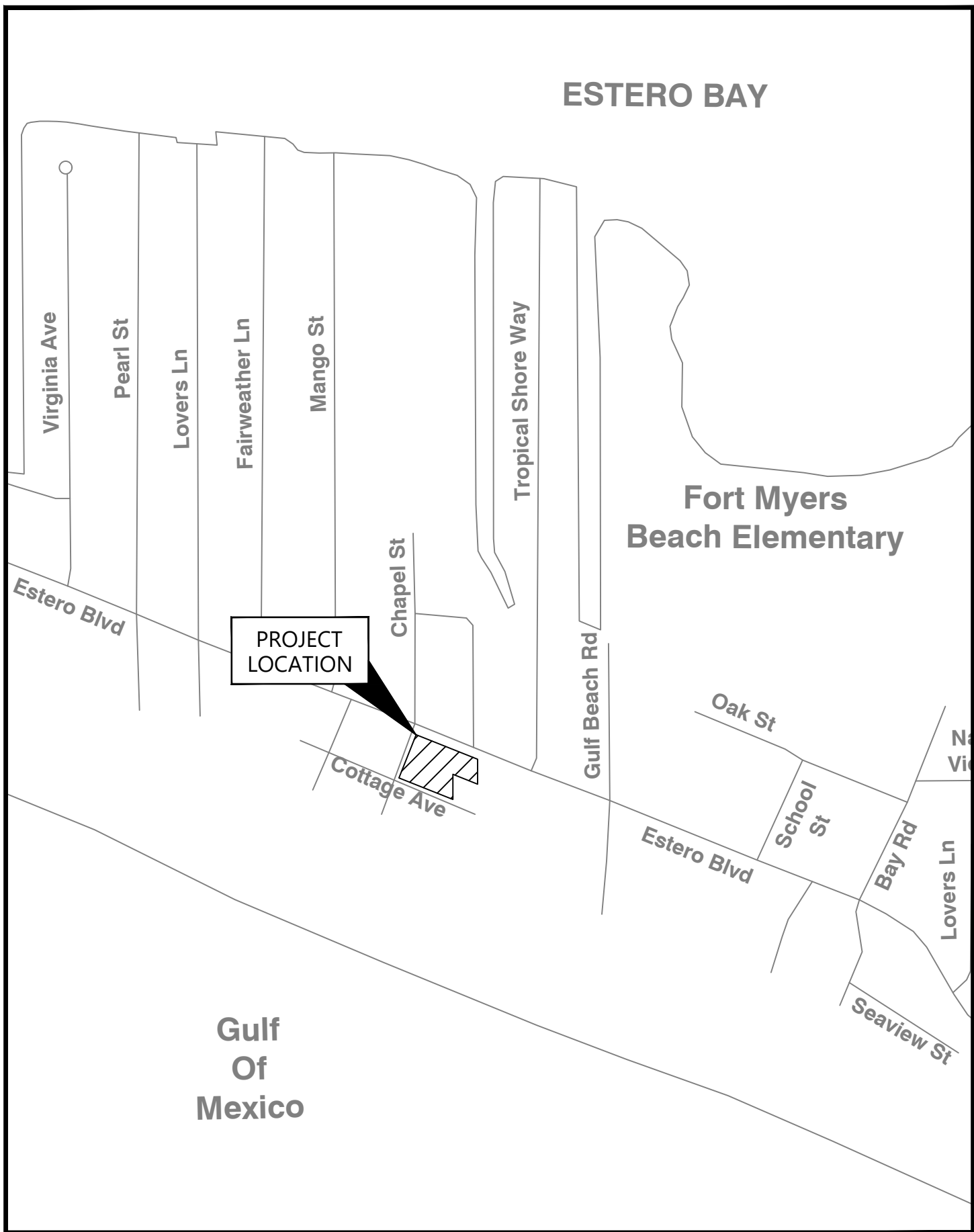
6104 E. 21ST STREET
INDIANAPOLIS, IN 46219

CONTENTS		
SHEET NUMBER	SHEET DESCRIPTION	
1	COVER SHEET	
2	MASTER CONCEPT PLAN	
3	NOTES	
DATE:	PROJECT No.:	SHEET No.:
January, 2025	230035.01.01	1 OF 3

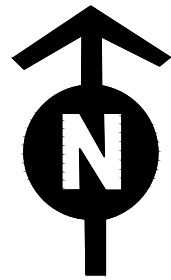
MASTER CONCEPT PLAN FOR

2500 ESTERO CPD

SECTION 19, TOWNSHIP 46S, RANGE 24E,
FORT MYERS BEACH, FLORIDA



VICINITY MAP
N.T.S.



SITE LOCATION MAP
N.T.S.

PREPARED BY:



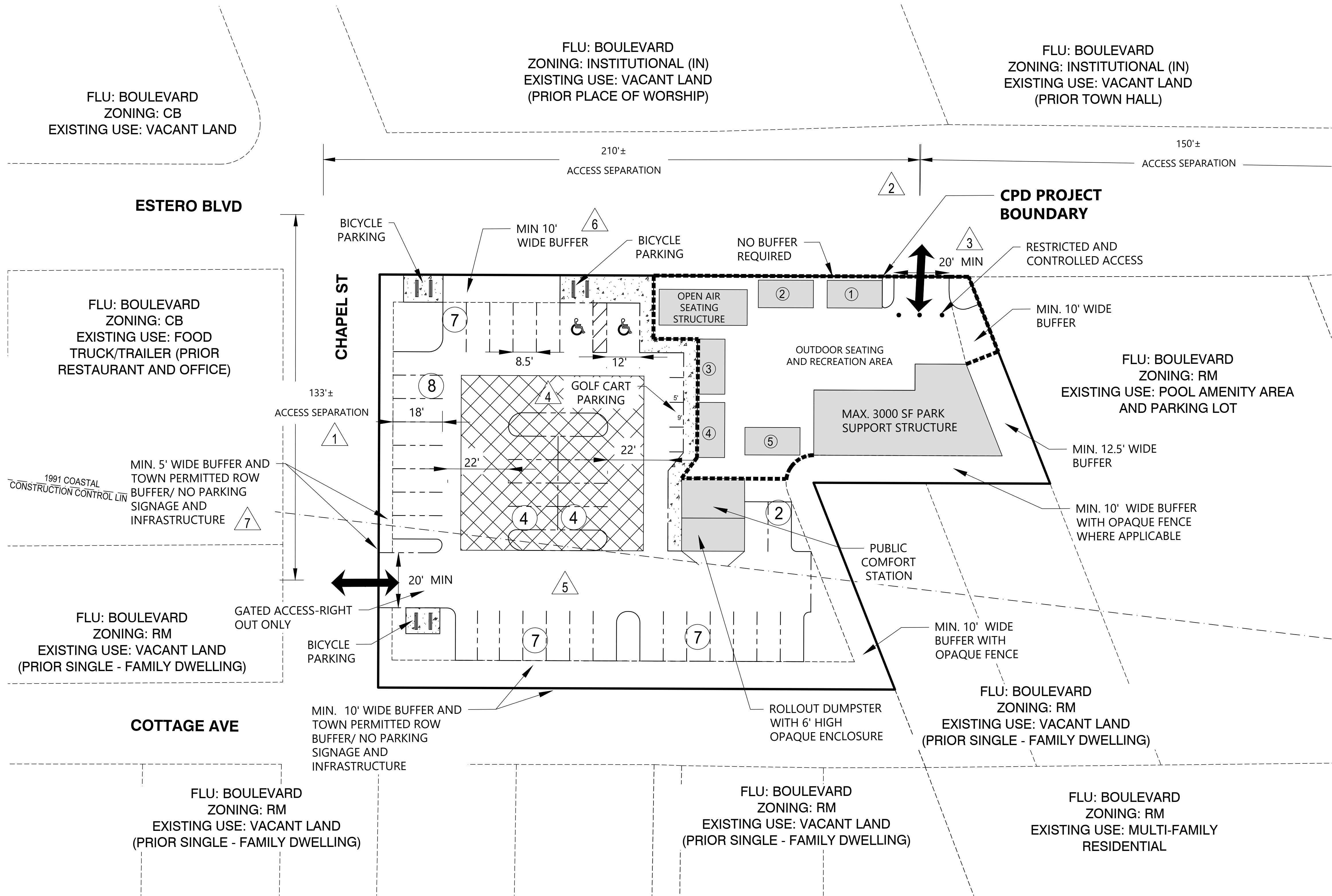
5618 WHISPERING WILLOW WAY
FORT MYERS, FL 33908

PREPARED FOR:

EMPIRE HOLDING CORPORATION

6104 E. 21ST STREET
INDIANAPOLIS, IN 46219

CONTENTS		
SHEET NUMBER	SHEET DESCRIPTION	
1	COVER SHEET	
2	MASTER CONCEPT PLAN	
3	NOTES	
DATE:	PROJECT No.:	SHEET No.:
March, 2025	230035.01.01	1 OF 3



LEGEND	
	CPD BOUNDARY
	OUTDOOR COP BOUNDARY
	MOBILE VENDOR/TRANSIENT MERCHANT PAD UNLESS LABELED OTHERWISE
	STORMWATER MANAGEMENT UNDERGROUND CHAMBER
	VEHICULAR INGRESS / EGRESS
	DEVIATIONS

0

20

40

DATE

DRAWN

REVISION

#

THE NEIGHBORHOOD
COMPANY

5618 WHISPERING WILLOW WAY | FORT MYERS, FL 33908
WWW.THENEIGHBORHOOD.COM/COMPANY

CLIENT:EMPIRE HOLDING CORPORATION

PROJECT:2500 ESTERO PLANNED
DEVELOPMENT (CPD) AMENDMENT

TITLE:MASTER CONCEPT PLAN

PROJECT NO.:230035.01.01

DATE:12/24

DRAWN:F.L.

DESIGN:K.G.

SHEET NUMBER:2

OF3



May 16, 2024

Town of Fort Myers Beach
Community Development
Department 2525 Estero Blvd.
Ft Myers Beach, FL 33931

**Subject: 2500 Estero Boulevard
2500/2510/2518 Estero Blvd. & 2543 Cottage Ave
Commercial Planned Development (CPD) Amendment – Submittal #1**

Intake Team:

The Neighborhood Company is pleased to submit on behalf of our client, Empire Holding Corp. an Indiana Corporation as Trustee for Ann Trust, a Planned Development Rezone (Amendment) Application associated with the subject property located at 2500/2510/2518 Estero Blvd. & 2543 Cottage Ave., Ft Myers Beach, FL 33931. The proposed request is to seek the following:

- Expand the existing CPD boundary approved under CPD Resolution #07-28 by rezoning 2518 Estero Boulevard (STRAP#: 19-46-24-W3-01301.0000) from Residential Multifamily (RM) and 2543 Cottage Avenue (STRAP#: 19-46-24-W3-0120A.013A) from Commercial Boulevard (CB), adding an Interim - Option "B" Master Concept Plan (MCP – Opt. B) and amending the schedule of uses.

Please find attached the following items to this cover letter consistent with application submittal checklist:

1. Application Filing Fee;
2. Application for Public Hearing:
 - a. Disclosure of Interest Affidavit & Authorization Form;
 - b. Letter of Authorization;
 - c. Exhibit 3-1 - Approved Waiver
 - d. Exhibit 6-1 – STRAP # and Legal Description
 - e. Exhibit 6-2 – Boundary Survey;
 - f. Exhibit 6-3 – Area Location Map;
 - g. Exhibit 6-6 – List of Surrounding Property Owners within 500’;
 - h. Exhibit 6-7 – Map Surrounding Property Owners within 500’; and
 - i. Mailing Labels Surrounding Property Owners within 500’.
3. Planned Development Zoning - Supplement PH-D:
 - a. Narrative and Applicable Supplements
 - b. Section F: Schedule of Deviations and Justifications
 - c. Master Concept Plan
 - d. Concept Architectural Renderings
 - e. Schedule of Uses
 - f. Resolution 07-28
 - g. TIS



We look forward to your review and are available to answer questions related to this application.

Sincerely,

The Neighborhood Company

Kenrick Gallander, AICP
Vice President, Partner

Attachments: Application Submittal Requirements (listed above)

cc: James R. Hotka
Dan Myers



**2500 ESTERO BOULEVARD
COMMERCIAL PLANNED DEVELOPMENT (CPD)
Planned Development Amendment**

FILING FEE

Town Fee Schedule 2023:

- PD Rezone = \$6,500

TOTAL: \$6,500



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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

Site Address: 2500/2510/2518 Estero Blvd. & 2543 Cottage Ave., Fort Myers Beach, FL

STRAP Number: 19-46-24-W3-0120A.0100, 19-46-24-W3-01302.0000, 19-46-24-W3-01301.0000, & 19-46-24-W3-0120A.013A

Applicant: Empire Holding Corp., an Indiana Corporation as Trustee for Ann Trust Phone: _____

Contact Name: James R. Hotka Phone: 317-601-9780

Email: _____ Fax: _____

Current Zoning District: CPD & RM

Future Land Use Map (FLUM) Category: Boulevard

FLUM Density Range: 6 du/ac Platted Overlay: ☐ YES ☒ NO

ACTION REQUESTED

☐ Special Exception

☐ Variance

☐ Conventional Rezoning

☒ Planned Development ☒ Commercial ☐ Residential

☐ Master Concept Plan Extension

☐ Appeal of Administrative Action

☐ Vacation of Platted Right-of-way and Easement

☐ Other – cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

PH-A

PH-B

PH-C

PH-D

PH-E

PH-F

PH-G

attach on separate sheet

PART I – General Information

A. Applicant*: Empire Holding Corp., an Indiana Corporation as Trustee for Ann Trust Phone: _____

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

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

Applicant Mailing Address: 6104 E. 21st Street, Indianapolis, IN 46219

Email: _____ Fax: _____

Contact Name: James R. Hotka Phone: 317-601-9780



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

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

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

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

Name: Kenrick Gallander, AICP Phone: 850-803-5621
Address: 5618 Whispering Willow Way, Fort Myers, FL 33908
Email: kg@theneighborhood.company Fax: _____

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

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

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

PART II – Nature of Request

Requested Action (each request requires a separate application)

- ☐ Special Exception
- ☐ Variance from LDC Section _____ - _____
- ☐ Conventional Rezoning from _____ to _____
- ☒ Planned Development
- ☐ Rezoning from _____ to ☐ Commercial PD ☐ Residential PD
- ☒ Amendment. List the project number: Resolution 07-28
- ☐ Extension/reinstatement of Master Concept Plan. List project number: _____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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

PART III – Waivers

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

Code Section: LDC Sec. 10-473 Description: See enclosed approval.

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV – Property Ownership (Single Owner)

☐ Single Owner (individual or husband and wife)

Name: _____ Phone: _____

Mailing Address: _____

Email: _____ Fax: _____

AFFIDAVIT APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

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

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

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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

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

Signature

Printed Name

STATE OF _____ COUNTY OF _____

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

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

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

_____ as identification.

(SEAL)

Notary Public Signature

PART V

Property Ownership (Multiple Owners)

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

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

DISCLOSURE OF OWNERSHIP INTEREST

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

Name and Address

Percentage Ownership



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____

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

Name and Address

Percentage of Interest

Shore Waters Development LLC (Beneficiary)

100%

(SEE PARTNERS BELOW)

_____	_____
_____	_____
_____	_____

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

Name and Address

Percentage of Ownership

Leighanna E. Myers (Hotka) - 6104 E 21st Street, Indianapolis, IN 46219

25%

Jessie D Hotka - 6104 E 21st Street, Indianapolis, IN 46219

25%

Christopher J Hotka - 6104 E 21st Street, Indianapolis, IN 46219

25%

Annison C Hotka - 6104 E 21st Street, Indianapolis, IN 46219

25%

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

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Date of Contract: _____

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

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

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

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

_____	_____
Signature	Printed Name

AFFIDAVIT

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

I, James R Hotka (name), as President (title)
of Empire Holding Corp (company), swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

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



COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING

Anne Trust, By Empire Holding Corp, Trustee

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

Signature

James R Hotka

Typed or Printed Name

President

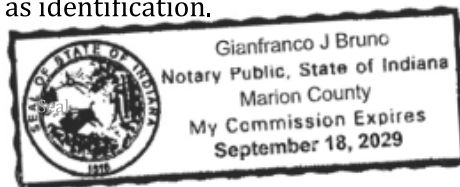
Title

3/6/2023

Date

STATE OF Indiana COUNTY OF Marion

The foregoing instrument was certified and subscribed before me by means of X physical presence OR ☐ online notarization, this 6th day of March, 2023, by James R Hotka ☒ who is personally known to me OR ☒ who has produced Indiana Drivers License as identification.



Notary Public Signature #NP0647625

PART VI- Property Information

A. Legal Description:

STRAP: 19-46-24-W3-0120A.0100, 19-46-24-W3-01302.0000, 19-46-24-W3-01301.0000, & 19-46-24-W3-0120A.013A

Property Address: 2500/2510/2518 Estero Boulevard and 2543 Cottage Avenue, Fort Myers Beach, FL

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

☒ Yes. Property identified in subdivision: Seagrape Subdivision PB 4, PG 17 Lots 10 - 13 and Lots 1 & 2, Blake's Subdivision, PB 4, Pg 44.

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

B. Boundary Survey:

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 160 feet
Depth (please provide an average width if irregular in shape) 150 feet
Frontage on street: 160' Estero Blvd. feet. Frontage on waterbody: N/A feet
Total land area: 0.691 ☒ acres ☐ square feet

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

The subject property is located approximately 1.07 +/- miles from the Matanzas
Pass Bridge.

☒ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

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

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

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

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

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

Please submit required applications, supplemental information, exhibits and documents to zoningpermits@fmbgov.com.

Application fees are set by resolution of the Town Council of the Town of Fort Myers Beach and must be paid before any materials submitted will be considered an application.

The applicant is responsible for the accuracy and completeness of this application. Time delays or additional expenses necessitated by submitting inaccurate or incomplete information will be the responsibility of the applicant. Decisions regarding requests to waive submittal requirements are at the discretion of the Community Development Director and may not be appealed.

All information submitted with the application becomes a part of the public record and will be a permanent part of the file.

All attachments and exhibits must be legible, suitable for recording, and of a size that will fit or conveniently fold into a letter size (8 ½ by 11) folder.

Explanatory Notes – Part I

- A. Applicant's name: The applicant may be the landowner or an authorized agent.
- B. Relationship of applicant to property: Indicate if the applicant is the property owner, and if so, the type of ownership. If the applicant is not the owner of the property, indicate the relationship of the applicant to the owner and submit a notarized authorization from the owner(s) to the applicant.
- C. Agent's name: If the applicant will have others representing him/her in processing the application, indicate name, address, and phone number.
- D. Other agents: Provide contact information for any other agents that may be involved in the request.

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

If waiver of any application requirement has been approved by the Community Development Director, attach a copy of the approval. Please request waivers prior to applying. Exhibit 3-1

Explanatory Notes – Part IV

- A. If the property owner is an individual or husband and wife, check the box and provide the information.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Explanatory Notes – Part V

- A. If there are multiple property owners exhibit 5-1, complete the disclosure form and include the names and mailing addresses of all persons or entities having an ownership interest in the property, including the names of all stockholders and trust beneficiaries. Disclosure is not required of any entity whose interests are solely equity interests that are regularly traded on an established securities market in the United States or another country.
- B. If more than one parcel is involved, submit a list of all property owners and their mailing addresses. Provide a map keyed to the list of property owners showing their interests. The applicant is responsible for the accuracy of the list and map Exhibit 5-2
- C. Where the property is a condominium or timeshare condominium, the application must be initiated by both the condominium association and no less than 75% of the total number of unit owners. To verify ownership, the list of property owners must be identified by unit number and/or timeshare period as applicable, along with proof that the owners who did not join in the application were given actual written notice of the application by the applicants, who must verify the list and the notice by sworn affidavit. Attach this affidavit as Exhibit 5-3.
- D. In addition, a letter of opinion from an attorney licensed to practice law in the State of Florida addressing the considerations in LDC Section 34-201(a)(1)b.3. must be attached as Exhibit 5-4.

Explanatory Notes – Part VI

- A. Include the street address of the subject property. List STRAP number. If more than one parcel is involved, list all STRAP numbers. If you don't know the STRAP number, you can look up the property in the records of the Lee County Property Appraiser at <http://www.leepa.org>. If the application includes only one or more undivided platted lots within a subdivision officially recorded in the Plat Books of Lee County, Florida, identify the property by lot number(s), block if applicable, subdivision unit if applicable, subdivision name, and plat book number and page number. If the property is not one or more undivided platted lots or is in an "unrecorded" subdivision, attach a metes and bounds legal description giving accurate bearings and distances for each course. If multiple parcels are involved, the metes and bounds legal description must describe the perimeter of the entire property subject to the request. The initial point in the description must be related to at least one established identifiable real property corner, such as a government corner or a recorded corner. The bearings used in the description must be clearly referenced to a well-established and monumented line. Exhibit 6-1
- B. Submit a Boundary Survey meeting the minimum technical standards for surveying set out in Chapter 61G17-6 of the Florida Administrative Code. Make sure that the surveyor is aware of any specific needs of the survey (location of Coastal Construction Lines, locations of existing structures, locations of easements, etc) that are relevant to your request. The perimeter boundary of the entire subject property should be indicated clearly with a heavy



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

line. Exhibit 6-2

- C. Provide the property dimensions or the approximate dimensions if the property is not a regular quadrilateral.
- D. Describe how to get to the property starting from either the Sky Bridge or the Big Carlos Pass Bridge (specify which). Exhibit 6-3
- E. If there are any deed restrictions or covenants that might affect the requested action, provide the information. Exhibit 6-4
- F. A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5
- G. Attach a list of the surrounding property owners within 500 feet of the perimeter of the area of the request. Also include two sets of mailing labels providing the names and addresses of the owners on this list, and a map showing the parcel boundaries within the 500-foot radius Exhibit 6-6. This information can be acquired for a small fee by requesting a “variance report” from the Map Sales Office at the Lee County Property Appraiser’s Office. Contact information for the Property Appraiser can be found at <http://www.leepa.org>.
- H. Indicate the Future Land Use Map category or categories of the property as shown on the Fort Myers Beach Comprehensive Plan’s Future Land Use Map, and whether the property is located in the “platted overlay” on the map.
- I. Indicate the current zoning of the property. In most cases the current zoning is shown on the official zoning map of the Town of Fort Myers Beach, as adopted by ordinance. If zoning actions affecting the subject property have been taken since March 2004, call Town Hall to verify the current zoning.

Explanatory Notes – Part IV & V

The applicant must sign and submit either of the affidavits in Part V & VI, as applicable.



THE NEIGHBORHOOD COMPANY

I James R Hotka, as authorized member of Empire Holding Corp., an Indiana Corporation as Trustee for Ann Trust owner of property located at 2500/2510/2518 Estero Blvd. & 2543 Cottage Ave., Fort Myers Beach, FL, identified by STRAP Numbers 19-46-24-W3-0120E.0020, 19-46-24-W3-0120E.0010, 19-46-24-W3-0120E.0020, & 19-46-24-W3-0120E.0030, hereby authorizes The Neighborhood Company regarding the above-referenced property to serve as agent for the Town of Ft Myers Beach Planned Development Rezone (Amendment) Application.

Empire Holding Corp., an Indiana Corporation as Trustee for Ann Trust

By: [Signature]

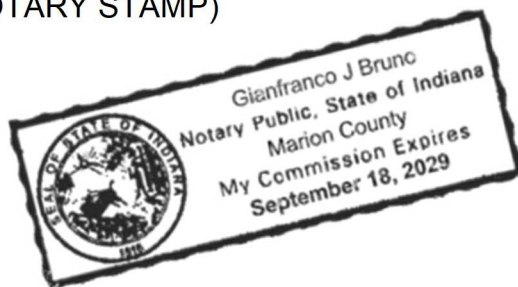
Print Name: James R Hotka

Title: President

STATE OF Indiana
CITY OF Marion

The foregoing instrument was acknowledged before me by means of physical presence or ~~online notarization~~, this 6th day of March 2024 by James R Hotka, as President of Empire Holding Corp, on behalf of the company(s), who ~~is personally known to~~ has produced a(n) driver's license as identification.

(NOTARY STAMP)



[Signature] #NP0647625
Notary Public, State of Indiana
Print Name: GAINFRANCO J BRUNO
My Commission Expires: 9/18/2029



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Application for Waiver of Submittal Requirements

Specific requirements from which waiver is sought

Section Number	Requirement
LDC Sec. 10-473	Listed Species Survey
LDC Sec. 10-286	Traffic Impact Statement (TIS)

Scope of project and reasons for request

Explain the nature of the project and give reasons why you think specific requirements are inapplicable or otherwise should be waived.

Please see attached Waiver Narrative.

I hereby state that the information provided above is accurate to the best of my knowledge. I recognize that if my project changes from what is described above approval of this waiver request may no longer be valid.

Kenrick S. Gallander

Digitally signed by Kenrick S. Gallander
Date: 2024.04.11 09:52:23 -04'00'

Signature

Date

Director's Decision ☐ Approved ☐ Denied

Comments:

<i>I'm only agreeing to a waiver on listed species</i>

Signature

Date

Revised 1/6/2017

Town of Fort Myers Beach
2525 Estero Blvd., Fort Myers Beach, Florida 33931
Phone: 239-765-0202 Permits@FortMyersBeachFL.gov Fax: 239-765-0909

Page 2 of 2

SUBMIT



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Application for Waiver of Submittal Requirements

Submit a request for waiver of submittal requirements prior to submitting an application for public hearing or administrative action. Requesting a waiver of submittal requirements simultaneously with an application may delay your application. The request and the director's response will become part of the application file.

Waiver is requested for items required for:

Public Hearing

- ☐ General Requirements
- ☐ DRI
- ☒ Planned Development
- ☐ Conventional Rezoning
- ☐ Special Exception
- ☐ Variance
- ☐ Appeal
- ☒ Other

Administrative Action

- ☐ General Requirements
- ☐ Planned Dev. Amendment
- ☐ Commercial Antenna
- ☐ Consumption on Premises
- ☐ Forced Relocation of a Business
- ☐ Interpretation of LDC
- ☐ Minimum Use Determination
- ☐ Setback Variance
- ☐ Other

Name of Project: 2500 Estero Boulevard CPD Amendment

Applicant: Empire Holding Corp., an Indiana Corporation as Trustee for Ann Trust (AGENT - THE NEIGHBORHOOD COMPANY)

Strap Number: 19-46-24-W3-0120A.0100, 19-46-24-W3-01302.0000, 19-46-24-W3-01301.0000, & 19-46-24-W3-0120A.013A

Street Address: 2500/2510/2518 Estero Blvd. & 2543 Cottage Ave., Fort Myers Beach, FL

Phone Number: 850-803-5621

Email: kg@theneighborhood.company



2500 Estero Boulevard Commercial Planned Development (CPD) Amendment

Waiver Justification Narrative

The property located at 2500/2510/2518 Estero Blvd. & 2543 Cottage Ave., Fort Myers Beach, FL is the subject property for an application to amend the existing CPD (Resolution #07-28) to include the following:

- Amend the boundary to include and rezone Lot 1 (2518 Estero Boulevard) from Commercial Boulevard to CPD.
- Amend the boundary to include and rezone the remainder of Lot 13 (2543 Cottage Avenue) from Residential Multifamily (RM) to CPD.
- Provide for an "Option B" - Master Concept Plan and updated Schedule of Uses to allow for an interim development of a food truck/trailer park with outdoor seating and a commercial parking lot.

The Neighborhood Company, on behalf of our client, Empire Holding Corp., an Indiana Corporation as Trustee for Ann Trust, is submitting this Waiver Request for the following submittal requirements to the forthcoming Planned Development Amendment application:

- LDC Sec. 10-473 - Listed Species Survey
- LDC Sec. 10-286 - Traffic Impact Statement

The waiver is requested due to the fact the currently vacant property was previously developed with a restaurant (removed in 2006) and two residences destroyed by Hurricane Ian. As a result of the prior development impacts and the impacts from Hurricane Ian, no native vegetation or listed species exist on this site. Additionally, the proposed amendment as outlined above does not increase the density or intensity of development previously approved under Resolution #07-28, thus not further impacting the surrounding roadway network.

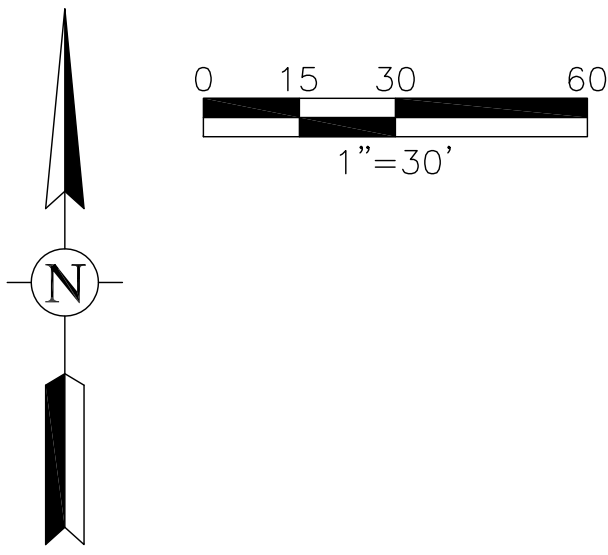
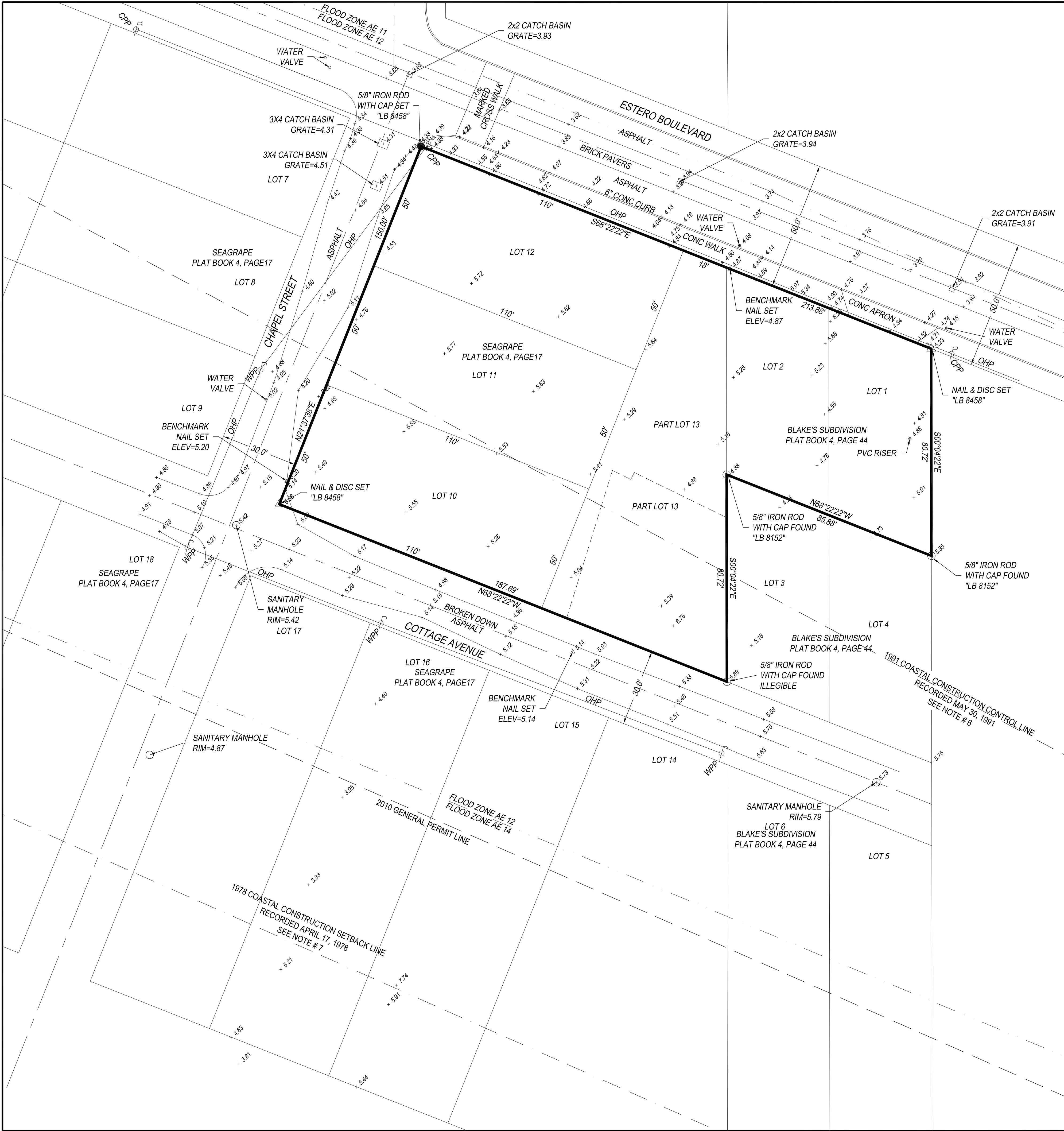
Due to the justifications provided above, we respectfully request waivers from LDC Sec. 10-473 and LDC Sec. 10-286 which require a Listed Species Survey and a Traffic Impact Statement to accompany the CPD Amendment application.



**2500 ESTERO BOULEVARD
COMMERCIAL PLANNED DEVELOPMENT (CPD)
Planned Development Amendment**

LEGAL DESCRIPTION:

LOTS 10-13, SEAGRAPE SUBDIVISION (PLAT BOOK 4, PAGE 17) AND LOTS 1 & 2, BLAKE'S SUBDIVISION (PLAT BOOK 4, PAGE 44). ALL INFORMATION PER THE OFFICIAL RECORDS OFFICE OF THE CLERK OF CIRCUIT COURT OF LEE COUNTY, FLORIDA.



LEGAL DESCRIPTION:

LOTS 10-13, SEAGRAPE SUBDIVISION (PLAT BOOK 4, PAGE 17) AND LOTS 1 & 2, BLAKE'S SUBDIVISION (PLAT BOOK 4, PAGE 44). ALL INFORMATION PER THE OFFICIAL RECORDS OFFICE OF THE CLERK OF CIRCUIT COURT OF LEE COUNTY, FLORIDA.

SURVEYOR NOTES:

- BEARINGS SHOWN HEREON ARE GRID BEARINGS BASED UPON THE NORTH AMERICAN DATUM OF 1983, 1990 ADJUSTMENT (NAD83/90) FLORIDA EAST ZONE. DISTANCES SHOWN ARE GROUND DISTANCES MEASURED IN FEET. COORDINATES SHOWN ARE GRID COORDINATES. DATUM BASED UPON DEPARTMENT OF NATURAL RESOURCES CONTROL MONUMENTS 64-78-A26 AND 64-78-A27 HAVING NAD83/90 GRID COORDINATES AS SHOWN.
- NO UNDERGROUND IMPROVEMENTS OR FOUNDATIONS WERE LOCATED UNDER THE SCOPE OF THIS SURVEY.
- ELEVATIONS SHOWN HEREON ARE REFERENCED TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 1988). ELEVATIONS ARE BASED UPON TIES TO THE TRIMBLE REAL-TIME KINEMATIC (RTK) GLOBAL POSITIONING SYSTEM (GPS) CONTROL NETWORK.
- THIS PARCEL LIES IN FLOOD ZONES AS SHOWN. ZONES ARE BASED ON FEMA FLOOD INSURANCE RATE MAP PANEL 12071C0554G, DATED NOVEMBER 17, 2023. FLOOD ZONE LINES SHOWN HEREON WERE SCALED FROM THE INDICATED F.I.R.M. MAP PANEL.
- BOUNDARY INFORMATION SHOWN HEREON IS BASED UPON THE RECORD PLAT AND LEGAL DESCRIPTION PROVIDED. NO SEARCH OF THE PUBLIC RECORD WAS PERFORMED BY THIS SURVEYOR. THERE MAY BE OTHER SETBACKS AND/OR EASEMENTS NOT KNOWN TO THIS SURVEYOR.
- THE 1991 COASTAL CONSTRUCTION CONTROL LINE SHOWN HEREON IS AS RECORDED IN PLAT BOOK 48, PAGE 30, AND FILED IN OFFICIAL RECORDS BOOK 2224, PAGES 1010 THROUGH 1041 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA ON MAY 30, 1991.
- THE 1978 COASTAL CONSTRUCTION SETBACK LINE SHOWN HEREON IS AS RECORDED BY ORDINANCE 76-3 RECORDED APRIL 17, 1978 IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA
- MEAN HIGH WATER ELEVATION OF 0.26' (NAVD 1988) IS BASED ON A DETERMINATION OF THE FLORIDA DEPARTMENT OF ENVIRONMENTAL AGENCY.
- THIS TIDAL WATER SURVEY COMPLIES WITH CHAPTER 177, PART II, FLORIDA STATUTES.
- THIS PARCEL CONTAINS 0.691 ACRES, OR 30,118 SQ. FT., MORE OR LESS.

PROJECT:
19-46-24-W3-0120A.0100
2600 ESTERO BLVD.
LOTS 10, 11, 12 & PART 13
SEAGRAPE SUBDIVISION

19-46-24-W3-0120A.013A
2443 COTTAGE AVE.
PART LOT 13
SEAGRAPE SUBDIVISION

19-46-24-W3-01302.000
2510 ESTERO BLVD
LOT 2, BLAKE'S SUBDIVISION

19-46-24-W3-01301.0000
2518 ESTERO BLVD.
LOT 1, BLAKE'S SUBDIVISION

EMPIRE HOLDING CORPORATION
FORT MYERS BEACH, FLORIDA
BOUNDARY SURVEY

ABBREVIATIONS:

D.U.E.	DRAINAGE/UTILITY EASEMENT
IRR	IRRIGATION
WPP	WOOD POWER POLE
GUY	GUY ANCHOR WITH CABLE
OHP	OVERHEAD POWER
MBX	MAIL BOX
LP	LIGHT POLE
CS	CATCH BASIN
CONC	CONCRETE
MON	MONUMENT

MILLER GEOSPATIAL LLC
YOUR LAND SURVEYING PARTNER
4401 NW 20TH TERRACE
CAPE CORAL, FL 33903
238-571-4668
LB 8458



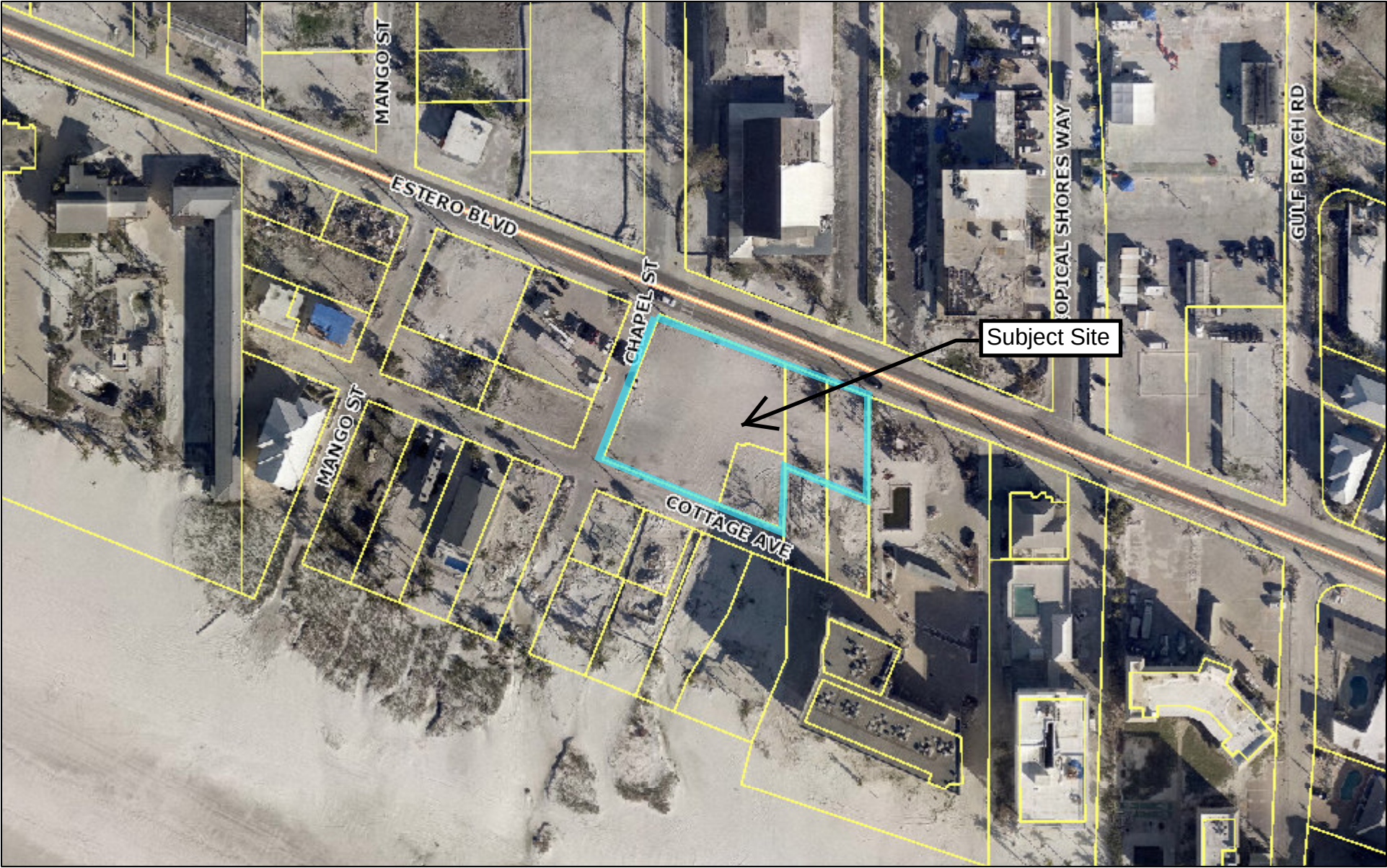
I HEREBY CERTIFY TO THE BEST OF MY KNOWLEDGE THAT THIS SURVEY OF THE HEREON DESCRIBED LANDS IS A TRUE REPRESENTATION OF THE FIELD SURVEY MADE UNDER MY DIRECTION AND CONFORMS TO THE STANDARDS OF PRACTICE FOR PROFESSIONAL SURVEYORS AND MAPPERS AS OUTLINED IN CHAPTER 53-17 OF THE FLORIDA ADMINISTRATIVE CODE.

CERTIFIED TO:
EMPIRE HOLDING CORPORATION

DONALD G. MILLER, P.S.M.
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 6674

SURVEYOR:	DGM
DRAWING BY:	DGM
JURISDICTION:	CAPE CORAL
DATE:	10/24/2023
SHEET TITLE:	BOUNDARY SURVEY

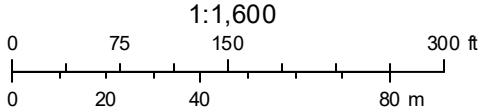
2500 Estero Blvd. Property Location Map



March 8, 2024

Air Photos: 2023 Hi-Res (3 inch)

- | | | | | |
|--------------------|------------------|--------------------|----------------|--------------|
| Hospital Locations | School Locations | County Boundary | US 41 | Parcels Near |
| Library Locations | CCC_Parks | Major Roads Medium | Other Highways | |
| | | I-75 | Other Roads | |



Date: 3/5/2024 12:00:00 AM	List Size: 188							
STRAP	OwnerName	OwnerName2	MailAddress	MailAddress2	MailCity	MailState	MailZip	MailCountry
19-46-24-W3-0120A.0100	EMPIRE HOLDING CORP TR		PO BOX 19492		INDIANAPOLIS	IN	46219	
19-46-24-W3-0120A.013A	EMPIRE HOLDING CORP TR	RAINBOW REALTY GROUP INC	6104 E 21ST ST		INDIANAPOLIS	IN	46219	
19-46-24-W3-01301.0000	EMPIRE HOLDING CORP TR		PO BOX 19492		INDIANAPOLIS	IN	46219	
19-46-24-W3-01302.0000	EMPIRE HOLDING CORP TR		PO BOX 19492		INDIANAPOLIS	IN	46219	
19-46-24-W2-0020B.0010	SK FMB GROUP LLC		17761 SAN CARLOS BLVD		FORT MYERS BEACH	FL	33931	
19-46-24-W3-0020C.0010	TOWN OF FORT MYERS BEACH		2525 ESTERO BLVD		FORT MYERS BEACH	FL	33931	
19-46-24-W3-0020C.0070	GULF BEACH LLC		100 GULF BEACH RD		FORT MYERS BEACH	FL	33931	
19-46-24-W3-0020C.0090	DJ AREND FARMS INC		15759 RD 138		PAULDING	OH	45879	
19-46-24-W3-0020C.0110	REEF OF FMB LLC	JARET BISHOP	2411 US RT 22 SW		WASHINGTON COURT HOUSE	OH	43160	
19-46-24-W3-00450.0000	TOWN OF FORT MYERS BEACH		2525 ESTERO BLVD		FORT MYERS BEACH	FL	33931	
19-46-24-W3-00450.A000	TOWN OF FORT MYERS BEACH		2525 ESTERO BLVD		FORT MYERS BEACH	FL	33931	
19-46-24-W3-00458.0000	FORT MYERS BEACH FIRE CONTROL		PO BOX 2880		FORT MYERS BEACH	FL	33932	
19-46-24-W3-00458.0010	FORT MYERS BEACH FIRE CONTROL		PO BOX 2880		FORT MYERS BEACH	FL	33932	
19-46-24-W3-0110A.0010	CHG NEPTUNE ACQUISITIONS LLC	MARK A DAMANTE	150 E BROAD ST	STE 800	COLUMBUS	OH	43215	
19-46-24-W3-0110D.0010	1249 ESTERO ADVENTURES LLC		290 BAHIA VIA		FORT MYERS BEACH	FL	33931	
19-46-24-W3-0110D.0030	DYE GARY A & LOIS +		553 W31115 OLD VILLAGE RD		MUKWONAGO	WI	53149	
19-46-24-W3-0120A.001A	WOLFPACK PROPERTIES LLC		567 SIMBURY ST		COLUMBUS	OH	43228	
19-46-24-W3-0120A.001B	WOLFPACK PROPERTIES LLC		567 SIMBURY ST		COLUMBUS	OH	43228	
19-46-24-W3-0120A.0020	NANKO RAYMOND S		919 WEST JACKSON ST		MUNCIE	IN	47305	
19-46-24-W3-0120A.0040	YANKE RONALD		328 BUCKLIN ST		LA SALLE	IL	61301	
19-46-24-W3-0120A.0050	YANKE RONALD		328 BUCKLIN ST		LA SALLE	IL	61301	
19-46-24-W3-0120A.0070	THOMAS E SWANBECK PA		2450 ESTERO BLVD		FORT MYERS BEACH	FL	33931	
19-46-24-W3-0120A.0090	YANKE RONALD		328 BUCKLIN ST		LA SALLE	IL	61301	
19-46-24-W3-0120A.014A	FRENCH EDWIN T III		PO BOX 22538		INDIANAPOLIS	IN	46222	
19-46-24-W3-0120A.0150	FRENCH EDWIN T III		PO BOX 22538		INDIANAPOLIS	IN	46222	
19-46-24-W3-0120A.016A	COASTAL COTTAGES LLC		6850 W SOUTH LAKE GAGE DR		ANGOLA	IN	46703	
19-46-24-W3-0120A.016B	COASTAL COTTAGES LLC		6850 W SOUTH LAKE GAGE DR		ANGOLA	IN	46703	
19-46-24-W3-0120A.0170	TEZAK HELEN C TR		50 CHAPEL ST #4		FORT MYERS BEACH	FL	33931	
19-46-24-W3-0120A.017A	GOLDBERG GENNIE M TR		11793 ROYAL TEE CT		CAPE CORAL	FL	33991	
19-46-24-W3-0120A.0180	FMB COTTAGE LLC		2440 COTTAGE AVE		FORT MYERS BEACH	FL	33931	
19-46-24-W3-0120A.0190	BONFIGLI ANDREW & SUSAN		2434 COTTAGE AVE		FORT MYERS BEACH	FL	33931	
19-46-24-W3-0120A.0200	PAISLEY LLC		414 MARKET ST		IOWA CITY	IA	52245	
19-46-24-W3-0120A.0210	MCLAUGHLIN SAMUEL R &		4700 EDEN PARK DR		ZANESVILLE	OH	43701	
19-46-24-W3-0120A.0220	SCHLICHT EDITION		61 MANGO ST		FORT MYERS BEACH	FL	33931	
19-46-24-W3-0120B.0010	CHAPEL BY THE SEA		PO BOX 2997		FORT MYERS BEACH	FL	33932	
19-46-24-W3-0120B.0090	TOWN OF FORT MYERS BEACH		2525 ESTERO BLVD		FORT MYERS BEACH	FL	33931	
19-46-24-W3-0120D.0010	GERSTENHABER RAM TR	BEACH CONNECTION	2401 ESTERO BLVD		FORT MYERS BEACH	FL	33931	
19-46-24-W3-0120D.0020	CZULEWICZ MARYLU TR		4281 ORANGE RIVER LOOP RD		FORT MYERS	FL	33905	
19-46-24-W3-0120D.0030	BOREK TINA D		1605 PENNSAUKEN ST		CINNAMINSON	NJ	8077	
19-46-24-W3-0120D.0040	MANGO STREET LLC		126 MANGO ST		FORT MYERS BEACH	FL	33931	
19-46-24-W3-0120D.0060	PAOLERCIO WILLIAM		2367 JIM HENRY RD		DANDRIDGE	TN	37725	
19-46-24-W3-0120D.0070	MERIDIAN ENTERPRISES II LLC		2248 OLD STATE RD		BEAUFORT	MO	63013	
19-46-24-W3-0120D.0120	MEEHAN PATRICIA LYNN		293 ELM ST W		SUDBURY	ON	P3C 1V6	CANADA
19-46-24-W3-0120D.0130	BIG MARLIN PROPERTIES LLC		4704 VINCENNES BLVD		CAPE CORAL	FL	33904	
19-46-24-W3-0120D.0140	PPAFFINGER HEDWIG TR	JAMES SCHULTZ	1030 SPINDLE HILL RD		WOLCOTT	CT	6716	
19-46-24-W3-0120D.0150	RYAN JAMES	JASMINE RYAN	102 JEAN ST		OCONOMOWOC	WI	53066	
19-46-24-W3-0120D.0190	CHAPEL BY THE SEA		PO BOX 2997		FORT MYERS BEACH	FL	33932	
19-46-24-W3-0120E.0010	1249 ESTERO ADVENTURES LLC		290 BAHIA VIA		FORT MYERS BEACH	FL	33931	
19-46-24-W3-0120E.0020	1249 ESTERO ADVENTURES LLC		290 BAHIA VIA		FORT MYERS BEACH	FL	33931	
19-46-24-W3-0120E.0030	1249 ESTERO ADVENTURES LLC		290 BAHIA VIA		FORT MYERS BEACH	FL	33931	
19-46-24-W3-0120E.0040	GP REALTY CO OF CLEVELAND LTD		2369 HUNTERS CREEK CIR		HINCKLEY	OH	44233	
19-46-24-W3-0120E.0050	TOMMAR INC		9616 ROUND LAKE BLVD		WHITE LAKE	MI	48386	
19-46-24-W3-01303.0000	OLOUGHLIN DEREK W		30111 BATES RD		PERRYSBURG	OH	43551	
19-46-24-W3-01304.0000	WHITEHEAD LELAND S &		1155 NW 97TH DR		CORAL SPRINGS	FL	33071	
19-46-24-W3-02000.00CE	ESTERO BEACH CLUB CONDO ASSN		15751 SAN CARLOS BLVD #8		FORT MYERS	FL	33908	
19-46-24-W3-02400.00CE	ISLAND HOUSE BEACH CLUB ASSN		2560 ESTERO BLVD OFC		FORT MYERS BEACH	FL	33931	
19-46-24-W3-02900.00CE	PELICAN WATCH CONDO ASSOC	BOBACK COMMERCIAL GROUP	STE 203	10491 SIX MILE CYPRESS PKWY	FORT MYERS	FL	33966	
19-46-24-W3-04100.00CE	TROPICAL SHORES ASSN		2550 ESTERO BLVD		FORT MYERS BEACH	FL	33931	
19-46-24-W3-04200.00CE	SEA BREEZE ESTATES CONDO ASSN		325 W LOCUST LN		KENNETT SQUARE	PA	19348	
19-46-24-W3-04201.0010	71 MANGO LLC		15440 CATALPA COVE LANE		FORT MYERS	FL	33908	
19-46-24-W3-04202.0020	71 MANGO LLC		15440 CATALPA COVE LN		FORT MYERS	FL	33908	
30-46-24-W2-0020B.041A	FOREMAN BRADFORD G		50 GULF BEACH RD		FORT MYERS BEACH	FL	33931	
19-46-24-W3-0200A.0110	DIAMOND PROPERTY ALLIANCE LLC		1900 E GOLF RD STE 1275		SCHAUMBURG	IL	60173	
19-46-24-W3-0200A.0120	BROWELL BRIAN R & DEBRA I		900 ROSA LN		LA FAYETTE	IN	47905	
19-46-24-W3-0200A.0140	COFFMAN JOYCE A		55 HIAWATHA LN		GALESBURG	IL	61401	
19-46-24-W3-0200A.0150	STUCK STEVEN L & LORRAINE M		362 MISTY PINE TR		PRUDENVILLE	MI	48651	
19-46-24-W3-0200A.0210	VOLPE KENT R +		919 WARWICK LN		LIBERTYVILLE	IL	60048	
19-46-24-W3-0200A.0220	OLSEN SUSAN L		406 SPRING CREEK CT		ALBANY	IL	61230	
19-46-24-W3-0200A.0230	RAMEY STEVEN L & NANCY K		1634 DORRELL CT		GREENWOOD	IN	46143	
19-46-24-W3-0200A.0240	KDMJ ASSOCIATES INC		23884 SANCTUARY LAKES CT		BONITA SPRINGS	FL	34134	
19-46-24-W3-0200A.0250	LAIRD W E & DORIS M		1125 MERCER DR		TALLAHASSEE	FL	32312	
19-46-24-W3-0200A.0310	KREUTZ DAVID TR		2580 ESTERO BLVD # 31		FORT MYERS BEACH	FL	33931	
19-46-24-W3-0200A.0320	INCAUDO DANIEL +		20113 HARTFORD BLVD		ESTERO	FL	33928	
19-46-24-W3-0200A.0330	JOHNSTON DEAN + DEBI		PO BOX 20010	149 WESTMOUNT DR N	ORILLIA	ON	L3V 7X9	CANADA
19-46-24-W3-0200A.0340	GREGORY W GARNETT TRUST +		244 N WOODRIDGE DR		PITTSBORO	IN	46167	
19-46-24-W3-0200A.0350	T&R MULDOWNEY FAMILY LLC +	CJ KENTNER	5667 N CL MYERS DR		BYRON	IL	61010	
19-46-24-W3-0200A.0410	RAMEY STEVEN L & NANCY K		1634 DORRELL CT		GREENWOOD	IN	46143	
19-46-24-W3-0200A.0420	LTE 6020 LLC		2024 OAKRIDGE ST		SAINT PAUL	MN	55119	
19-46-24-W3-0200A.0430	HV DESIGNS LLC		2592 INDIAN WELLS TRL		XENIA	OH	45385	
19-46-24-W3-0200A.0440	MANNING DEBORAH A TR		2580 ESTERO BLVD #44		FORT MYERS BEACH	FL	33931	
19-46-24-W3-0200A.0450	ZECHINATI JAMES &		924 WESTCHESTER WAY		RICHMOND	KY	40475	
19-46-24-W3-0200A.0510	SCHRAEDER CHARLES H TR		2580 ESTERO BLVD #51		FORT MYERS BEACH	FL	33931	
19-46-24-W3-0200A.0520	CAPPARIS PROPERTIES LLC		1500 COLONIAL BLVD #200		FORT MYERS	FL	33907	
19-46-24-W3-0200A.0530	KOOP ROBERT N & SHARON L		1137 ELMWOOD LN		ELK GROVE VILLAGE	IL	60007	
19-46-24-W3-0200A.0540	AREND DAVID L & JOANNA L		15759 ROAD 138		PAULDING	OH	45879	
19-46-24-W3-0200A.0550	HIGHLAND MANOR APARTMENTS LLC		818 LAUREN DR		VILLA HILLS	KY	41017	
19-46-24-W3-0200B.1010	GULFWAY 101 LLC		23884 SANCTUARY LAKES CT		BONITA SPRINGS	FL	34134	
19-46-24-W3-0200B.1020	GULFWAY 102 LLC		23884 SANCTUARY LAKES CT		BONITA SPRINGS	FL	34134	
19-46-24-W3-0200B.1030	WOLFE CHARLES G & PAMELA M		401 MONOCACY DR		BATH	PA	18014	
19-46-24-W3-0200B.1040	GARNETT RODNEY S & ALTHEA N		7377 N COUNTY ROAD 550 E		PITTSBORO	IN	46167	
19-46-24-W3-0200B.1050	ESTERO BEACH CLUB CONDO ASSN		2580 ESTERO BLVD OFC		FORT MYERS BEACH	FL	33931	
19-46-24-W3-0200B.2010	YEAGER JOHN A & M ELAINE		4923 STONEHAVEN DR		COLUMBUS	OH	43220	

19-46-24-W3-0200B.2020	ESTERO FMB RENTAL LLC	2580 ESTERO BLVD #44	FORT MYERS BEACH	FL	33931
19-46-24-W3-0200B.2030	SEASHORE PROPERTIES LLC	20280 BURNSIDE PL UNIT 1202	ESTERO	FL	33928
19-46-24-W3-0200B.2040	FLORIDA WRIGHT ENTERPRISES LLC	10100 CYPRESS COVE DR UNIT 354	FORT MYERS	FL	33908
19-46-24-W3-0200B.2050	ALEXANDER MICHAEL B TR	9667 WINDGATE DR	BLOOMINGTON	IL	61705
19-46-24-W3-0200B.3010	NORRIS MARK A & SUSAN K	3155 E STRATER RD	KENDALLVILLE	IN	46755
19-46-24-W3-0200B.3020	CHESNUT STEVEN WAYNE &	6701 IDLEWILD ST	FORT MYERS	FL	33966
19-46-24-W3-0200B.3030	MEYER LAURELEE M	2580 ESTERO BLVD #303	FORT MYERS BEACH	FL	33931
19-46-24-W3-0200B.3040	TUBBS THOMAS A TR	2580 ESTERO BLVD #304	FORT MYERS BEACH	FL	33931
19-46-24-W3-0200B.3050	ROMBERG TINA RUIZ &	2580 ESTERO BLVD #305	FORT MYERS BEACH	FL	33931
19-46-24-W3-0200B.4010	HEUCK DAVID & MICHELLE	14690 FAIR HAVEN RD	FORT MYERS	FL	33908
19-46-24-W3-0200B.4020	DELBERT G CLARK TRUST +	29785 KESTRAL LANE ST	SAINT JOSEPH	MN	56374
19-46-24-W3-0200B.4030	EBC 403 LLC	1922 MADISON ST	MADISON	WI	53711
19-46-24-W3-0200B.4040	CONKLIN KERRY P TR	12956 ROCKY POINTE ROAD	MC CORDSVILLE	IN	46055
19-46-24-W3-0200B.4050	ALLEN RICHARD JOHN	532 E POLK RD	ITHACA	MI	48847
19-46-24-W3-0200B.5010	MORRISON STEVEN L &	9207 175TH ST W	ILLINOIS CITY	IL	61259
19-46-24-W3-0200B.5020	COMBS JILL A GRAVEL &	14 OAKRIDGE CIR	WARE	MA	1082
19-46-24-W3-0200B.5030	EBC 503 LLC	1922 MADISON ST	MADISON	WI	53711
19-46-24-W3-0200B.5040	MELLEMA GARY & LARI ANN	11 HAYES CT	TROPHY CLUB	TX	76262
19-46-24-W3-0200B.5050	WRIGHT AARON DAVID LEE &	20280 BURNSIDE PL #1202	ESTERO	FL	33928
19-46-24-W3-02401.0080	WHITE ANN A	1831 ARDMORE RD	FORT MYERS	FL	33901
19-46-24-W3-02401.00C0	GAFFNEY JOSEPH J & MARGARET	4914 WEST CHESTER PIKE	NEWTOWN SQUARE	PA	19073
19-46-24-W3-02401.00D0	EVANS JOHN ROBERT JR	10715 FINTAN CT	MOKENA	IL	60448
19-46-24-W3-02402.00A0	SCHRAM JULIE TR	566 SUNSET DR	SOUTH SIOUX CITY	NE	68776
19-46-24-W3-02402.00B0	TOWNSEND THOMAS & AMY	13000 W BETHEL AVE	YORKTOWN	IN	47396
19-46-24-W3-02402.00C0	TOWNSEND AMY E & THOMAS A	13000 W BETHEL AVE	YORKTOWN	IN	47396
19-46-24-W3-02402.00D0	ISLAND HOUSE 2D LLC	1015 W JACKSON ST	MUNCIE	IN	47305
19-46-24-W3-02402.00E0	BLAKE JANICE	7253 PARK LANE	CLAY	MI	48001
19-46-24-W3-02403.00A0	MONKS ROBERT C	1073 FAIR BIRCH DR	MISSISSAUGA	ON	L5H 1M4 CANADA
19-46-24-W3-02403.00B0	KROULADIS JOHN J SR &	2560 ESTERO BLVD #38	FORT MYERS BEACH	FL	33931
19-46-24-W3-02403.00C0	CZERKIES BEACH LLC	612 ROOKERY LN	JOLIET	IL	60431
19-46-24-W3-02403.00D0	HART HOWARD E +	PO BOX 341	ELWOOD	IL	60421
19-46-24-W3-02403.00E0	WHITEHOUSE KATHLEEN M	2157 TANTALLON DR	FT MITCHELL	KY	41017
19-46-24-W3-02404.00A0	AUSMAN PAMELA	60 SPRINGWATER CHASE	NEWMAN	GA	30265
19-46-24-W3-02404.00B0	SUTTON JOSEPH CHARLES TR	711 N MILLER AVE	MARION	IN	46952
19-46-24-W3-02404.00C0	RALSON JEFFREY S TR	560 W FULTON ST UNIT 605	CHICAGO	IL	60661
19-46-24-W3-02404.00D0	TUBBS THOMAS A TR	PO BOX 763	WESTFIELD CENTER	OH	44251
19-46-24-W3-02404.00E0	TRESCHUK-BAHN JACQUELINE	1720 BROADWAY ST	MOUNT VERNON	IL	62864
19-46-24-W3-02405.00A0	GABOR PETER +	701 INDEPENDENCE PL UNIT 206	RALEIGH	NC	27603
19-46-24-W3-02405.00B0	MCCAFFREY WILLIAM F TR +	7400 BELLAIRE AVE	DUBLIN	OH	43017
19-46-24-W3-02405.00C0	NELSON WILLIAM M &	36 KENNINGTON CT	DALLAS	TX	75248
19-46-24-W3-02405.00D0	MANNING NATALIE	2560 ESTERO BLVD #5D	FORT MYERS BEACH	FL	33931
19-46-24-W3-02405.00E0	SCOTT E CZERKIES +	612 ROOKERY LN	JOLIET	IL	60431
19-46-24-W3-02406.00A0	KADO KELLY JOE & TERESA JO	2560 ESTERO BLVD #6A	FORT MYERS BEACH	FL	33931
19-46-24-W3-02406.00E0	LEVINE STEPHEN M & DIANE E	16480 RAINBOW MEADOWS CT	FORT MYERS	FL	33908
19-46-24-W3-02900.1010	BURGETT RUSSELL E TR	497 S PRAYA DR	IVINS	UT	84738
19-46-24-W3-02900.1020	SHEPHARD ROBERT W +	12392 EAGLE RIDGE CT	ESTERO	FL	33928
19-46-24-W3-02900.1030	TAYLOR GLENN & ANDREE	440 POPLAR AVE	ELMHURST	IL	60126
19-46-24-W3-02900.1040	OWENS JAMES L & DIANNE L	567 DAWES AVE	GLEN ELLYN	IL	60137
19-46-24-W3-02900.1050	MINOR KEVIN L & WENDY	N74 W22552 TWIN OAKS CT	SUSSEX	WI	53089
19-46-24-W3-02900.1060	JERRY LEE & DARLENE LOUISE WEA	2532 ESTERO BLVD #106	FORT MYERS BEACH	FL	33931
19-46-24-W3-02900.2010	LACAVA JOYCE L/E	2 SULLIVAN FARM	NEW MILFORD	CT	6776
19-46-24-W3-02900.2020	STAHL JUDITH A TR	2532 ESTERO BLVD #202	FORT MYERS BEACH	FL	33931
19-46-24-W3-02900.2030	BRIESATH RANDAL TR	2868 KENDRIDGE LN	AURORA	IL	60502
19-46-24-W3-02900.2040	KRAUSE RANDY STEVEN & JAN A	12281 N CR 2950 E	MASON CITY	IL	62664
19-46-24-W3-02900.2050	ASCEND HOMES LLC	15055 WOODCREST DR	CLIVE	IA	50325
19-46-24-W3-02900.2060	BRUNER RICHARD T +	2821 NE 46TH ST	LIGHTHOUSE POINT	FL	33064
19-46-24-W3-02900.3010	VREDENBURG JOHN F TR	21750 483RD LN	CHARITON	IA	50049
19-46-24-W3-02900.3020	GRENZ LYLE R TR	600 S TAYBERRY AVE	SIOUX FALLS	SD	57106
19-46-24-W3-02900.3030	ALICE A BRUNETTI TRUST +	16970 SAN CARLOS BLVD STE 160	FORT MYERS	FL	33908
19-46-24-W3-02900.3040	WINDFALL INC	3317 E LAKE DR N	ELKHART	IN	46514
19-46-24-W3-02900.3050	SUTTON MAVIS M	850 CEDAR ST	WATERLOO	IN	46793
19-46-24-W3-02900.3060	AMESBURY WILLIAM ROBIN JR &	12915 KINGSMILL WAY	FORT MYERS	FL	33913
19-46-24-W3-02900.4010	BURNSTINE HARRY M TR	56860 SR 15	BRISTOL	IN	46507
19-46-24-W3-02900.4020	SMITH DON SCOT TR	2532 ESTERO BLVD #402	FORT MYERS BEACH	FL	33931
19-46-24-W3-02900.4030	HAWES GARY R &	2788 EDGEEMERE DR	ROCHESTER	NY	14612
19-46-24-W3-02900.4040	BANERIAN KIRK G & LESLIE N	2950 WOODCREEK WAY	BLOOMFIELD HILLS	MI	48304
19-46-24-W3-02900.4050	BUSCH FAMILY PROPERTIES LLC	17769 HIGHWAY W	CLARKSVILLE	MO	63336
19-46-24-W3-02900.4060	WINDFALL INC	3317 E LAKE DR N	ELKHART	IN	46514
19-46-24-W3-02900.5010	STICKLEY KIM A & PAMELA S	26725 COUNTY ROAD 52	NAPPANEE	IN	46550
19-46-24-W3-02900.5020	OoyKAAS DICK E & PATRICIA T +	17026 W MANHATTAN RD	ELWOOD	IL	60421
19-46-24-W3-02900.5030	OoyKAAS DICK E & PATRICIA T +	17026 W MANHATTAN RD	ELWOOD	IL	60421
19-46-24-W3-02900.5040	POHL JAMES W TR	43 ROCKVIEW DR	ROCKFORD	MI	49341
19-46-24-W3-02900.5050	DORNFELD LEE V & DONNA	303 KIRKWOOD GLEN CIR	LOUISVILLE	KY	40207
19-46-24-W3-02900.5060	BARRETT HILARY W +	3668 GORDON RD	ELKHART	IN	46516
19-46-24-W3-02900.6010	FIELDS GARY L TR	4751 OLSON LAKE TRAIL N	LAKE ELMO	MN	55042
19-46-24-W3-02900.6020	FRANCIS J GALVIN TRUST +	1171 STANDISH CT	NAPERVILLE	IL	60540
19-46-24-W3-02900.6030	OoyKAAS DICK E & PATRICIA T	17026 W MANHATTAN RD	ELWOOD	IL	60421
19-46-24-W3-02900.6040	MANDATE CAPITAL LLC	160 3RD AVE SW	PERHAM	MN	56573
19-46-24-W3-02900.6050	MCKEOWN PATRICK G &	155 SAINTGEORGE PL	ATHENS	GA	30606
19-46-24-W3-02900.6060	PELICAN PARTNERS	8183 RUSH PL	INDIANAPOLIS	IN	46250
19-46-24-W3-02900.1070	OoyKAAS DICK E & PATRICIA T +	17026 W MANHATTAN RD	ELWOOD	IL	60421
19-46-24-W3-02900.1080	HENDRIX EDGAR P	1219 TWIN PALM DR	FORT MYERS	FL	33919
19-46-24-W3-02900.2070	BERKEY BRIAN D TR	690 LAKESIDE DR	ROME CITY	IN	46784
19-46-24-W3-02900.2080	PETER WILLIAM C +	2532 ESTERO BLVD #205	FORT MYERS BEACH	FL	33931
19-46-24-W3-02900.3070	SIEFFRING RICHARD M TR	3374 ARLINGTON PL	BEAVERCREEK	OH	45434
19-46-24-W3-02900.3080	MEYER STEPHEN P	2532 ESTERO BLVD #308	FORT MYERS BEACH	FL	33931
19-46-24-W3-02900.4070	MARSHALL MARYLU B L/E	7204 RUSTIC TRAIL	BOULDER	CO	80301
19-46-24-W3-02900.4080	SPITZER ARDEN L & SANDRA C	555 DEER LAKE DR	FINDLAY	OH	45840
19-46-24-W3-02900.5070	WILTSE GARY ALAN &	930 W SAVIDGE ST UNIT 19	SPRING LAKE	MI	49456
19-46-24-W3-02900.5080	ONKEN JAMES H & LYNN E +	314 W ROOSEVELT RD	MASON CITY	IL	62664
19-46-24-W3-02900.6070	GROLMUS MARY JO ANN	872 FOSTER RD	IOWA CITY	IA	52245
19-46-24-W3-02900.6080	ROBshaw RICHARD P	2532 ESTERO BLVD # 608	FORT MYERS BEACH	FL	33931
19-46-24-W3-04100.0011	TROPICAL SHORES LLC	5302 BROOKSIDE LN	WASHINGTON	MI	48094
19-46-24-W3-04100.0012	MAROTTA JAMES & LINDA	83 VAN DYKE RD	HOPEWELL	NJ	8525

JAFFREY M WELLS

19-46-24-W3-04100.0021	TROPICAL SHORES LLC	5302 BROOKSIDE LN	WASHINGTON	MI	48094
19-46-24-W3-04100.0022	TROPICAL SHORES LLC	5302 BROOKSIDE LN	WASHINGTON	MI	48094



SK FMB GROUP LLC
17761 SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

TOWN OF FORT MYERS BEACH
2525 ESTERO BLVD
FORT MYERS BEACH FL 33931

GULF BEACH LLC
100 GULF BEACH RD
FORT MYERS BEACH FL 33931

DJ AREND FARMS INC
15759 RD 138
PAULDING OH 45879

REEF OF FMB LLC
JARET BISHOP
2411 US RT 22 SW
WASHINGTON COURT HOUSE OH 43160

TOWN OF FORT MYERS BEACH
2525 ESTERO BLVD
FORT MYERS BEACH FL 33931

TOWN OF FORT MYERS BEACH
2525 ESTERO BLVD
FORT MYERS BEACH FL 33931

FORT MYERS BEACH FIRE CONTROL
PO BOX 2880
FORT MYERS BEACH FL 33932

FORT MYERS BEACH FIRE CONTROL
PO BOX 2880
FORT MYERS BEACH FL 33932

CHG NEPTUNE ACQUISITIONS LLC
MARK A DAMANTE
150 E BROAD ST STE 800
COLUMBUS OH 43215

1249 ESTERO ADVENTURES LLC
290 BAHIA VIA
FORT MYERS BEACH FL 33931

DYE GARY A & LOIS +
S53 W31115 OLD VILLAGE RD
MUKWONAGO WI 53149

WOLFPACK PROPERTIES LLC
567 SIMBURY ST
COLUMBUS OH 43228

WOLFPACK PROPERTIES LLC
567 SIMBURY ST
COLUMBUS OH 43228

NANKO RAYMOND S
919 WEST JACKSON ST
MUNCIE IN 47305

YANKE RONALD
328 BUCKLIN ST
LA SALLE IL 61301

YANKE RONALD
328 BUCKLIN ST
LA SALLE IL 61301

THOMAS E SWANBECK PA
2450 ESTERO BLVD
FORT MYERS BEACH FL 33931

YANKE RONALD
328 BUCKLIN ST
LA SALLE IL 61301

FRENCH EDWIN T III
PO BOX 22538
INDIANAPOLIS IN 46222

FRENCH EDWIN T III
PO BOX 22538
INDIANAPOLIS IN 46222

COASTAL COTTAGES LLC
6850 W SOUTH LAKE GAGE DR
ANGOLA IN 46703

COASTAL COTTAGES LLC
6850 W SOUTH LAKE GAGE DR
ANGOLA IN 46703

TEZAK HELEN C TR
50 CHAPEL ST #4
FORT MYERS BEACH FL 33931

GOLDBERG GENNIE M TR
11793 ROYAL TEE CT
CAPE CORAL FL 33991

FMB COTTAGE LLC
2440 COTTAGE AVE
FORT MYERS BEACH FL 33931

BONFIGLI ANDREW & SUSAN
2434 COTTAGE AVE
FORT MYERS BEACH FL 33931

PAISLEY LLC
414 MARKET ST
IOWA CITY IA 52245

MCLAUGHLIN SAMUEL R &
4700 EDEN PARK DR
ZANESVILLE OH 43701

SCHLICHTE EDITH
61 MANGO ST
FORT MYERS BEACH FL 33931

CHAPEL BY THE SEA
PO BOX 2997
FORT MYERS BEACH FL 33932

TOWN OF FORT MYERS BEACH
2525 ESTERO BLVD
FORT MYERS BEACH FL 33931

GERSTENHABER RAM TR
BEACH CONNECTION
2401 ESTERO BLVD
FORT MYERS BEACH FL 33931

CZULEWICZ MARYLU TR
4281 ORANGE RIVER LOOP RD
FORT MYERS FL 33905

BOREK TINA D
1605 PENNSAUKEN ST
CINNAMINSON NJ 08077

MANGO STREET LLC
126 MANGO ST
FORT MYERS BEACH FL 33931

PAOLERCIO WILLIAM
2367 JIM HENRY RD
DANDRIDGE TN 37725

MERIDIAN ENTERPRISES II LLC
2248 OLD STATE RD
BEAUFORT MO 63013

MEEHAN PATRICIA LYNN
293 ELM ST W
SUDBURY ON P3C 1V6
CANADA

BIG MARLIN PROPERTIES LLC
4704 VINCENNES BLVD
CAPE CORAL FL 33904

PFAFFINGER HEDWIG TR
JAMES SCHULTZ
1030 SPINDLE HILL RD
WOLCOTT CT 06716

RYAN JAMES
JASMINE RYAN
102 JEAN ST
OCONOMOWOC WI 53066

CHAPEL BY THE SEA
PO BOX 2997
FORT MYERS BEACH FL 33932

1249 ESTERO ADVENTURES LLC
290 BAHIA VIA
FORT MYERS BEACH FL 33931

1249 ESTERO ADVENTURES LLC
290 BAHIA VIA
FORT MYERS BEACH FL 33931

1249 ESTERO ADVENTURES LLC
290 BAHIA VIA
FORT MYERS BEACH FL 33931

GP REALTY CO OF CLEVELAND LTD
2369 HUNTERS CREEK CIR
HINCKLEY OH 44233

TOMMAR INC
9616 ROUND LAKE BLVD
WHITE LAKE MI 48386

OLOUGHLIN DEREK W
30111 BATES RD
PERRYSBURG OH 43551

WHITEHEAD LELAND S &
1155 NW 97TH DR
CORAL SPRINGS FL 33071

ESTERO BEACH CLUB CONDO ASSN
15751 SAN CAROLOS BLVD #8
FORT MYERS FL 33908

ISLAND HOUSE BEACH CLUB ASSN
2560 ESTERO BLVD OFC
FORT MYERS BEACH FL 33931

PELICAN WATCH CONDO ASSOC
BOBACK COMMERCIAL GROUP
STE 203
10491 SIX MILE CYPRESS PKWY
FORT MYERS FL 33966

TROPICAL SHORES ASSN
2550 ESTERO BLVD
FORT MYERS BEACH FL 33931

SEA BREEZE ESTATES CONDO ASSN
325 W LOCUST LN
KENNETT SQUARE PA 19348

71 MANGO LLC
15440 CATALPA COVE LANE
FORT MYERS FL 33908

71 MANGO LLC
15440 CATALPA COVE LN
FORT MYERS FL 33908

FOREMAN BRADFORD G
50 GULF BEACH RD
FORT MYERS BEACH FL 33931

DIAMOND PROPERTY ALLIANCE LLC
1900 E GOLF RD STE 1275
SCHAUMBURG IL 60173

BROWELL BRIAN R & DEBRA I
900 ROSA LN
LAFAYETTE IN 47905

COFFMAN JOYCE A
55 HIAWATHA LN
GALESBURG IL 61401

STUCK STEVEN L & LORRAINE M
362 MISTY PINE TR
PRUDENVILLE MI 48651

VOLPE KENT R +
919 WARWICK LN
LIBERTYVILLE IL 60048

OLSEN SUSAN L
406 SPRING CREEK CT
ALBANY IL 61230

RAMEY STEVEN L & NANCY K
1634 DORRELL CT
GREENWOOD IN 46143

KDMJ ASSOCIATES INC
23884 SANCTUARY LAKES CT
BONITA SPRINGS FL 34134

LAIRD W E & DORIS M
1125 MERCER DR
TALLAHASSEE FL 32312

KREUTZ DAVID TR
2580 ESTERO BLVD # 31
FORT MYERS BEACH FL 33931

INCAUDO DANIEL +
20113 HARTFORD BLVD
ESTERO FL 33928

JOHNSTON DEAN + DEBI
PO BOX 20010
149 WESTMOUNT DR N
ORILLIA ON L3V 7X9
CANADA

GREGORY W GARNETT TRUST +
244 N WOODRIDGE DR
PITTSBORO IN 46167

T&R MULDOWNNEY FAMILY LLC +
CJ KENTNER
5667 N CL MYERS DR
BYRON IL 61010

RAMEY STEVEN L & NANCY K
1634 DORRELL CT
GREENWOOD IN 46143

LTE 6020 LLC
2024 OAKRIDGE ST
SAINT PAUL MN 55119

HV DESIGNS LLC
2592 INDIAN WELLS TRL
XENIA OH 45385

MANNING DEBORAH A TR
2580 ESTERO BLVD #44
FORT MYERS BEACH FL 33931

ZECHINATI JAMES &
924 WESTCHESTER WAY
RICHMOND KY 40475

SCHRADER CHARLES H TR
2580 ESTERO BLVD #51
FORT MYERS BEACH FL 33931

CAPPARIS PROPERTIES LLC
1500 COLONIAL BLVD #200
FORT MYERS FL 33907

KOOP ROBERT N & SHARON L
1137 ELMWOOD LN
ELK GROVE VILLAGE IL 60007

AREND DAVID L & JOANNA L
15759 ROAD 138
PAULDING OH 45879

HIGHLAND MANOR APARTMENTS LLC
818 LAUREN DR
VILLA HILLS KY 41017

GULFWAY 101 LLC
23884 SANCTUARY LAKES CT
BONITA SPRINGS FL 34134

GULFWAY 102 LLC
23884 SANCTUARY LAKES CT
BONITA SPRINGS FL 34134

WOLFE CHARLES G & PAMELA M
401 MONOCACY DR
BATH PA 18014

GARNETT RODNEY S & ALTHEA N
7377 N COUNTY ROAD 550 E
PITTSBORO IN 46167

ESTERO BEACH CLUB CONDO ASSN
2580 ESTERO BLVD OFC
FORT MYERS BEACH FL 33931

YEAGER JOHN A & MELAINE
4923 STONEHAVEN DR
COLUMBUS OH 43220

ESTERO FMB RENTAL LLC
2580 ESTERO BLVD #44
FORT MYERS BEACH FL 33931

SEASHORE PROPERTIES LLC
20280 BURNSIDE PL UNIT 1202
ESTERO FL 33928

FLORIDA WRIGHT ENTERPRISES LLC
10100 CYPRESS COVE DR UNIT 354
FORT MYERS FL 33908

ALEXANDER MICHAEL B TR
9667 WINDGATE DR
BLOOMINGTON IL 61705

NORRIS MARK A & SUSAN K
3155 E STRATER RD
KENDALLVILLE IN 46755

CHESNUT STEVEN WAYNE &
6701 IDLEWILD ST
FORT MYERS FL 33966

MEYER LAURELEE M
2580 ESTERO BLVD #303
FORT MYERS BEACH FL 33931

TUBBS THOMAS A TR
2580 ESTERO BLVD #304
FORT MYERS BEACH FL 33931

ROMBERG TINA RUIZ &
2580 ESTERO BLVD #305
FORT MYERS BEACH FL 33931

HEUCK DAVID & MICHELLE
14690 FAIR HAVEN RD
FORT MYERS FL 33908

DELBERT G CLARK TRUST +
29785 KESTRAL LANE ST
SAINT JOSEPH MN 56374

EBC 403 LLC
1922 MADISON ST
MADISON WI 53711

CONKLIN KERRY P TR
12956 ROCKY POINTE ROAD
MC CORDSVILLE IN 46055

ALLEN RICHARD JOHN
532 E POLK RD
ITHACA MI 48847

MORRISON STEVEN L &
9207 175TH ST W
ILLINOIS CITY IL 61259

COMBS JILL A GRAVEL &
14 OAKRIDGE CIR
WARE MA 01082

EBC 503 LLC
1922 MADISON ST
MADISON WI 53711

MELLEMA GARY & LARI ANN
11 HAYES CT
TROPHY CLUB TX 76262

WRIGHT AARON DAVID LEE &
20280 BURNSIDE PL #1202
ESTERO FL 33928

WHITE ANN A
1831 ARDMORE RD
FORT MYERS FL 33901

GAFFNEY JOSEPH J & MARGARET
4914 WEST CHESTER PIKE
NEWTOWN SQUARE PA 19073

EVANS JOHN ROBERT JR
10715 FINTAN CT
MOKENA IL 60448

SCHRAM JULIE TR
566 SUNSET DR
SOUTH SIOUX CITY NE 68776

TOWNSEND THOMAS & AMY
13000 W BETHEL AVE
YORKTOWN IN 47396

TOWNSEND AMY E & THOMAS A
13000 W BETHEL AVE
YORKTOWN IN 47396

ISLAND HOUSE 2D LLC
1015 W JACKSON ST
MUNCIE IN 47305

BLAKE JANICE
7253 PARK LANE
CLAY MI 48001

MONKS ROBERT C
1073 FAIR BIRCH DR
MISSISSAUGA ON L5H 1M4
CANADA

KROULAUDIS JOHN J SR &
2560 ESTERO BLVD #3B
FORT MYERS BEACH FL 33931

CZERKIES BEACH LLC
612 ROOKERY LN
JOLIET IL 60431

HART HOWARD E +
PO BOX 341
ELWOOD IL 60421

WHITEHOUSE KATHLEEN M
2157 TANTALLON DR
FT MITCHELL KY 41017

AUSMAN PAMELA
60 SPRINGWATER CHASE
NEWNAN GA 30265

SUTTON JOSEPH CHARLES TR
711 N MILLER AVE
MARION IN 46952

RALSON JEFFREY S TR
560 W FULTON ST UNIT 605
CHICAGO IL 60661

TUBBS THOMAS A TR
PO BOX 763
WESTFIELD CENTER OH 44251

TRESCHUK-BAHN JACQUELINE
1720 BROADWAY ST
MOUNT VERNON IL 62864

GABOR PETER +
701 INDEPENDENCE PL UNIT 206
RALEIGH NC 27603

MCCAFFREY WILLIAM F TR +
7400 BELLAIRE AVE
DUBLIN OH 43017

NELSON WILLIAM M &
36 KENNINGTON CT
DALLAS TX 75248

MANNING NATALIE
2560 ESTERO BLVD #5D
FORT MYERS BEACH FL 33931

SCOTT E CZERKIES +
612 ROOKERY LN
JOLIET IL 60431

KADO KELLY JOE & TERESA JO
2560 ESTERO BLVD #6A
FORT MYERS BEACH FL 33931

LEVINE STEPHEN M & DIANE E
16480 RAINBOW MEADOWS CT
FORT MYERS FL 33908

BURGETT RUSSELL E TR
497 S PRAYA DR
IVINS UT 84738

SHEPHARD ROBERT W +
12392 EAGLE RIDGE CT
ESTERO FL 33928

TAYLOR GLENN & ANDREE
440 POPLAR AVE
ELMHURST IL 60126

OWENS JAMES L & DIANNE L
567 DAWES AVE
GLEN ELLYN IL 60137

MINOR KEVIN L & WENDY
N74 W22552 TWIN OAKS CT
SUSSEX WI 53089

JERRY LEE & DARLENE LOUISE WEA
2532 ESTERO BLVD #106
FORT MYERS BEACH FL 33931

LACAVA JOYCE L/E
2 SULLIVAN FARM
NEW MILFORD CT 06776

STAHL JUDITH A TR
2532 ESTERO BLVD #202
FORT MYERS BEACH FL 33931

BRIESATH RANDAL TR
2868 KENDRIDGE LN
AURORA IL 60502

KRAUSE RANDY STEVEN & JAN A
12281 N CR 2950 E
MASON CITY IL 62664

ASCEND HOMES LLC
15055 WOODCREST DR
CLIVE IA 50325

BRUNER RICHARD T +
2821 NE 46TH ST
LIGHTHOUSE POINT FL 33064

VREDENBURG JOHN F TR
21750 483RD LN
CHARITON IA 50049

GRENZ LYLE R TR
600 S TAYBERRY AVE
SIOUX FALLS SD 57106

ALICE A BRUNETTI TRUST +
16970 SAN CARLOS BLVD STE 160
PO BOX 346
FORT MYERS FL 33908

WINDFALL INC
3317 E LAKE DR N
ELKHART IN 46514

SUTTON MAVIS M
850 CEDAR ST
WATERLOO IN 46793

AMESBURY WILLIAM ROBIN JR &
12915 KINGSMILL WAY
FORT MYERS FL 33913

BURNSTINE HARRY M TR
56860 SR 15
BRISTOL IN 46507

SMITH DON SCOT TR
2532 ESTERO BLVD #402
FORT MYERS BEACH FL 33931

HAWES GARY R &
2788 EDGEMERE DR
ROCHESTER NY 14612

BANERIAN KIRK G & LESLIE N
2950 WOODCREEK WAY
BLOOMFIELD HILLS MI 48304

BUSCH FAMILY PROPERTIES LLC
17769 HIGHWAY W
CLARKSVILLE MO 63336

WINDFALL INC
3317 E LAKE DR N
ELKHART IN 46514

STICKLEY KIM A & PAMELA S
26725 COUNTY ROAD 52
NAPPANEE IN 46550

OOYKAAS DICK E & PATRICIA T +
17026 W MANHATTAN RD
ELWOOD IL 60421

OOYKAAS DICK E & PATRICIA T +
17026 W MANHATTAN RD
ELWOOD IL 60421

POHL JAMES W TR
43 ROCKVIEW DR
ROCKFORD MI 49341

DORNFELD LEE V & DONNA
303 KIRKWOOD GLEN CIR
LOUISVILLE KY 40207

BARRETT HILARY W +
JAFFREY M WELLS
3668 GORDON RD
ELKHART IN 46516

FIELDS GARY L TR
4751 OLSON LAKE TRAIL N
LAKE ELMO MN 55042

FRANCIS J GALVIN TRUST +
1171 STANDISH CT
NAPERVILLE IL 60540

OOYKAAS DICK E & PATRICIA T
17026 W MANHATTAN RD
ELWOOD IL 60421

MANDATE CAPITAL LLC
160 3RD AVE SW
PERHAM MN 56573

MCKEOWN PATRICK G &
155 SAINTGEORGE PL
ATHENS GA 30606

PELICAN PARTNERS
8183 RUSH PL
INDIANAPOLIS IN 46250

OOYKAAS DICK E & PATRICIA T +
17026 W MANHATTAN RD
ELWOOD IL 60421

HENDRIX EDGAR P
1219 TWIN PALM DR
FORT MYERS FL 33919

BERKEY BRIAN D TR
690 LAKESIDE DR
ROME CITY IN 46784

PETER WILLIAM C +
2532 ESTERO BLVD #205
FORT MYERS BEACH FL 33931

SIEFRING RICHARD M TR
3374 ARLINGTON PL
BEAVERCREEK OH 45434

MEYER STEPHEN P
2532 ESTERO BLVD #308
FORT MYERS BEACH FL 33931

MARSHALL MARYLU B L/E
7204 RUSTIC TRAIL
BOULDER CO 80301

SPITZER ARDEN L & SANDRA C
555 DEER LAKE DR
FINDLAY OH 45840

WILTSE GARY ALAN &
930 W SAVIDGE ST UNIT 19
SPRING LAKE MI 49456

ONKEN JAMES H & LYNNE E +
314 W ROOSEVELT RD
MASON CITY IL 62664

GROLMUS MARY JO ANN
872 FOSTER RD
IOWA CITY IA 52245

ROBSHAW RICHARD P
2532 ESTERO BLVD # 608
FORT MYERS BEACH FL 33931

TROPICAL SHORES LLC
5302 BROOKSIDE LN
WASHINGTON MI 48094

MAROTTA JAMES & LINDA
83 VAN DYKE RD
HOPEWELL NJ 08525

TROPICAL SHORES LLC
5302 BROOKSIDE LN
WASHINGTON MI 48094

TROPICAL SHORES LLC
5302 BROOKSIDE LN
WASHINGTON MI 48094

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-D

Additional Required Information for a Planned Development Application

This is the second part of a two-part application. This part requests specific information for a planned development rezoning or an amendment to an approved planned development. Include this form with the Request for Public Hearing form.

Fee in the amount of \$8000.00 up to 1 acre +1000.00 per additional acre
\$2000.00 PD Amendment minor (< acre total property area)
\$4000.00 PD Reinstatement or \$6500.00 PD Amendment

Project Name: 2500 Estero CPD
Authorized Applicant: Empire Holding Corp., an Indiana Corporation as Trustee for Ann Trust
STRAP Number(s): 19-46-24-W3-0120A.0100, 19-46-24-W3-01302.0000, 19-46-24-W3-01301.0000, & 19-46-24-W3-0120A.013A

Current Property Status: Vacant
Current Zoning: CPD & RM
Future Land Use Map (FLUM) Category: Boulevard
Platted Overlay? ☐ yes, ☒ no FLUM Density Range: 6 du/ac

Requested Action:

☐	DRI (with rezoning)
☒	Planned Development (also check below)
☐	Rezoning from: _____ to: _____
☒	Amendment to Master Concept Plan/attendant documentation

PART I Narrative Statements

A. Comprehensive Plan Amendments (check one)

☐	There are NO Comprehensive Plan Amendments pending that could affect the future use of this property.
☒	The following Comprehensive Plan Amendments ARE pending and could affect the future use of this property (list the amendment and give a brief explanation of its possible effect)
Please see attached Narrative	

B. Phasing of Construction

☐	The development is to be constructed in a single phase.
☒	The development is to be constructed in phases as follows: (describe proposed phasing below)
Please see attached Narrative	

C. Comprehensive Plan Compliance.

Explain how the proposed development complies with applicable Goals, Objectives, and Policies of the Fort Myers Beach Comprehensive Plan.

Please see attached Narrative

D. Design Standards Compliance

For projects required to meet Commercial Design Standards, explain how the proposed development complies with the design standards set forth in LDC Sections 34-991 through 34-997.

Please see attached Narrative



Explain how the proposed development complies with the guidelines for decision-making embodied in LDC Section 34-85.

[illegible]

Provide a list of the requested deviations keyed to the Master Concept Plan and provide a written justification for each deviation. The location of each deviation should be indicated on the Master Concept Plan.

[illegible]

G. Administrative amendments to approved Master Concept Plan

For amendments to an approved Master Concept Plan, indicate the specific amendments that could not be approved administratively as set forth in LDC Section 34-219.

Please see attached Narrative

PART 2 Submittal Requirements

All applications for a planned development must submit fourteen (14) copies of this application form and all applicable exhibits.

Required Items

- Public Hearing Request Form
- Supplement Form PH-D
- Master Concept Plan
- Traffic Impact Statement
- Architectural Elevations
- Schedule of Uses
- Fee in the amount of \$8000.00 up to 1 acre +1000.00 per additional acre
- \$2000.00 PD Amendment minor (< acre total property area)
- \$4000.00 PD Reinstatement or \$6500.00 PD Amendment

For DRI: A Binding letter of interpretation from DCA or a complete and sufficient ADA.

Guide to Filing Supplement PH-D for Planned Developments

Amendments Applications for amendments to an approved Master Concept Plan or its attendant documentation will require as much information as is needed to describe the changes requested, to specify the incremental change in impacts expected from the amendment, and to detail the changes in surrounding land uses that have occurred since the original application. Some amendments can be approved administratively as provided in LDC Section 34-219, but all other amendments must proceed through the public hearing process.

Through a pre-application meeting with Community Development staff, prospective applicants can determine whether proposed amendments will require a public hearing, and can request waivers from any submittal requirements that are not necessary to specify the changes requested.

All other planned developments All other applications must complete and submit the Request for Public Hearing and Supplement PH-D, along with all required documents. Refer also to the instructions for the Request for Public Hearing form.

Case Number will be inserted by Community Development staff.

Project Name must be the same as the name used on the Request for Public Hearing form.

Authorized Applicant must be the same as on the Request for Public Hearing form.

STRAP numbers must be the same as on the Request for Public Hearing form.

Current status of property must be the same as on the Request for Public Hearing form.

Requested Action: Indicate whether the request is a DRI (Development of Regional Impact) that requires rezoning, a Planned Development, or an amendment to a Planned Development.

Part 1 Narrative Statements:

Comprehensive Plan Amendments

If Comprehensive Plan Amendments are pending that might affect the future use of the property, explain the amendments' possible effects.

Construction Phasing

If the project is to be constructed in multiple phases, describe the ordering and timing of the proposed phasing. In the absence of a phasing plan, phasing of development would be governed by the limitations of LDC Section 34-220.

Comprehensive Plan Compliance

Explain how the proposed development complies with the Fort Myers Beach Comprehensive Plan. Address the Future Land Use Map category or categories applicable to the subject property and any other relevant policies.

Design Standards Compliance

For properties and/or projects as described in LDC Section 34-992, explain how the proposed development will comply with the standards in LDC Sections 34-991 through 34-997.

Decision-making compliance

Explain how the proposed development will comply with the standards for decision-making in LDC Section 34-85.

Schedule of deviations and written justification

Identify the deviations from the requirements of the Land Development Code that are requested for the proposed development and justify them in relation to the guidance in LDC Section 34-932(b).

Administrative amendments

If the request is for an amendment to a planned development, indicate which of the requested changes could not be approved administratively as allowed by LDC Section 34-219.

Part 2 Submittal Requirements

Public Hearing Application Form. Applications for rezoning, including Planned Developments and Planned Development amendments for which public hearing is required, consist of the Public Hearing form and the supplemental form PH-D. Both parts of the application form must be completed and submitted.

Master Concept Plan. The master concept plan consists of maps, graphic illustrations, and written statements concerning the development. Space has

been provided on this form for many of the required narrative statements, though they can be attached on separate sheets. A master concept plan must include the following required information:

- a. The general size, configuration, and location of each development phase, and a description of the phasing of construction, unless the development is to be constructed in a single phase.
- b. The maximum height of any proposed buildings or structures, using the Land Development Code's method of measuring building height (see LDC Section 34-631).
- c. Proposed principal and accessory uses, identified using the terminology employed in the Land Development Code. Employ the groupings of uses in Tables 34-1 and 34-2 of the Land Development Code, or specify individual uses if necessary.
- d. The density and intensity of the proposed uses, in terms of dwelling units by type, or through conversion factors for hotel/motel units. Provide gross square footages for types of commercial uses, and maximum Floor-Area Ratio.
- e. The minimum width and composition of proposed buffers along the perimeter of the property. References to the types of buffers required by LDC chapter 10 are acceptable.
- f. The location of any environmentally sensitive land and water, based on standard environmental data capable of verification by Town staff. Developments larger than one acre in size may require a protected species survey under LDC Section 10-473.
- g. The exact location of all points of vehicular ingress and egress from existing easements or rights-of-way into the development, with distances from other existing or planned rights-of-way or access points.
- h. Access and facilities for public transit, if applicable.
- i. The general location of stormwater management areas.
- j. The specific locations of requested deviations, including sample detail drawings illustrating their effects if applicable.
- k. The exact location of existing rights-of-way and easements, whether or not those easements are recorded.
- l. Proposed dedications, if any, including beach access, boat ramps, park or recreation areas, open space, or other easements.

Traffic Impact Statement. A traffic impact statement in the same format and to the same degree of detail required for development orders (LDC Section 10-286).

Architectural Elevations. Architectural elevations or three-dimensional renderings that show at minimum all building façades adjoining public streets. These drawings will serve for the sketch requirement of LDC Section 34-202(b)(5) as well. If aspects of the proposed design will not comply with the commercial design standards of LDC Sections 34-991 through 34-997 (if required), the applicant may request deviations from those standards.

Schedule of uses. A list of all proposed principal and accessory uses. Identify these uses by reference to the groups of uses in Tables 34-1 and 34-2 of the Land Development Code unless greater specificity is necessary. For amendments to planned developments that were approved under different regulations, the enumeration of uses in the schedule of uses supplied for the amendment must be specific enough to explain what uses were previously approved without future reference to prior regulations or approvals.



December 10, 2024

Town of Fort Myers Beach
Community Development Department
2525 Estero Blvd.
Ft Myers Beach, FL 33931

**Subject: Supplemental Response Letter for CPD Application #20240137
2500 Estero Boulevard
Commercial Planned Development (CPD) Amendment – Supplement to Submittal #2**

Intake Team:

Please accept this letter as a follow up/supplement to our previous Submittal #2 response letter for the above subject project. This resubmittal outlines additional changes based on further public input and evaluation by the project team. Please find the following list of information and materials that are being resubmitted electronically:

- Narrative - Revised
- Schedule of Deviations – Revised
- Master Concept Plan (MCP) – Option B – Revised
- Rendering Exhibit - Revised
- Parking Analysis Exhibit – Revised
- DRAFT Proposed Conditions/Commitments
- Exhibit 6-2: Boundary Survey - Updated

We look forward to your review and are available to answer questions related to this application.

Sincerely,

The Neighborhood Company

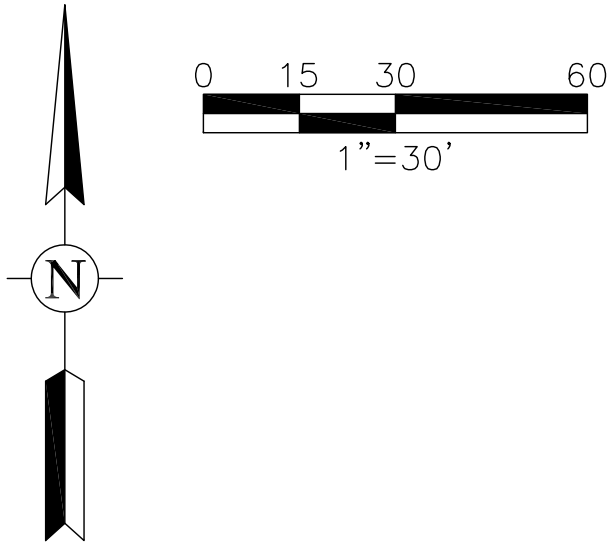
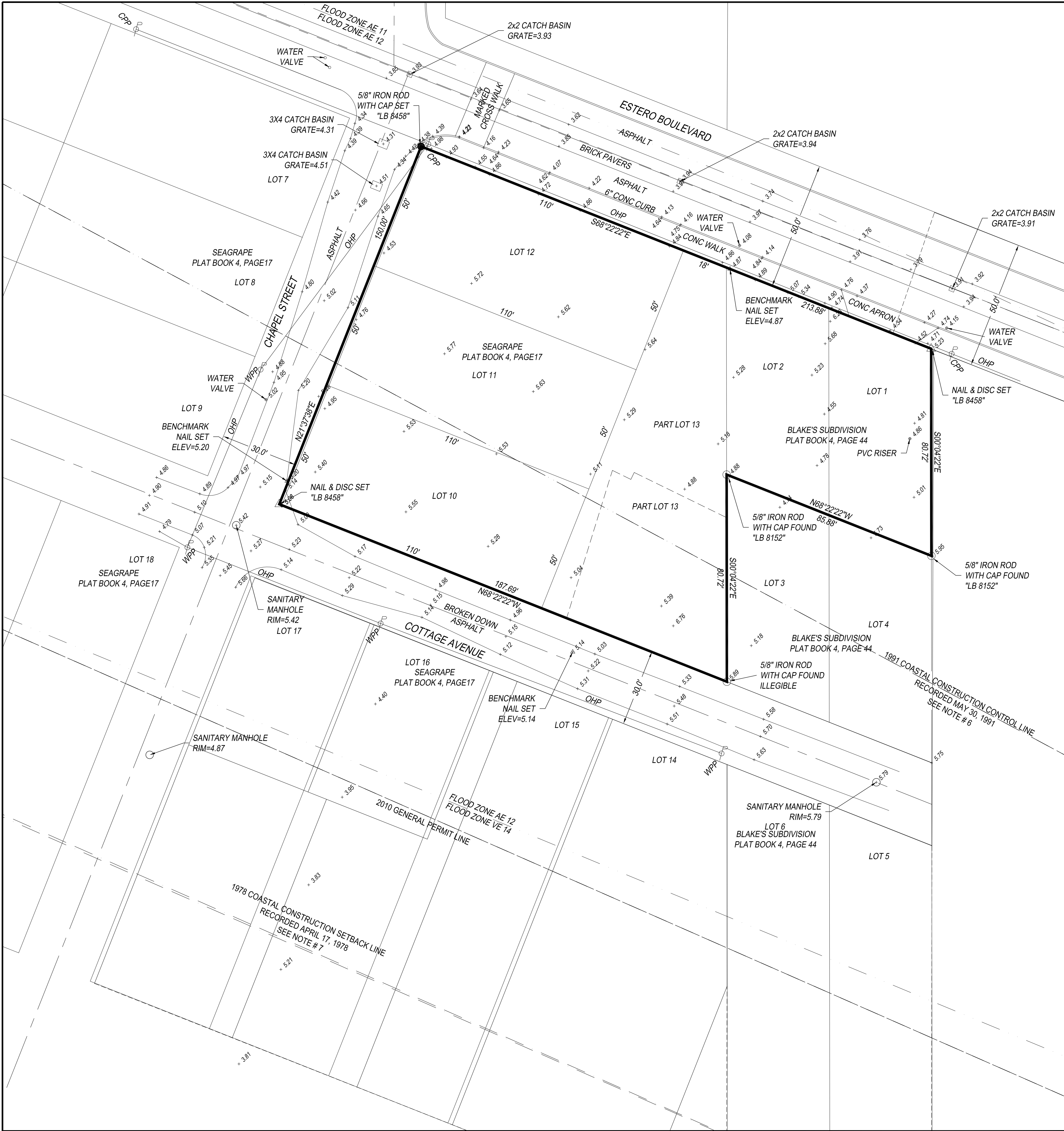
Kenrick Gallander, AICP Vice President, Partner

Attachments: Application Submittal Requirements (listed above)

cc: Dan Myers
Brandon Frey

2500 Estero Boulevard CPD Amendment
Supplement to Submittal #2
12/10/24

Page 1 of 1



LEGAL DESCRIPTION:
LOTS 10-13, SEAGRAPE SUBDIVISION (PLAT BOOK 4, PAGE 17) AND LOTS 1 & 2, BLAKE'S SUBDIVISION (PLAT BOOK 4, PAGE 44). ALL INFORMATION PER THE OFFICIAL RECORDS OFFICE OF THE CLERK OF CIRCUIT COURT OF LEE COUNTY, FLORIDA.

SURVEYOR NOTES:
- BEARINGS SHOWN HEREON ARE GRID BEARINGS BASED UPON THE NORTH AMERICAN DATUM OF 1983, 1990 ADJUSTMENT (NAD83/90) FLORIDA EAST ZONE. DISTANCES SHOWN ARE GROUND DISTANCES MEASURED IN FEET. COORDINATES SHOWN ARE GRID COORDINATES. DATUM BASED UPON DEPARTMENT OF NATURAL RESOURCES CONTROL MONUMENTS 64-78-A26 AND 64-78-A27 HAVING NAD83/90 GRID COORDINATES AS SHOWN.
- NO UNDERGROUND IMPROVEMENTS OR FOUNDATIONS WERE LOCATED UNDER THE SCOPE OF THIS SURVEY.
- ELEVATIONS SHOWN HEREON ARE REFERENCED TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 1988). ELEVATIONS ARE BASED UPON TIES TO THE TRIMBLE REAL-TIME KINEMATIC (RTK) GLOBAL POSITIONING SYSTEM (GPS) CONTROL NETWORK.
- THIS PARCEL LIES IN FLOOD ZONES AS SHOWN. ZONES ARE BASED ON FEMA FLOOD INSURANCE RATE MAP PANEL 12071C0554G, DATED NOVEMBER 17, 2023. FLOOD ZONE LINES SHOWN HEREON WERE SCALED FROM THE INDICATED F.I.R.M. MAP PANEL.
- BOUNDARY INFORMATION SHOWN HEREON IS BASED UPON THE RECORD PLAT AND LEGAL DESCRIPTION PROVIDED. NO SEARCH OF THE PUBLIC RECORD WAS PERFORMED BY THIS SURVEYOR. THERE MAY BE OTHER SETBACKS AND/OR EASEMENTS NOT KNOWN TO THIS SURVEYOR.
- THE 1991 COASTAL CONSTRUCTION CONTROL LINE SHOWN HEREON IS AS RECORDED IN PLAT BOOK 48, PAGE 30, AND FILED IN OFFICIAL RECORDS BOOK 2224, PAGES 1010 THROUGH 1041 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA ON MAY 30, 1991.
- THE 1978 COASTAL CONSTRUCTION SETBACK LINE SHOWN HEREON IS AS RECORDED BY ORDINANCE 76-3 RECORDED APRIL 17, 1978 IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA
- MEAN HIGH WATER ELEVATION OF 0.26' (NAVD 1988) IS BASED ON A DETERMINATION OF THE FLORIDA DEPARTMENT OF ENVIRONMENTAL AGENCY.
- THIS TIDAL WATER SURVEY COMPLIES WITH CHAPTER 177, PART II, FLORIDA STATUTES.
- THIS PARCEL CONTAINS 0.691 ACRES, OR 30,118 SQ. FT., MORE OR LESS.

PROJECT:
19-46-24-W3-0120A.0100
2600 ESTERO BLVD.
LOTS 10, 11, 12 & PART 13
SEAGRAPE SUBDIVISION
19-46-24-W3-0120A.013A
2443 COTTAGE AVE.
PART LOT 13
SEAGRAPE SUBDIVISION
19-46-24-W3-01302.000
2510 ESTERO BLVD
LOT 2, BLAKE'S SUBDIVISION
19-46-24-W3-01301.0000
2518 ESTERO BLVD.
LOT 1, BLAKE'S SUBDIVISION

EMPIRE HOLDING CORPORATION
FORT MYERS BEACH, FLORIDA
BOUNDARY SURVEY

ABBREVIATIONS:
D.U.E. DRAINAGE/UTILITY EASEMENT
IRR. IRRIGATION
WPP. WOOD POWER POLE
GUY. GUY ANCHOR WITH CABLE
OHP. OVERHEAD POWER
MBOX. MAIL BOX
LP. LIGHT POLE
CB. CATCH BASIN
CONC. CONCRETE
MON. MONUMENT

10/26/2024 - REVISED FLOOD ZONE OFF PROPERTY TO "VE"
23154_BOUND.DWG
MILLER GEOSPATIAL LLC
YOUR LAND SURVEYING PARTNER
4401 NW 20TH TERRACE
CAPE CORAL, FL 33903
238-571-4668
LB 8458



I HEREBY CERTIFY TO THE BEST OF MY KNOWLEDGE THAT THIS SURVEY OF THE HEREON DESCRIBED LANDS IS A TRUE REPRESENTATION OF THE FIELD SURVEY MADE UNDER MY DIRECTION AND CONFORMS TO THE STANDARDS OF PRACTICE FOR PROFESSIONAL SURVEYORS AND MAPPERS AS OUTLINED IN CHAPTER 53-17 OF THE FLORIDA ADMINISTRATIVE CODE.
CERTIFIED TO:
EMPIRE HOLDING CORPORATION
DONALD G. MILLER, P.S.M.
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 6674

SURVEYOR:	DGM
DRAWING BY:	DGM
JURISDICTION:	CAPE CORAL
DATE:	10/24/2023
SHEET TITLE:	BOUNDARY SURVEY

**2500 ESTERO BOULEVARD
COMMERCIAL PLANNED DEVELOPMENT (CPD)
Planned Development Amendment**

NARRATIVE

BACKGROUND & REQUEST

The subject property is located at 2500/2510/2518 Estero Blvd. & 2543 Cottage Ave. and is comprised of four parcels (STRAP #'s: 19-46-24-W3-0120A.0100, 19-46-24-W3-01302.0000, 19-46-24-W3-01301.0000, and 19-46-24-W3-0120A.013A), totaling +/- 0.691 acres (See Figure 1). The property has a Future Land Use (FLUM) Map Designation of *Boulevard* and is within the *CPD, Commercial Boulevard (CB)* and *Residential Multifamily (RM)* Zoning Districts.



Figure 1. Location Map



The Neighborhood Company on behalf of Empire Holding Corp., an Indiana corporation as Trustee for Ann Trust, is submitting this Planned Development Rezone (Amendment) Application to request the following:

- Expand the existing CPD boundary approved under CPD Resolution #07-28 by rezoning 2518 Estero Boulevard (STRAP#: 19-46-24-W3-01301.0000) from Commercial Boulevard (CB) and 2543 Cottage Avenue (STRAP#: 19-46-24-W3-0120A.013A) from Residential Multifamily (RM), adding an Option “B” Master Concept Plan (MCP – Opt. B), and amending the schedule of uses and applicable conditions.

Historically, the property located at 2500 Estero Boulevard was home to several restaurants over time such as The Holmes House, Smitty’s on the Beach and the Mucky Duck. The last restaurant use was removed in 2005 with that portion of the site remaining vacant. The property located at 2518 Estero Boulevard was purchased in 2014 and developed into a single-family home which was destroyed by Hurricane Ian. The 2543 Cottage Avenue property consisted of a single-family home which was destroyed by Hurricane Ian and subsequently purchased by the applicant in April of 2022.

The existing CPD consists of a 0.52± acre parcel with a maximum of 23,067 square feet, consisting of 9,952 square feet of commercial and office plus (3) three dwelling units developed as either 3 multi-family or 3 live/work units with a total of 13,115 square feet in two (2) buildings, not to exceed a maximum building height of 40 feet above base flood elevation/3 stories. In light of the acquisition of the additional properties, increasing the CPD boundary area to +/- 0.691 acres, and significant changes impacting redevelopment opportunities that have taken place on the island since the approval of the CPD, the applicant is requesting this amendment to ultimately allow for mobile vendors/transient merchants with outdoor seating/entertainment/recreation area and a permanent park support structure, consumption on premises, and a commercial parking lot within the new CPD boundary area.

PROPOSED USE/DEVELOPMENT

The applicant is proposing an amendment to the existing CPD pursuant to Resolution 07-28. Prior to Hurricane Ian, the subject properties included two residential structures and a previous restaurant. The subject of this petition is to increase the property boundary through the addition of Lot 1 and the remainder of Lot 13, add mobile vendors and transient merchants with an outdoor seating/entertainment/recreation area, a park support structure, consumption on premises, commercial parking lot, and to create an MCP – Opt. B related to these added uses. The proposed uses associated with this amendment reflect the conditions on the island due to the impacts of Hurricane Ian. The town is currently faced with the arduous task of redeveloping as efficiently and effectively as possible with uses and facilities that are needed, wanted, and as the market may dictate overtime to support the residents and visitors.

The existing CPD allows for a maximum of 23,067 square feet of floor area, consisting of 9,952 square feet of commercial and office and three (3) dwelling units. The property owners do not feel that now is the right time for the previously approved development but do feel they could provide a benefit to the island through a development consisting of mobile vendors and transient merchant park.



The following list includes the existing and proposed uses and development standards as depicted on MCP – Opt. B or to remain from Res. 07-28. The additional uses being requested through this proposed amendment are listed in **bold**. The requested deviations and justifications (Section F: Schedule of Deviations and Justifications) are included within the submittal documents.

SCHEDULE OF USES:

RESIDENTIAL:

- DWELLING UNIT:
 - MULTI-FAMILY - MAXIMUM OF 3 UNITS
 - LIVE/WORK PURSUANT TO LDC SECTION 34-1773 - MAXIMUM OF 3 UNITS

LODGING:

- RENTAL OF ANY PERMITTED DWELLING UNIT TO A SINGLE FAMILY FOR PERIODS OF ONE WEEK OR LONGER PURSUANT TO SECTION LDC 34- 2391 THROUGH 34-2410.

OFFICE:

- ADMINISTRATIVE OFFICES

COMMERCIAL:

- RETAIL:
 - RETAIL STORE, SMALL (LESS THAN 5,000 SQUARE FEET)
- **FOOD SERVICE/RESTAURANT/ BAR**
- **MOBILE VENDOR/TRANSIENT MERCHANTS WITH OUTDOOR SEATING, ENTERTAINMENT, RECREATION AREAS AS INDICATED ON THE MASTER CONCEPT PLAN - OPTION B**
- **OUTDOOR SERVICE AND CONSUMPTION ON PREMISES WITHIN THE DESIGNATED AREA AS INDICATED ON MASTER CONCEPT PLAN – OPTION B**
- **COMMERCIAL PARKING LOT (MASTER CONCEPT PLAN – OPTION B ONLY)**

CIVIC:

- ESSENTIAL SERVICES
- DAYCARE CENTER, ADULT OR CHILD (BY ADMINISTRATIVE APPROVAL)

CULTURAL FACILITIES (BY ADMINISTRATIVE APPROVAL)

**DEVELOPMENT STANDARDS:**

MINIMUM LOT SIZE: 30,099.96+/- SQUARE FEET OR 0.691+/- ACRES

MINIMUM LOT WIDTH: 213 +/- FEET ALONG ESTERO BOULEVARD

MINIMUM LOT DEPTH: 150 +/- FEET ALONG CHAPEL STREET

MINIMUM LOT WIDTH: 187 +/- FEET ALONG COTTAGE AVENUE

MINIMUM SETBACKS:

- STREET: 5 FEET (ESTERO BOULEVARD)
10 FEET (CHAPEL STREET)
10 FEET (COTTAGE STREET)
- SIDE: 5 FEET

MAXIMUM HEIGHT: 40 FEET ABOVE BASE FLOOD ELEVATION/3 STORIES

MAXIMUM INTENSITY AND DENSITY:

TO REMAIN CONSISTENT WITH RESOLUTION 07-28.

LOCATION, SITE DESIGN & COMPATIBILITY**Location**

The subject property is located approximately 1.07 miles from Times Square and is southwest of the area known as the Civic Center of Fort Myers Beach. The properties front the southside of Estero Boulevard; north of Cottage Avenue; and to the east of Chapel Street. The project is surrounded by vacant commercial properties as well as single and multifamily residential properties.

Site Design

The property's location on Estero Boulevard, near the Civic Center and existing public beach access #26 has presented an opportunity for redevelopment which will provide additional options for eating, shopping and parking for island residents and guests while the island is recovering. The proposed MCP – Opt. B depicts improvements to the site that provide a functional and attractive layout containing a mobile vendor/transient merchant park with outdoor seating/entertainment/recreation area and a commercial parking lot. The concept site is specifically designed for five (5) improved pads with utility hookups for mobile vendors/transient merchants, and a permanent park support structure, which will surround an outdoor seating, entertainment, and recreation area. Additional outdoor seating is also proposed along Estero Boulevard to further activate the public realm. Allowing this mobile vendor/transient merchant park will provide island residents and visitors an opportunity to walk, bike, drive, or use public transit to a destination they can eat, relax and socialize while also being in close proximity to the beach.



The Town of Fort Myers Beach Land Development Code (LDC) does not provide specific parking requirements for a mobile vendor/transient merchant park. Through our research of neighboring jurisdiction parking regulations, we found the typical parking requirement is three (3) spaces per mobile vendor/transient merchant and 1 parking space per 15 seats. Based on the current plan of 5 vendor spaces, our assumption of approximately 75 seats, applicable square footage within the proposed park support structure, and a reduction of one parking space for a four (4) bike parking rack, we determined the required number of parking spaces to be 26. There are a total of 45 parking spaces being provided on site to support the park and for visitors to the beach or other desired destinations in the surrounding area.

The proposed improvements will provide a more attractive pedestrian and public realm. The site has been designed so that the access from Estero Boulevard will be restricted and controlled for mobile vendor/transient merchant access only, while the public will gain pedestrian access from the Estero Boulevard sidewalk and primary vehicular access into the site from Chapel Street as originally depicted on the existing MCP.

The development will provide improved pads for the mobile vendors/transient merchants with power and water/sewer hookups surrounding an outdoor seating/entertainment and recreation area. As indicated on MCP Opt. B, a permanent support structure will also be located on the eastern border of the site, the outdoor Consumption on Premises (COP) area will generally include the mobile vendor/transient merchant area and will extend from the eastern CPD boundary, south of the Estero Boulevard property line, west to the eastern parking lot boundary and south to the rear of the dumpster enclosure/parking lot. Adjacent to the Estero Boulevard sidewalk between the mobile vendor/transient merchant entrance and the parking lot, there will be an outdoor seating area for park patrons. The proposed pedestrian connection extends from the Estero Boulevard sidewalk between the eastern portion of the parking lot and the mobile vendor/transient merchant locations leading south to the southern parking lot. The permanent support structure will be a maximum of 1,500 square feet and will include a public "comfort station" consisting of restrooms, a foot wash/shower, water fountain as well as office space, storage, and beverage service with bar counter seating. The "comfort station" is intended to be available to the customers of the park and the beach-going public using the parking lot.

The proposed hours of operation for the mobile vendor/transient merchants and outdoor seating area will be 7am to 10 pm seven days a week. Any outdoor entertainment will be permitted until 9:00 pm and located within the centralized seating/entertainment/recreation area as depicted on the proposed MCP – Opt. B. These restrictions along with the location of the permanent structure, significant buffers, enhanced landscape plantings, and opaque fence will help to minimize sound carrying over to the surrounding properties. The type of entertainment proposed will be mainly limited to solo and duo acts that would complement this family-oriented venue.

Vehicular and Pedestrian access

The site design outlined on MCP – Opt. B provides a direct pedestrian connection from the Estero Boulevard sidewalk to the commercial parking lot and the mobile vendor/transient merchant park entrance. The primary vehicular access to the site is from Chapel Street, while the mobile vendors/transient merchants will access the site from a restricted and controlled existing access on Estero Boulevard. Pedestrians will be able to access the park directly from the sidewalk along Estero Boulevard and along the edge of the parking lot. The parking lot configuration will allow two-way traffic through a 22' drive aisle, allowing traffic to move freely in a logical two-way circulation pattern and to provide safe ingress and egress movements from Chapel Street. The public parking lot is a short and convenient walk just north of the public beach access #26 on Chapel Street. The site will also provide bicycle parking on the northern border of the site near Estero Boulevard.



Buffers and Screening

There are 10' wide buffers along the south property line abutting Cottage Avenue, the west property line along Chapel Street, and a portion of the northern property line along Estero Boulevard. A combination of a minimum 10' wide and 5' wide buffer with enhanced landscaping is proposed along the eastern property line. Along with the proposed eastern side buffer and enhanced landscaping, the proposed permanent support structure will provide additional park separation/buffering from the adjacent property. A minimum 10' wide buffer with a 6' high opaque fence is proposed along the south/southeastern property lines adjacent to the vacant RM zoned land. The proposed buffers will provide aesthetically pleasing views, with appropriately placed, ample plantings beyond what is required, while ensuring compatibility with the adjoining properties. Resolution 07-28, provides the following existing buffer conditions. The applicant is proposing the following amendments (Strikethrough & Underline) to these existing conditions applicable to MCP - Option B:

3. At the time of Development Order, the applicant must provide the following buffers:

Along Chapel Street (the west property line), a 10-foot-wide buffer with a minimum of 4 trees per 100 linear feet (6 trees) and a 3-foot-high hedge planted in a double staggered row.

Along the east property line that extends from Estero Boulevard for a distance of 100± feet, a 5-foot-wide buffer with a minimum of 4 trees per 100 linear feet (4 trees) and a 3-foot-high hedge planted in a double staggered row. Option B: Along the east property line that extends from Estero Boulevard to the proposed structure (30±), a minimum 10-foot-wide buffer with a minimum of 8 trees per 100 linear feet and a 3-foot-high hedge planted in a double staggered row. From and along the proposed structure (45±), a minimum 5-foot-wide buffer with a minimum of 10 trees per 100 linear feet.

Along the southeast property lines that depicts a 6-foot-high opaque fence, with a 3-foot-high hedge planted in double staggered rows to be planted on the outside of the fence. Option B: Along the southeast property lines a minimum 10 foot wide buffer with 6 foot high opaque fence with a minimum of 8 trees per 100 linear feet and a 3 foot high hedge planted in a double staggered row planted on the outside of the fence.

Along Cottage Avenue, (the south property line), a 10-foot-wide buffer with a minimum of 4 trees per 100 linear feet (4 trees) and a 3-foot-high hedge planted in a double staggered row. Option B: A minimum 10-foot-wide buffer with a minimum of 8 trees per 100 linear feet and a 3 foot high hedge planted in a double staggered row.

Landscaping in the parking area will be in compliance with the Land Development Code at the time of development order. The proposed landscaping and buffers will contribute to enhancing the public realm and providing an aesthetically pleasing environment for patrons, island residents and visitors.



Surrounding Uses

The future land use category, zoning and existing land uses surrounding the property are as follows:

	FUTURE LAND USE	ZONING DISTRICT	EXISTING LAND USES
NORTH	Boulevard	Institutional	Estero Blvd. ROW, Vacant (prior place of worship)
SOUTH	Boulevard	Residential Multifamily	Cottage Ave. ROW, Vacant (prior single-family)
EAST	Boulevard	Residential Multifamily	Pool Amenity Area and Parking Lot
WEST	Boulevard	Commercial Boulevard & Residential Multifamily	Chapel St. ROW, Food Truck (prior Restaurant & office) and vacant (prior single-family)

Compatibility

The site design for Option “B” has considered the established surrounding uses, the site location on Estero Boulevard, and the needs of the island community. This area of the island was heavily damaged by Hurricane Ian and many of the surrounding properties are currently vacant. The redevelopment in this area has yet to be completed as property owners and Town staff determine the future use of their property and work through the permitting processes. The previous uses surrounding the property were town hall, a place of worship, restaurant, office, and single and multi-family residences. The previously approved CPD included compatible uses such as multi-family residential, lodging units for periods of one week or more, offices, retail, and through administrative approval, both daycare center and cultural facilities. The proposed uses included in this CPD Amendment request will not negatively impact the public’s health, safety, and welfare. They are complementary and consistent with the previously approved uses and will contribute to the island’s recovery efforts through the addition of options for eating, shopping and available parking.

The development standards, proposed buffers and screening, location of the vendors, and permanent structure, as well as connecting to existing services ensures compatibility with adjacent uses and are appropriate for property located in the Boulevard Future Land Use Category District. The existing public beach access #26 location on Chapel Street and the commercial parking lot create a reciprocal relationship which provides additional spaces for the public and access to the beach. The addition of the restrooms will also be a benefit to the public and island visitors using the parking area to access the public beach access. The mobile vendors/transient merchants will provide alternative locations for eating, shopping and outdoor entertainment to include items such as outdoor seating, corn hole, volleyball, etc. Access to parking, eating establishments, and entertainment are all components of a vibrant successful community, the addition of the proposed uses for this site supports the island during its recovery and are compatible with the approved uses within this area of the island.



**THE FOLLOWING ADDRESSES APPLICABLE SECTIONS PROVIDED FOR IN THE
PLANNED DEVELOPMENT APPLICATION – SUPPLEMENT PHD FORM:**

A. COMPREHENSIVE PLAN AMENDMENTS

The following Comprehensive Plan Amendments are pending and could affect the future use of this property:

**Mixed Use Districts Designation –
Civic Center and Coconut Village RV Park Mixed-Use District**



Figure 3. Proposed FLUM category

The applicant is aware that the Town of Fort Myers Beach has initiated an update to the Comprehensive Plan Future Land Use Element (FLUE) and Future Land Use Map (FLUM). This initiative was presented before the LPA on January 18, 2023 (Yellow Sheet #2023-895) and the Town Council on March 20, 2023. As of the date of this submittal, these updates are still in process. Should the proposed updates be approved, the subject property would be reclassified to the "Civic Center and Coconut Village RV Park Mixed-Use District" FLUM category (See Figure 3). Currently, the Applicant desires to move forward with this petition and intends to be consistent with the existing Boulevard FLUM designation, while also taking into consideration the current drafted language for the proposed Civic Center & Coconut Village RV Park Mixed-Use District category. Items included in the updated FLUE, which have been considered within this petition, include multi-modal improvements along with contributions to the public realm.



B. PHASING OF CONSTRUCTION

The development will be constructed in a single phase.

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C. COMPREHENSIVE PLAN COMPLIANCE

COMMUNITY DESIGN ELEMENT:

OBJECTIVE 1-A ESTERO BOULEVARD — Improve the functioning and appearance of Estero Boulevard as the premier public space and primary circulation route of Fort Myers Beach.

POLICY 1-A-1 Changes along Estero Boulevard should improve on the characteristics that make it a boulevard in character and not just in name: safe and interesting to walk along, impressive landscaping, and scaled to people rather than high-speed traffic.

The vision for Estero Boulevard to be an interesting, safe area for the public to walk along is supported through this proposed amendment and subsequent project. The redevelopment design features characteristics such as enhanced landscaping that will include properly placed shade trees, shrubs and ground cover as well as bicycle parking along Estero Boulevard. Additionally, pedestrian connectivity from Estero Boulevard is provided and outdoor shaded seating is located to be within a few feet of the sidewalk along the eastern portion of the site along Estero Boulevard. These elements contribute to the safe walkability and engagement of the public realm along Estero Boulevard. The mobile vending park is a unique, interesting, and inviting venue that will draw the walking, biking, or driving public along Estero Boulevard in to eat, shop and enjoy some family entertainment.

These enhancements create a development easily accessible and safe for pedestrians, while adding interest and improving the character of Estero Boulevard for residents and visitors, thus supporting the “Estero Blvd” vision as described in Objective 1-A and Policy 1-A-1 of the Fort Myers Beach Comprehensive Plan.

POLICY 1-A-3 In commercial and mixed-use areas, the town shall identify specific portions of Estero Boulevard where changes in land development regulations could work towards a more coherent “framing” of the Boulevard. New regulations should accomplish the following design goals over time through infill and redevelopment:

- i. bringing buildings closer to the sidewalk
- ii. encouraging or requiring compatible means of meeting the mandatory flood elevation requirements (for example; using dry-floodproofing techniques, or designs such as the old hardware store which is built close to the street with outside steps up, but with added steps up inside to reach the flood elevation);
- iii. locating most parking to the rear of buildings, limiting curb cuts, and promoting shared parking areas;
- iv. facilitating pedestrian and bicycle access and contributing to the interconnectedness of the circulation system;
- v. adopting design guidelines that encourage architecture and urbanism along Estero Boulevard that contributes to the human scale and “beach cottage character”



The mobile vendor/transient merchant park is located along the eastern portion of the project adjacent to Estero Boulevard. The project promotes the activation of the public realm and the creation of an active and inviting environment along Estero Boulevard through a design that brings outdoor seating and shade elements toward the front and draws people then into the development to the main seating, entertainment, and recreation area that is surrounded by the mobile vendors. The design provides a distinct node consisting of a pedestrian connection into the park and bicycle parking area, helping to further encourage the traveling public to walk and bike throughout the town.

The unique configuration of the overall property, limiting the primary access point off Chapel Street and adhering to the vision of the mobile vending park results in locating the parking area to the western portion of the site. It is the intent of the town to encourage and locate “most” of parking to the rear of site as stated under Policy 1-A-3. However, not all projects can function or be designed strictly to these desired standards. Through this rezoning amendment to the existing CPD, the design provides for a significant buffer along Estero Boulevard. This buffer will be designed and consist of an extensive number of plantings beyond the requirements for a Type D buffer. This element of the project will create a lush and natural vegetated environment to help further frame the pedestrian and public realm along Estero Boulevard. The parking area orientation not only helps to serve the mobile vending park but also gives the public options to park and access the town’s public beach access point along Chapel Street. (Beach Access #26) located just 255 feet south of the development.

Through the elements and design as well as the flexibility under CPD amendment process, the proposed redevelopment and design of this site contributes toward achieving the goals as outlined in Policy 1-A-3.

FUTURE LAND USE ELEMENT:

GOAL 4: To keep Fort Myers Beach a healthy and vibrant “small town,” while capitalizing on the vitality and amenities available in a beach–resort environment and minimizing the damage that a hurricane could inflict.

OBJECTIVE 4-A SMALL-TOWN CHARACTER — Maintain the small-town character of Fort Myers Beach and the pedestrian-oriented “public realm” that allows people to move around without their cars even in the midst of peak-season congestion.

The proposed amendment provides for the option to allow for a mobile vendor/transient merchant park in an area of the island that has been heavily damaged by Hurricane Ian. This location will provide an area for island residents and visitors to purchase food and goods, enjoy the ambiance of the activity along Estero Boulevard, access to the beach, and interaction with one another in a unique setting. The proposed option for the mobile vending park will include outdoor seating/entertainment and a recreation area. This provides patrons an option for obtaining food and beverages, and shopping in a unique setting, all while enjoying a pedestrian friendly atmosphere with a direct connection from the Estero Boulevard pathway to the park or access to the public beach access #26. Through the implementation of these elements, the development will enhance the public realm of Fort Myers Beach and add to its unique small-town character.

Policy 4-A-2 The Town of Fort Myers Beach values its vibrant economy and walkable commercial areas. Through this plan, the town will ensure that new commercial activities, when allowed, will contribute to



the pedestrian-oriented public realm.

Located along Estero Boulevard, and in close proximity to transient lodging, other commercial and residential uses, the proposed amendment will provide for a unique commercial mobile park/marketplace as the town continues to recover and redevelop from the impacts of Hurricane Ian. The proposed site configuration, as shown on the MCP – Option B, contributes to the pedestrian oriented public realm by promoting the mobile vending park with outdoor seating directly along a portion of Estero Boulevard. Enhanced landscaping, pedestrian connections to the site, and bicycle parking are elements that will provide and create a more desirable place to access and walk along as well as to encourage the public to stop and enjoy the vendors. This commercial activity and the enhancements proposed will contribute to an inviting, safe, visually attractive project ensuring locational compatibility and improved pedestrian-oriented elements consistent with Policy 4-A-2.

POLICY 4-B-5 “BOULEVARD”: a mixed-use district along portions of Estero Boulevard, including less intense commercial areas, historic cottages, and mixed housing types. This category is not intended to allow commercial uses on all properties; its mixed-use nature is intended to remain permanent. For new residential development, the maximum density is six dwelling units per acre (except where the Future Land Use Map’s “platted overlay” indicates a maximum density of 10 units per acre for legally existing dwelling units). To obtain approval for new or expanded commercial activities, proposals must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code. These qualities and overall consistency with this comprehensive plan shall be evaluated by the town through the planned development rezoning process. Non-residential uses (including motels and churches) now comprise 46.9% of the land in this category, and this percentage shall not exceed 70%.

The project site is located within the Boulevard FLUC, and as stated in Policy 4-B-5, commercial activities must be sensitive to nearby residential uses, complement any adjoining commercial uses, and contribute to the pedestrian-oriented public realm. The MCP – Option B proposes to provide improvements to the public realm along Estero Boulevard through enhanced and appropriately placed and selected landscaped buffers that further soften the view into the parking area as well as promote interest and seeks to add an impressive natural element along the corridor. The project provides clearly defined pedestrian connectivity from the existing sidewalk along Estero Boulevard into the project and adds vehicle and bike parking opportunities for the public to walk to the beach via access #26. The proposed commercial mobile vending park with the various food and miscellaneous retail items will add a unique but complementary element to the other commercial uses coming back to the surrounding area. The project features design concepts such as appropriate use of building location, buffering to ensure proper separation from adjoining properties, incorporating enhanced plantings, opaque fencing, appropriate infrastructure (utility hookups) and orientation of the park amenities away from the perimeter all help to ensure the project does not negatively impact and is sensitive to the surrounding uses. Overall, the project has been designed to be considerate of the nearby residences, complementary to the adjoining commercial uses and to contribute to the pedestrian-oriented public realm along Estero Boulevard to ensure consistency with Policy 4-B-5.



POLICY 4-C-3 COMMERCIAL LOCATIONS: When evaluating proposals for new or expanded commercial uses in categories where they are permitted, the following principles shall apply:

iv. In the “Boulevard” category, where mixed-use development including some commercial uses may be permissible, landowners may seek commercial rezoning only through the planned development process. Proposals must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code.

The CPD amendment is consistent with this policy as it is following the planned development application process to accomplish the needed flexibility in the design and layout of the project. The existing mixed-use development uses based on the schedule of uses is still applicable and was found to be compatible and complementary to the surrounding area. The proposed mobile vending park use that would be allowed under the amendment will also be sensitive to the surrounding area. Through the site design that directs the most intense activities toward Estero Boulevard and interior to the site away from surrounding properties, the provision of enhanced landscaping throughout the project, appropriate buffering, and opaque fence, the project is sensitive to nearby residential uses, complements adjoining existing and future commercial uses and contributes to the public realm to ensure compliance with Policy 4-C-3 of the Comprehensive Plan.

COASTAL MANAGEMENT ELEMENT:

GOAL 5: To keep the public aware of the potential effects of hurricanes and tropical storms and to plan a more sustainable redevelopment pattern that protects coastal resources, minimizes threats to life and property, and limits public expenditures in areas subject to destruction by storms.

POLICY 5-A-1 The town shall maintain and enforce building codes at least as stringent as required by Florida law to limit the potential damage of structures from hurricanes and tropical storms. These codes shall include wind-resistance commensurate with the risk of a coastal environment and building elevation requirements that conform with federal laws and Flood Insurance Rate Maps.

As stated per Objective 4-D, the proposed development of the site will be in compliance with all applicable federal, state and local regulations to develop a more resilient commercial property to serve the residents and visitors of Fort Myers Beach. A hurricane action plan will be prepared to address the timing and required removal of any applicable structures/mobile units prior to a hurricane event.

TRANSPORTATION ELEMENT

GOAL 7: To improve peak-season mobility without reducing the permeability of Estero Boulevard to foot traffic or damaging the small-town character of Fort Myers Beach. The town seeks to reduce speeding, improve evacuation capabilities, and improve mobility through balanced transportation improvements such as a continuous system of sidewalks and bikeways, a network of trolleys and water taxis linked to off- island systems, and parking options matched to road capacity.



POLICY 7-D-3 ALTERNATE TRAVEL MODES

The town shall support alternatives to car travel to free up road capacity for trips that do require a car. Public funding sources shall include county/state gasoline taxes and road impact fees. The town shall modify its road impact fee ordinance by 1999 to allow these fees to be spent (within legal limits) on capital improvements that relieve road congestion, such as better sidewalks, trolley improvements, and off-island parking areas.

POLICY 7-F-1 ENCOURAGE SHARED PARKING LOTS:

Parking lots serving a variety of land uses require much less space than separate on-site lots for each business. Shared lots waste less land and encourage walking because businesses aren't separated by large parking lots. The town shall encourage shared parking lots when businesses are relatively small, are clustered together, and have different busy periods.

To better serve the public and a goal of "park-once", the proposed site design includes a parking layout and circulation which will allow the public to utilize the parking sites for not only the mobile vendor/transient merchant park but also additional paid public parking spaces for access to the beach and/or other destinations along Estero Boulevard. The project encourages the use of alternate travel modes under Policy 7-D-3 by providing bike racks for bicycle parking located on the property and pedestrian connectivity along Estero Boulevard to the two LeeTran "Trollee" stops less than 500 feet away, less than a minute walk, from the property.

UTILITIES ELEMENT

GOAL 8: To improve the existing systems that provide safe drinking water, irrigation water, sewer service, and solid waste disposal in order to reduce environmental impacts on land and water while keeping costs as economical as possible.

POLICY 8-A-1 Mandatory customer connections to water and sewer utilities shall continue to be the policy of the Town of Fort Myers Beach.

The proposed development will provide connections to electric, central water and sewer utilities for the mobile vendors and the public restrooms as mandated by the Town of Fort Myers Beach.



D. DESIGN STANDARDS COMPLIANCE

Pursuant to Sec. 34-707- Commercial design standards, the Commercial Boulevard district states that the commercial design standards shall apply to newly built and substantial improvements to buildings. In this case, the proposed mobile vendor/transient merchant park and commercial parking lot will likely not have permanently constructed principal buildings at the on-set of the park's development. If newly built buildings are desired, appropriate approvals will be obtained to ensure compliance with standards and regulations. Site improvements, to include bicycle parking, direct pedestrian connections to and from the existing sidewalk and the parking area would be consistent with the intent of the applicable Commercial design standards pursuant to sec.34-991 through 34-1010.

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DECISION-MAKING COMPLIANCE

(1) Whether there exists an error or ambiguity which must be corrected.

There are no known errors or ambiguity that must be corrected in relation to the requested CPD amendment. If any exist, they will be discussed and resolved during staff review and public hearings before the Local Planning Agency (LPA) and Town Council. Through the proposed CPD rezone request, the previously approved deviations will still apply along with additional deviations to assist in the improvements to the public realm and pedestrian circulation.

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

The Town of Fort Myers Beach has been devastated by Hurricane Ian. The proposed CPD amendment will allow the establishment of a mobile vendor/transient merchant park and commercial parking lot. This will allow the property owner to provide needed amenities to visitors and residents as the Town recovers and future development needs and wants become known.

(3) The impact of a proposed change on the intent of this chapter.

The proposed CPD amendment is consistent with the purpose and intent of the zoning chapter of the Land Development Code (LDC) and specifically for Planned Developments which encourages flexibility in the development and design standards.

(4) The testimony of any applicant.

The professional experts retained to support the petition will provide future testimony during the appropriate public hearings.

(5) The recommendation of staff and of the local planning agency.

The petition will be reviewed by staff, expert testimony will be provided during the public hearing process before the Local Planning Agency and a recommendation will be made to the Town Council.

(6) The testimony of the public.

The public will be provided with the opportunity to testify before the LPA and Town Council. Such testimony will be evaluated as applicable and appropriate to the request for the LPA's recommendation and Town Council's decision.

(7) Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.

Please see Section C above, which explains how the petition is consistent with the town's comprehensive plan.



(8) Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.

It is important to note that a Commercial Planned Development provides the regulatory flexibility which allows for creative design and development options to address site constraints and the needs of the community to redevelop. The proposed Master Concept Plan (MCP) Option "B" depicts improvements to the functional and attractive layout that further fulfills the goals of the Comprehensive Plan. These include improvements to the vacant property, such as the parking layout, landscaping, and pedestrian and public realm improvements.

(9) Whether urban services are, or will be, available and adequate to serve a proposed land use change.

All urban services are in place to adequately serve the subject site.

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

The subject property was previously developed and has been subsequently cleared of all existing natural vegetation. No environmentally critical areas and natural resources exist on the site.

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

Based on the layout and design elements of the development, the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to person or property as the proposed use existed prior to the catastrophic events of Hurricane Ian.

(12) Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.

The existing CPD approval, which is to remain in effect in conjunction with the proposed uses outlined in the application and MCP – Opt. B, allows for a maximum of 9,952 square feet of commercial and office space as well as three residential units. The request for five (5) mobile vending pads with an outdoor seating/entertainment/recreation area is less intensive than the previously approved uses. As such, there will not be any further burden placed upon the existing transportation network or services and facilities.

(13) For planned development rezonings, see § 34-216 for additional considerations.

This request to amend an existing CPD on the subject property will be presented at a public hearing before the local planning agency and the town council consistent with LDC Section 34-216(a)(1). As demonstrated throughout this narrative, the proposed CPD meets the following criteria under LDC Section 34-216(2):

- a. The proposed mobile vendor/transient merchant park as detailed previously and commercial parking lot, as provided for within the Schedule of Uses, is appropriate for the subject location and provides adequate buffers to enhance the public realm and streetscape of the adjacent road



rights-of-way. Compatibility is discussed throughout the enclosed Narrative.

- a. Sufficient safeguards are in place to protect the public interest through the proposed CPD amendment and supporting Master Concept Plan – Option “B.” The design, location and proposed use and development standards are generally consistent with the mixture of uses and pedestrian nature of the area and will meet the needs of the town’s residents and visitors. Access and circulation will be safe and functional, and the pedestrian experience will be improved.
- b. If recommended special conditions are presented and are deemed reasonable and feasible, the applicant will be willing to accept them to further ensure sufficient safeguards are established.
- c. The proposed rezoning request meets specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:
 1. Policy 4-C-3: See Section “C” and the above narrative.
 2. Policies 4-B-5 and 4-C-3: See Section “C” above and the narrative.
 3. Policy 4-C-4: Proposed height of 40 feet is not taller than the standard height limit allowed under the Land Development Code.
 4. Policy 4-C-8: Density transfers. Not applicable.
 5. Policy 4-E-1: The proposed redevelopment of the property will be well below the allowed intensity (FAR 1.0) as approved in Resolution 07-28 prior to the natural disaster (Hurricane Ian).
 6. Policy 7-D-3 Alternate Travel Modes: Alternative modes of travel are encouraged through the provision of bicycle parking and path connection from the property to existing sidewalks.

CONCLUSION:

The above narrative, supporting application documents, and the proposed MCP – Option B demonstrates consistency and compliance with both the Fort Myers Beach Comprehensive Plan and Land Development Code. The project proposes to utilize the regulatory flexibility of the CPD process to provide the opportunity to redevelop the property with a unique and beneficial community-oriented commercial use and parking facility as the town recovers and redevelops.



**2500 ESTERO BOULEVARD
COMMERCIAL PLANNED DEVELOPMENT (CPD)
Planned Development Amendment**

SECTION F: SCHEDULE OF DEVIATIONS AND JUSTIFICATIONS

DEVIATION #1 is from Section 10-285 that requires driveways to be located at least 250 feet from the centerline of a local street such as Chapel Street, to allow a distance of 100 feet from Estero Boulevard. Chapel Street is a local street that is maintained by the Town of Fort Myers Beach. The previous development on the site used this driveway as an access point and the proposed development will continue to use this driveway. The applicant is unable to meet the 250 foot separation distance, therefore the Town Council **APPROVES** this application with a condition that the property owner voluntarily donate a 5 foot easement along Estero Boulevard to the Town of Fort Myers Beach for roadway, utility, drainage and reasonably related purposes.

(PRIOR APPROVED AND TO REMAIN)

DEVIATION #2 seeks relief from LDC Section 10-285 that requires driveways to be located at least 250 feet from the centerline of the intersection of Estero Boulevard and Chapel Street and the driveway to Pelican Watch Condominiums. This will allow the existing driveway located on Estero Boulevard to remain approximately 210 feet from the Chapel Street/Estero intersection and 150 feet from the existing driveway to Pelican Watch Condominiums.

Justification: LDC Section 10-285, Table 10-1 states that when a street or accessway is constructed or improved, it must be spaced a minimum distance from all other streets or accessways. Estero Boulevard is classified as a major street, requiring streets and accessways to be spaced 250 feet from centerline to centerline. The site design maintains the existing access/curb cut from Estero Boulevard. This existing access/curb cut aligns with the entrance into the Chapel by the Sea Presbyterian Church directly to the north, across Estero Boulevard. This area of Estero Boulevard contains a turn lane allowing motorists to safely maneuver turns from both directions off of Estero Boulevard both into the subject property as well as the property to the north across Estero Boulevard.



As depicted on the Master Concept Plan Option “B”, this CPD amendment proposes to maintain the existing access from Estero Boulevard as a restricted and controlled access for mobile vendors/transient merchants delivery and removals only. All other vehicular traffic will gain access to the site from the Chapel Street location, south of the intersection of Estero Boulevard with Chapel Street. The location of the access into the parking area creates an improved traffic flow directing traffic away from Estero Boulevard.

The continued use of the existing Estero Boulevard access, that will be controlled and restricted to the delivery and removal of mobile vendors/transient merchants equipment, supports the intent of LDC Sec. 10-285 which is to provide as much connection separation as possible while protecting the health, safety, and welfare of island residents and visitors.

DEVIATION #3 seeks relief from LDC Section 34-706(d) which states that existing driveway and parking spaces shall be relocated from Estero Boulevard to allow for the existing access point to remain from Estero Boulevard into the property.

Justification: As shown on the proposed Master Concept Plan, Option “B”, the only access from Estero Boulevard is to be an existing access point/curb cut which is located directly across from the Chapel by the Sea Presbyterian Church access. The site was previously designed with an additional access from Estero Boulevard located on Lot 12. Through the new configuration, the traffic wanting to access the development will be directed to the entrance at Chapel Street, thereby removing one existing driveway from Estero Boulevard.

The site configuration as shown on the proposed Master Concept Plan - Option “B” allows the removal of one access from Estero Boulevard while still allowing limited access for the delivery and removal of mobile vendor/transient merchant equipment. The new proposed configuration of the site reduces conflicts on Estero Boulevard and redirects traffic along Chapel Street thus supporting the intent of LDC Section 34-706(d). The granting of this deviation will not be injurious to the health, safety and welfare of the island’s residents and visitors.



DEVIATION #4 seeks relief from the LDC Section 34-706(a) which requires that off-street parking lots be placed in side or rear yards. This deviation will allow the parking lot to be located along Chapel Street between Estero Boulevard and Cottage Avenue.

Justification: The proposed CPD Amendment provides a Master Concept Plan "Option B" which is for the use of a mobile vendor/transient merchant park with additional public parking to a beach front access. The subject property has three street frontages, it is bounded by Estero Boulevard to the north, Chapel Street to the west and Cottage Avenue to the south, therefore, it is not possible to locate the proposed off-street parking in a side or rear yard. The MCP is designed with the proposed off-street parking to be located on the west side of the property with vehicular access from Chapel Street. Although the off-street parking is not located in a true side or rear yard, the configuration of the site provides access to the site from Chapel Street and removes the primary access from Estero Boulevard.

The proposed mobile vendor/transient merchant area and 10' buffer with a 6' high decorative fence, will provide separation from the adjacent residential multi-family property to the east. While 10' buffers and the rights-of-way for Chapel Street and Cottage Avenue will provide separation from other residential multi-family properties to the west and south. This site design is appropriately located to provide excess off-street parking to be used by the public for access to the Chapel Street Public Beach Access #26, which can be reached via a short walk along Chapel Street. Due to the configuration of the property, the granting of this deviation will allow the applicant to develop the property in a manner that will benefit the island, its residents and visitors through providing much needed parking close to its public beach access.

DEVIATION #5 seeks relief from LDC Section 34-2017, which requires high turnover parking lots to have a paved surface to allow for a crushed shell or lime rock surface.

Justification: The proposed use of a mobile vendor/transient merchant park with public parking is not proposed to be the "permanent" use of the property but will allow the applicant a source of income until such time as the island recovery has stabilized and the market will support the development of Option "A" on the subject property. As such, the applicant is requesting relief from LDC Sec. 34-2017 to allow a high turnover parking lot to be developed with a crushed shell or lime rock surface. The use of a crushed shell or lime rock surface will provide a stabilized area for parking with low maintenance and efficient drainage. Crushed shell and lime rock parking areas are currently used throughout Fort Myers Beach and other coastal areas as a means to provide a more natural environment. Based on the above justification, the granting of this deviation from LDC Sec. 34-2017 will not be injurious to the neighborhood or negatively impact the overall health, safety and welfare of the island or its residents.



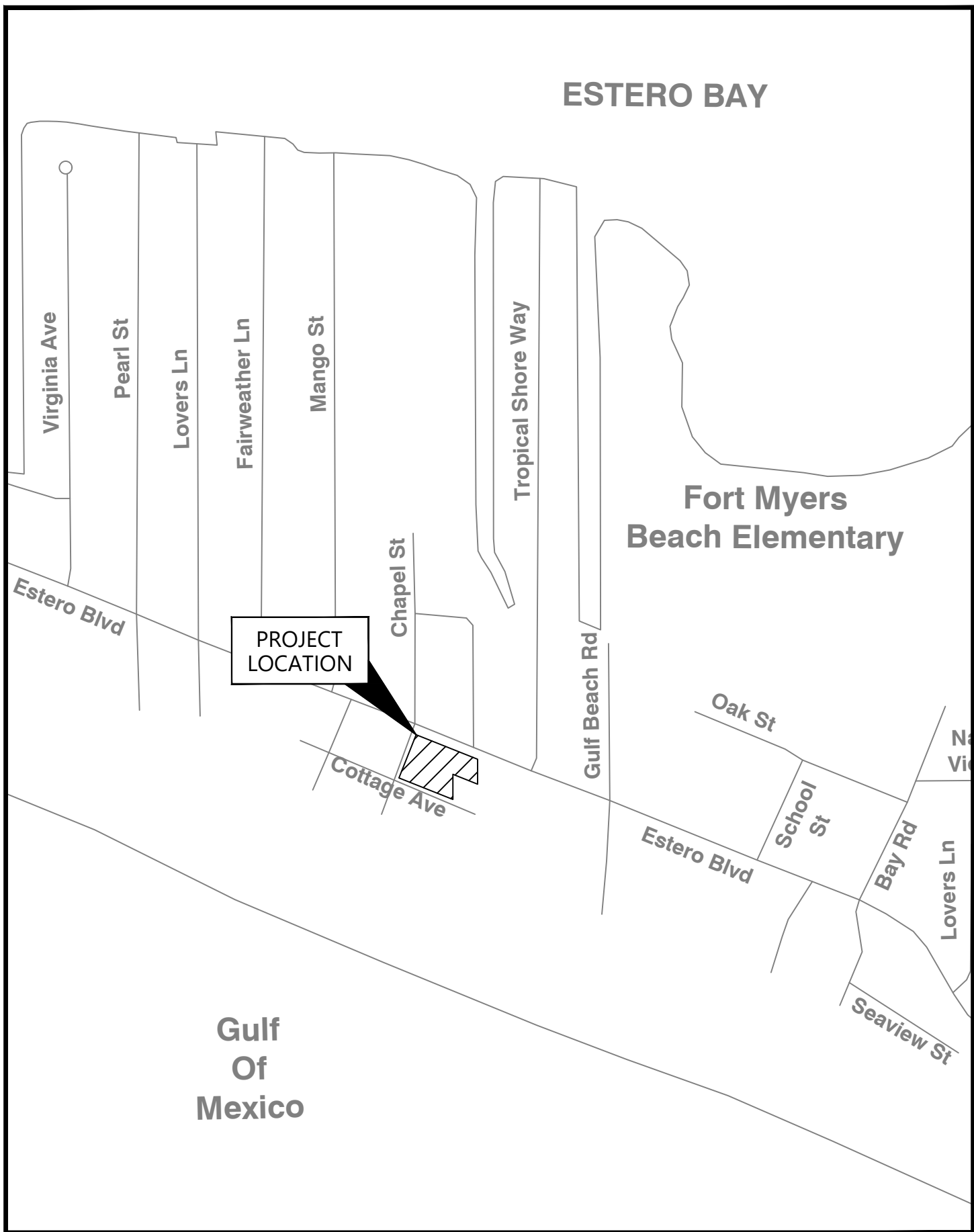
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Justification: The Master Concept Plan, Option “B” proposes a minimum 10-foot-wide buffer for a portion of the property containing the parking area abutting the Estero Boulevard right-of-way. This is a minor 5-foot reduction from the required 15 feet and is consistent with the prior buffering condition under Resolution #07-28 allowing for 10 foot-wide buffers for areas abutting rights-of-way. The proposed 10-foot-wide buffer will contain a minimum of 10 trees per 100 linear feet and a minimum 3-foot-high hedge planted in a double staggered row, which is an enhancement of an additional 5 trees per 100 linear feet or a doubling of the number of trees normally required in this buffer area. The additional trees will provide and ensure a positive and appealing aesthetic along the boulevard, support the goal of framing Estero Boulevard, create a hospitable environment for pedestrians and still achieve the purpose and intent of the buffer between parking areas and the right-of-way. The granting of this deviation will not be injurious to the health, safety and welfare of the island’s residents and visitors.

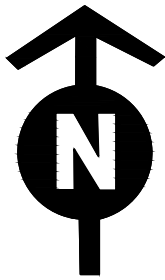
MASTER CONCEPT PLAN FOR

2500 ESTERO CPD

SECTION 19, TOWNSHIP 46S, RANGE 24E,
FORT MYERS BEACH, FLORIDA



VICINITY MAP
N.T.S.



SITE LOCATION MAP
N.T.S.

PREPARED BY:



5618 WHISPERING WILLOW WAY
FORT MYERS, FL 33908

PREPARED FOR:

EMPIRE HOLDING CORPORATION

6104 E. 21ST STREET
INDIANAPOLIS, IN 46219

CONTENTS		
SHEET NUMBER	SHEET DESCRIPTION	
1	COVER SHEET	
2	MASTER CONCEPT PLAN	
3	NOTES	
DATE:	PROJECT No.:	SHEET No.:
December, 2024	230035.01.01	1 OF 3





2500 ESTERO BLVD















**2500 ESTERO BOULEVARD
COMMERCIAL PLANNED DEVELOPMENT (CPD)
Planned Development Rezone (Amendment) Application**

Supplemental Parking Analysis

The Town of Fort Myers Beach Land Development Code (LDC) does not currently address parking standards for a mobile vendor/transient merchant park use. Research was conducted to analyze mobile vendor/transient merchant parks parking requirements within southwest Florida jurisdictions (City of Bonita Springs, City of Cape Coral, and City of Fort Myers). The following information is presented to support the parking calculation we have determined to be appropriate for a mobile vending park at this location.

1) City of Bonita Springs

a) LDC Sec. 4-2159 Mobile Food Vendor Park (6)

Parking will be provided at three spaces per mobile food vendor, plus one additional parking space per 15 seats.

2) City of Cape Coral

a) Section 5.11.16.C.8. **A minimum of three parking spaces shall be provided per vending space plus one additional parking space per 15 seats.** Additional parking spaces for on-site accessory uses such as bars or restaurants are required per LDC Article 6, as amended.

3) City of Fort Myers

a) LDC Sec. 118.3.5.F.7.B.8. **A minimum of three parking spaces per food truck** is required unless located in downtown or midtown where it can be demonstrated that enough public parking and on-street parking is available within a quarter mile walking distance to the food truck park. A shared parking agreement may also be entered with nearby uses subject to approval by the community development director. The director is authorized to approve an alternative number of parking spaces based upon a parking demand study submitted by the applicant.



Based on the above research, the proposed parking requirement for a mobile vending park is to allow a minimum of three parking spaces per mobile vendor/transient merchant and one additional parking space per 15 seats. The proposed development is for 5 mobile vendor/transient merchant spaces, park support structure, and a maximum of 60 seats for patrons.

2500 ESTERO BOULEVARD CPD AMENDMENT Vehicle Parking Calculations	
Requirements	Spaces
3 spaces per mobile vendor/transient merchant Five (5) mobile vendor/transient merchants	15
1 parking space per 15 seats Seventy-five (75) seats (Includes outdoor tables and beverage service counter seating)	5
Proposed Park Support Structure (Max. 1500 SF):	
• Office Area (2 spaces/1,000 SF): 150+/- SF	3.3
• Storage Area: 400+/- SF	N/A
• Restrooms: 120+/- SF	N/A
• Beverage Service Area Supporting Mobile Vendors (8 spaces/1,000 SF): 400+/- SF service area plus and counter seating	3.2
SubTotal Number of Parking Spaces Required	26.5
Parking Reduction: 1 space eliminated per 4 bicycle spaces provided. 4 bicycle spaces provided	(1)
TOTAL Number of Parking Spaces Required	25.5 (26)
TOTAL Number of Parking Spaces Provided	45



**2500 ESTERO BOULEVARD
COMMERCIAL PLANNED DEVELOPMENT (CPD)
Planned Development Rezone (Amendment) Application**

CONDITIONS AND COMMITMENTS (DRAFT)

Existing Conditions from Resolution #07-28 to remain or as amended (Strikethrough and Underlined):

1. The development of this project must be consistent with the six (6) page Master Concept Plan entitled "2500 Estero," stamped received October 6, 2006, or Option B, except as modified by the conditions below. This development must comply with all requirements of the LDC at time of local Development Order Approval, except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.

2. The following limits apply to the project and uses:

The project is limited to a maximum of 23,067 square feet and a maximum of 3 dwelling units of 13,115 square feet

a. Schedule of Uses

RESIDENTIAL:

- DWELLING UNIT:
 - MULTI-FAMILY - MAXIMUM OF 3 UNITS
 - LIVE/WORK PURSUANT TO LDC SECTION 34-1773 - MAXIMUM OF 3 UNITS

LODGING:

- RENTAL OF ANY PERMITTED DWELLING UNIT TO A SINGLE FAMILY FOR PERIODS OF ONE WEEK OR LONGER PURSUANT TO SECTION LDC 34- 2391 THROUGH 34-2410.

OFFICE:

- ADMINISTRATIVE OFFICES

COMMERCIAL:

- RETAIL:
 - RETAIL STORE, SMALL (LESS THAN 5,000 SQUARE FEET)



- FOOD SERVICE/RESTAURANT/ BAR
- MOBILE VENDOR/TRANSIENT MERCHANTS WITH OUTDOOR SEATING, ENTERTAINMENT, RECREATION AREAS AS INDICATED ON THE MASTER CONCEPT PLAN - OPTION B
- OUTDOOR SERVICE AND CONSUMPTION ON PREMISES WITHIN THE DESIGNATED AREA AS INDICATED ON MASTER CONCEPT PLAN – OPTION B
- COMMERCIAL PARKING LOT (MASTER CONCEPT PLAN – OPTION B ONLY)

CIVIC:

- ESSENTIAL SERVICES
- DAYCARE CENTER, ADULT OR CHILD (BY ADMINISTRATIVE APPROVAL)

CULTURAL FACILITIES (BY ADMINISTRATIVE APPROVAL)

b. **Site Development Regulations**

Minimum Lot Size: ~~23,067.00± Square Feet or 0.52± acres~~ 30,099.96 Square Feet or 0.691± acres

Minimum Lot Width: ~~160± feet~~ 213± feet along Estero Boulevard

Minimum Lot Depth: 150± feet along Chapel Street

Minimum Lot Width: ~~119± feet~~ 187± feet along Cottage Street

Minimum Setbacks:

Street: 5 feet (Estero Boulevard)
10 feet (Chapel Street)
10 feet (Cottage Street)

Side: 5 feet

Floor Area Ratio (FAR): 1.0

Maximum Height: 40 feet above base flood elevation /3 stories

3. At the time of Development Order, the applicant must provide the following buffers:

- Along Chapel Street (the west property line), a 10-foot-wide buffer with a minimum of 4 trees per 100 linear feet (6 trees) and a 3-foot-high hedge planted in a double staggered row.
- Along the east property line that extends from Estero Boulevard for a distance of 100± feet, a 5-foot-wide buffer with a minimum of 4 trees per 100 linear feet (4 trees) and a 3-foot-high hedge planted in a double staggered row. Option B: Along the east property line that extends from Estero Boulevard to the proposed structure (30±), a minimum 10-foot-wide buffer with a minimum of 8 trees per 100 linear feet and a 3-foot-high hedge planted in a double staggered row. From and along the proposed structure (45±), a minimum 5-foot-wide buffer with a minimum of 10 trees per 100 linear feet.



- Along the southeast property lines that depicts a 6-foot-high wall, a 3 foot high hedge planted in a double staggered row to be planted on the outside of the wall. Option B: Along the southeast property lines a minimum 10 foot wide buffer with 6 foot high opaque fence with a minimum of 8 trees per 100 linear feet and a 3 foot high hedge planted in a double staggered row planted on the outside of the fence.
 - Along Cottage Avenue,(the south property line), a 10 foot wide buffer with a minimum of 4 trees per 100 linear feet (4 trees) and a 3 foot high hedge planted in a double staggered row to be planted in between the driveways to the residential units. Option B: A minimum 10-foot-wide buffer with a minimum of 8 trees per 100 linear feet and a 3 foot high hedge planted in a double staggered row.
4. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the Fort Myers Beach Land Development Code ("LDC") may be required to obtain a local development order.
 5. The local development order must be in compliance with ~~LDC Section 14-71 through 14-79~~ all applicable federal, state, and local regulations regarding sea turtle and outdoor lighting.
 6. Approval of this zoning request does not give the Developer an undeniable right to receive local development order approval. Future development order approvals must satisfy the requirements of the Fort Myers Beach Comprehensive Plan ("Plan").
 7. Development of this property must comply with all of the requirements of the LDC at the time of local development order approval, except as may be granted by the conditions and deviations approved as part of this planned development.
 8. Prior to local development order approval, the construction plans must indicate that pervious pavement and exfiltration will be incorporated throughout the project to maximize the overall stormwater management capacity.
 9. Prior to local development order approval, the project developer will partner with the Town to coordinate survey, site preparation, and infrastructure improvements for the project with the Town's plans for work in the adjacent public rights-of-way.

**Proposed Commitments/Conditions DRAFT - PROPOSED LANGUAGE LIKELY TO BE AMENDED
BASED ON LEGAL REVIEW**

1. Mobile vendors or impacted/displaced businesses that were legally operating within the Town prior to Hurricanes Ian, Helene, or Milton and now operating as mobile vending business legally within the town will be given "first right of refusal" or priority for locating or re-locating to the mobile vending park.
2. A minimum of five (5) mobile vending pads shall be provided within the mobile vending park. Any additional mobile vending pads shall require town approval.



3. All mobile vendors shall be required to connect to onsite utilities. Generator use is only allowed when electrical service is disrupted or temporarily non-available due to designated disaster related events.
4. All mobile vendors will be associated with either food or merchandise. There shall be no cannabis or smoke/vape related merchandise vendors allowed.
5. All mobile vendors will be required to evacuate the property when evacuation orders are issued by Lee County Emergency Management.
6. Consumption on premises will be limited to beer and wine only.
7. All sound generated on-site will be in compliance with the Fort Myers Beach Noise Ordinance, Article II, Chapter 14.
8. Amplified music or entertainment is permitted outdoors until 9 pm and only within the designated entertainment area(s) indicated on the Option B Master Concept Plan. Outdoor entertainment or music will be restricted to only solo and duo performers. No bands (3 or more performers) or drums/percussion unless approved through the town's special event permitting process.
9. Access to and from the property via the Estero Boulevard access point will not be allowed during typical peak season traffic times, which are 8 am – 11 am and 4 pm – 7 pm.
10. Hours of operation:
 - a. Mobile Vending Park hours will be open to the public from 7 am until 10 pm.
 - b. Parking lot will be available for use 24 hours a day, 7 days a week.
11. A publicly accessible "comfort station" consisting of restrooms, outdoor shower/foot rinse, hand washing and water fountain will be integrated within the proposed park support structure.



**2500 ESTERO BOULEVARD
COMMERCIAL PLANNED DEVELOPMENT (CPD)
Planned Development Rezone (Amendment) Application**

Supplemental Parking Analysis

The Town of Fort Myers Beach Land Development Code (LDC) does not currently address parking standards for a mobile vendor/transient merchant park use. Research was conducted to analyze mobile vendor/transient merchant parks parking requirements within southwest Florida jurisdictions (City of Bonita Springs, City of Cape Coral, and City of Fort Myers). The following information is presented to support the parking calculation we have determined to be appropriate for a mobile vending park at this location.

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a) Section 5.11.16.C.8. **A minimum of three parking spaces shall be provided per vending space plus one additional parking space per 15 seats.** Additional parking spaces for on-site accessory uses such as bars or restaurants are required per LDC Article 6, as amended.

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Based on the above research, the proposed parking requirement for a mobile vending park is to allow a minimum of three parking spaces per mobile vendor/transient merchant and one additional parking space per 15 seats. The proposed development is for 5 mobile vendor/transient merchant spaces, park support structure, and a maximum of 60 seats for patrons.

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Proposed Park Support Structure (Max. 1500 SF):	
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• Storage Area: 400+/- SF	N/A
• Restrooms: 120+/- SF	N/A
• Beverage Service Area Supporting Mobile Vendors (8 spaces/1,000 SF): 400+/- SF service area plus and counter seating	3.2
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Parking Reduction: 1 space eliminated per 4 bicycle spaces provided. 4 bicycle spaces provided	(1)
TOTAL Number of Parking Spaces Required	25.5 (26)
TOTAL Number of Parking Spaces Provided	45



**2500 ESTERO BOULEVARD
COMMERCIAL PLANNED DEVELOPMENT (CPD)
Planned Development Amendment**

SECTION F: SCHEDULE OF DEVIATIONS AND JUSTIFICATIONS

DEVIATION #1 is from Section 10-285 that requires driveways to be located at least 250 feet from the centerline of a local street such as Chapel Street, to allow a distance of 100 feet from Estero Boulevard. Chapel Street is a local street that is maintained by the Town of Fort Myers Beach. The previous development on the site used this driveway as an access point and the proposed development will continue to use this driveway. The applicant is unable to meet the 250 foot separation distance, therefore the Town Council **APPROVES** this application with a condition that the property owner voluntarily donate a 5 foot easement along Estero Boulevard to the Town of Fort Myers Beach for roadway, utility, drainage and reasonably related purposes.

(PRIOR APPROVED AND TO REMAIN)

DEVIATION #2 seeks relief from LDC Section 10-285 that requires driveways to be located at least 250 feet from the centerline of the intersection of Estero Boulevard and Chapel Street and the driveway to Pelican Watch Condominiums. This will allow the existing driveway located on Estero Boulevard to remain approximately 210 feet from the Chapel Street/Estero intersection and 150 feet from the existing driveway to Pelican Watch Condominiums.

Justification: LDC Section 10-285, Table 10-1 states that when a street or accessway is constructed or improved, it must be spaced a minimum distance from all other streets or accessways. Estero Boulevard is classified as a major street, requiring streets and accessways to be spaced 250 feet from centerline to centerline. The site design maintains the existing access/curb cut from Estero Boulevard. This existing access/curb cut aligns with the entrance into the Chapel by the Sea Presbyterian Church directly to the north, across Estero Boulevard. This area of Estero Boulevard contains a turn lane allowing motorists to safely maneuver turns from both directions off of Estero Boulevard both into the subject property as well as the property to the north across Estero Boulevard.



As depicted on the Master Concept Plan this CPD amendment proposes to maintain the existing access from Estero Boulevard as a restricted and controlled access for mobile vendors/transient merchants delivery and removals only. All other vehicular traffic will gain access to the site from the Chapel Street location, south of the intersection of Estero Boulevard with Chapel Street. The location of the access into the parking area creates an improved traffic flow directing traffic away from Estero Boulevard.

The continued use of the existing Estero Boulevard access, that will be controlled and restricted to the delivery and removal of mobile vendors/transient merchants equipment, supports the intent of LDC Sec. 10-285 which is to provide as much connection separation as possible while protecting the health, safety, and welfare of island residents and visitors.

DEVIATION #3 seeks relief from LDC Section 34-706(d) which states that existing driveway and parking spaces shall be relocated from Estero Boulevard to allow for the existing access point to remain from Estero Boulevard into the property.

Justification: As shown on the proposed Master Concept Plan, the only access from Estero Boulevard is to be an existing access point/curb cut which is located directly across from the Chapel by the Sea Presbyterian Church access. The site was previously designed with an additional access from Estero Boulevard located on Lot 12. Through the new configuration, the traffic wanting to access the development will be directed to the entrance at Chapel Street, thereby removing one existing driveway from Estero Boulevard.

The site configuration as shown on the proposed Master Concept Plan allows the removal of one access from Estero Boulevard while still allowing limited access for the delivery and removal of mobile vendor/transient merchant equipment. The new proposed configuration of the site reduces conflicts on Estero Boulevard and redirects traffic along Chapel Street thus supporting the intent of LDC Section 34-706(d). The granting of this deviation will not be injurious to the health, safety and welfare of the island's residents and visitors.



DEVIATION #4 seeks relief from the LDC Section 34-706(a) which requires that off-street parking lots be placed in side or rear yards. This deviation will allow the parking lot to be located along Chapel Street between Estero Boulevard and Cottage Avenue.

Justification: The proposed CPD Amendment provides a Master Concept Plan which is for the use of a mobile vendor/transient merchant park with additional public parking to a beach front access. The subject property has three street frontages, it is bounded by Estero Boulevard to the north, Chapel Street to the west and Cottage Avenue to the south, therefore, it is not possible to locate the proposed off-street parking in a side or rear yard. The MCP is designed with the proposed off-street parking to be located on the west side of the property with vehicular access from Chapel Street. Although the off-street parking is not located in a true side or rear yard, the configuration of the site provides access to the site from Chapel Street and removes the primary access from Estero Boulevard.

The proposed mobile vendor/transient merchant area and 10' buffer with a 6' high decorative fence, will provide separation from the adjacent residential multi-family property to the east. While 10' buffers and the rights-of-way for Chapel Street and Cottage Avenue will provide separation from other residential multi-family properties to the west and south. This site design is appropriately located to provide excess off-street parking to be used by the public for access to the Chapel Street Public Beach Access #26, which can be reached via a short walk along Chapel Street. Due to the configuration of the property, the granting of this deviation will allow the applicant to develop the property in a manner that will benefit the island, its residents and visitors through providing much needed parking close to its public beach access.

DEVIATION #5 seeks relief from LDC Section 34-2017, which requires high turnover parking lots to have a paved surface to allow for a stabilized gravel/lime rock/crushed shell parking surface.

Justification: The proposed use of a mobile vendor/transient merchant park with public parking is not proposed to be the "permanent" use of the property but will allow the applicant a source of income until such time as the island recovery has stabilized and the market will support the development of Option "A" on the subject property. As such, the applicant is requesting relief from LDC Sec. 34-2017 to allow a high turnover parking lot to be developed with a crushed shell or lime rock surface. The use of a crushed shell or lime rock surface will provide a stabilized area for parking with low maintenance and efficient drainage. Crushed shell and lime rock parking areas are currently used throughout Fort Myers Beach and other coastal areas as a means to provide a more natural environment. Based on the above justification, the granting of this deviation from LDC Sec. 34-2017 will not be injurious to the neighborhood or negatively impact the overall health, safety and welfare of the island or its residents.



DEVIATION #6 seeks relief from LDC Section 10-416(d)(2) Table 10-8, which requires a 15-foot-wide Type D buffer when the proposed parking and vehicle use area abuts a right-of-way or road easement to allow for a minimum 10-foot-wide buffer

Justification: The Master Concept Plan proposes a minimum 10-foot-wide buffer for a portion of the property containing the parking area abutting the Estero Boulevard right-of-way. This is a minor 5-foot reduction from the required 15 feet and is consistent with the prior buffering condition under Resolution #07-28 allowing for 10 foot-wide buffers for areas abutting rights-of-way. The proposed 10-foot-wide buffer will contain a minimum of 10 trees per 100 linear feet, which is an enhancement of an additional 5 trees per 100 linear feet or a doubling of the number of trees normally required in this buffer area; a minimum 3-foot-high hedge planted in a double staggered row, and bicycle parking areas. The additional trees will provide and ensure a positive and appealing aesthetic along the boulevard, support the goal of framing Estero Boulevard, create a hospitable environment for pedestrians and still achieve the purpose and intent of the buffer between parking areas and the right-of-way. The granting of this deviation will not be injurious to the health, safety and welfare of the island's residents and visitors.

DEVIATION #7 seeks relief from LDC Section 10-416(d)(2) Table 10-8, which requires a 15-foot-wide Type D buffer when the proposed parking and vehicle use area abuts a right-of-way or road easement to allow for a minimum 5-foot-wide buffer.

The Master Concept Plan proposes a minimum 5-foot-wide buffer for a portion of the property abutting the Chapel Street right-of-way. This deviation is requested based on review by the town council to have the applicant evaluate the site design to reduce the initially conditioned and approved (Ord. No. 07-28) 10-foot-wide buffer along Chapel Street in order to allow for additional buffering (10 foot to 12.5 foot buffers) along the eastern property line abutting the Pelican Watch pool/amenity deck/parking area and open space area. The proposed 5-foot-wide buffer along Chapel Street will now contain a minimum of 10 trees per 100 linear feet, which is an enhancement of an additional 5 trees per 100 linear feet or a doubling of the number of trees normally required in this buffer area and a minimum 3-foot-high hedge. The additional trees will provide and ensure a positive and appealing aesthetic along the street and still supports the purpose and intent of the buffer between parking areas and the right-of-way. The granting of this deviation will not be injurious to the health, safety and welfare of the island's residents and visitors.



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

NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

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

TIME: 9 AM

DATE: LPA January 9th, 2025; 1st Town Council February 3rd, 2025; 2nd Town Council February 18th, 2025

CASE: DCI20240137

ADDRESS: 2500/2510/2518 Estero Blvd & 2543 Cottage Ave.

APPLICANT: Empire Holding Corp. TR for Ann Trust/The Neighborhood Company

REQUEST: Requesting a rezoning from CPD (Reso. 07-28) to an expanded boundary CPD (to include 2543 Cottage Ave and 2518 Estero Blvd.) with a food truck park with outdoor seating and a commercial parking lot.

TOWN CONTACT: JUDITH FRANKEL [JFRANKEL@FMBGOV.COM](mailto:jfrankel@fmbgov.com)

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

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



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ADDRESS: 2500/2510/2518 Estero Blvd & 2543 Cottage Ave.

APPLICANT: Empire Holding Corp. TR for Ann Trust/The Neighborhood Company

REQUEST: Requesting a rezoning from CPD (Reso. 07-28) to an expanded boundary CPD (to include 2543 Cottage Ave and 2518 Estero Blvd.) with a food truck park with outdoor seating and a commercial parking lot.

TOWN CONTACT: JUDITH FRANKEL [JFRANKEL@FMBGOV.COM](mailto:jfrankel@fmbgov.com)

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

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



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

NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

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

TIME: 9 AM

DATE: LPA January 9th, 2025; 1st Town Council February 3rd, 2025; 2nd Town Council February 18th, 2025

CASE: DCI20240137

ADDRESS: 2500/2510/2518 Estero Blvd & 2543 Cottage Ave.

APPLICANT: Empire Holding Corp. TR for Ann Trust/The Neighborhood Company

REQUEST: Requesting a rezoning from CPD (Reso. 07-28) to an expanded boundary CPD (to include 2543 Cottage Ave and 2518 Estero Blvd.) with a food truck park with outdoor seating and a commercial parking lot.

TOWN CONTACT: JUDITH FRANKEL [JFRANKEL@FMBGOV.COM](mailto:jfrankel@fmbgov.com)

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

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

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

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

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

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

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

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

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

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



Business Impact Estimate

This form should be included in the agenda packet for the item under which the proposed ordinance is to be considered and must be posted on the Town's website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference:

AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/ DENYING AN AMENDMENT TO THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING, PREVIOUSLY APPROVED BY RESOLUTION 07-28 FOR PARCELS LOCATED AT 2500 AND 2510 ESTERO BLVD., GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0120A.0100; 19-46-24-W3-01302.0000, TO ADD PARCELS 2518 ESTERO BLVD. AND 2543 COTTAGE AVENUE, GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-01301.0000; 19-46-24-W3-0120A.013A IN FORT MYERS BEACH;; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

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

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☒ The proposed ordinance is enacted to implement the following:

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

- a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
- b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
- c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or
- d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

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

1. Summary of the proposed ordinance (must include a statement of the public purpose, such as serving the public health, safety, morals and welfare):

The proposed ordinance is to allow an amendment to a commercial planned development proposed by the owner of the property.

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

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

There are unlikely to be direct compliance costs associated with the ordinance.

The ordinance does not impose any new charge or fee on businesses.

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

The Town will not likely incur additional costs.

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

One property owner will be impacted by this proposed ordinance.

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

[You may wish to include in this section the methodology or data used to prepare the Business Impact Estimate. For example: [Town/] staff solicited comments from businesses in the [Town] as to the potential impact of the proposed ordinance by contacting the chamber of commerce, social media posting, direct mail or direct email, posting on [own] website, public workshop, etc. You may also wish to include efforts made to reduce the potential fiscal impact on businesses. You may also wish to state here that the proposed ordinance is a generally applicable ordinance that applies to all persons similarly situated (individuals as well as businesses) and, therefore, the proposed ordinance does not affect only businesses).

From: [Sot, Olivia](#)
To: [Amy Baker](#); [Dan Allers](#)
Cc: [Berkey, Kathleen "Katie"](#); [Tourangeau, Tara](#); [Albuernes, Milena](#); [Judith Frankel](#); [Nancy Stuparich](#); noel.davies@daviesduke.com; karenwoodson@fmb.gov; scottsafford@fmb.gov; johnking@fmb.gov; [Jim Atterholt](#)
Subject: 4.07.2025 Agenda Packet Docs in Opposition to CPD/Food Truck Park Case Nos. DCI Rezoning 20240137.1 and 2024137.2
Date: Monday, March 24, 2025 10:38:01 AM
Attachments: [image001.png](#)
[image093556.png](#)
[image229820.png](#)
[image818551.png](#)
[image537026.png](#)
[image030856.png](#)
[image148656.png](#)
[image944969.png](#)
[image469284.png](#)
[KOB-CFC to Town of Fort Myers Beach Regarding Empire - Pelican Watch.pdf](#)
[KOB CFC to Town of Fort Myers Beach Regarding Affected - Pelican Watch.pdf](#)

Dear Ms. Baker:

On behalf of Attorney Katie Berkey, please find in the SharePoint folder linked below, the correspondence related to CPD Amendment Case Nos. DCI Rezoning 20240137.1 and 2024137.2 (Project Name: Food Truck Park) to be included in the agenda packet for the upcoming Town Council meeting on April 7, 2025. Due to their size, we are providing as a SharePoint link and will also try to transmit as e-mail attachments, to the extent the Town's server will accept same.

[FMB Town Council Agenda Packet](#)

Kindly, acknowledge receipt and let us know if you have any questions.

Olivia Sot

Word Processor

Becker

Becker & Poliakoff
Six Mile Corporate Park
12140 Carissa Commerce Court
Suite 200
Ft. Myers, FL 33966



239.628.4927



239.433.5933



OSot@beckerlawyers.com



www.beckerlawyers.com

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Note: Florida has a very broad public records law. Most communication(s) to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications and email address may be subject to public disclosure.

Kathleen "Katie" O. Berkey
Shareholder and Certified Land Planner
Board Certified Attorney, City, County, and
Local Government Law
Phone: 239.628.4919 Fax: 239.433.5933
KBerkey@beckerlawyers.com



Becker & Poliakoff
12140 Carissa Commerce Court
Suite 200
Fort Myers, FL 33966

Northern Trust Building
4001 Tamiami Trail North, Suite 270
Naples, Florida 34103

March 24, 2025

VIA E-MAIL ONLY: allersd@fmbgov.com

Mayor Dan Allers
Town of Fort Myers Beach

***RE: Pelican Watch Condominium Association, Inc./Opposition to CPD
Amendment Case Nos. DCI Rezoning 20240137.1 and 2024137.2
(Project Name: Food Truck Park) at 2500/2510/2518 Estero Boulevard
and 2543 Cottage Avenue, Fort Myers Beach, Florida***

Dear Mayor Allers:

Please be advised that our Firm represents the following with respect to the above-referenced applications:

1. Pelican Watch Condominium Association, Inc. ("Pelican Watch"), which operates and controls the Condominium Property, comprised of forty-eight (48) residential condominium units and common element property, located at 2530 and 2532 Estero Blvd., Fort Myers Beach, Florida;
2. Thomas S. and Debra S. Danford, Managers and Members Coastal Cottages LLC, owning residential property located at 2520 and 2522 Cottage Ave., Fort Myers Beach, Florida (the "Danfords"); and
3. Edwin T. French, III, 2548 and 2550 Cottage Ave., Fort Myers Beach, Florida ("Mr. French").

Pelican Watch, the Danfords, and Mr. French are collectively referred to herein as our Clients.

The Pelican Watch Condominium Property immediately abuts 2518 Estero Blvd. and is $\pm$ 39-feet from 2543 Cottage Ave., that are subject to the proposed Commercial Planned Development ("CPD") amendments. The respective properties of the Danfords and Mr. French are also $\pm$ 31-

feet from the properties subject to the proposed CPD amendments. If the proposed CPD amendments are approved, they will detrimentally affect Pelican Watch and its unit owners, the Danfords, and Mr. French. Accordingly, our Clients write to object to the above-referenced applications due to threatened harm and disproportionate impacts threatened by same.

Together with this letter, our Clients submit the following *enclosures* into the record for the above-referenced cases and ask that same be included in the agenda packets for the Town Council hearing on April 7, 2025 and any subsequent public hearings at which these cases will be heard:

1. Expert Planning Report prepared by Max Forgey, AICP, Forgey Planning, dated February 3, 2025, and Mr. Forgey's CV;
2. Expert Traffic Report prepared by Mohsen Salehi, AICP, ITE(F), Corbel Design Consulting Services, dated March 3, 2025, and Mr. Salehi's CV;
3. Value Impact Study prepared by Matthew S. Simmons, State-Certified Residential Real Estate Appraiser, State-Licensed Real Estate Broker, and Managing Partner, Maxwell, Hendry, Simmons, dated January 31, 2025, and Mr. Simmons' CV;
4. Renderings of the existing development and proposed redevelopment in the vicinity of the proposed project, layered onto the Applicant's renderings, which were prepared by Justin Rios, AIA, NASCLA, Director of Pre-Construction and Design, New Path Construction and Consulting;
5. Letters of objection from area residents addressed to Town staff received as of the date of this transmission and a corresponding map of their property addresses in relation to the proposed development;
6. Media File links - A document containing working links to drone fly-overs of the proposed site and their proximity to abutting property owners, as well as a video showing the impact of live music emanating from food trucks at more than 180 feet of distance; and
7. Minimum Requested Mitigations/Conditions following the First Reading before Town Council on March 3, 2025.

Our Clients have established the adverse impacts posed by these proposed CPD amendments and that the proposal is incompatible with the surrounding uses. As a result, the proposal will greatly diminish the existing residents' quality of life. For all the above reasons and the reasons detailed in the enclosures, which are supported by substantial competent evidence, as well as the testimony before and discussion by the LPA on January 9, 2025, and the Town Council on March 3, 2025, we respectfully urge for the Town Council to ultimately deny these applications. If it is the pleasure of Council to approve these applications, however, we respectfully request all of the proposed

Mayor Allers
March 24, 2025
Page 3

conditions of approval be incorporated to protect our Clients' interests to the maximum extent possible.

Very truly yours,



Kathleen O. Berkey
For the Firm

KOB/ma
Enclosures (as stated)

cc: Clients

Max Forgey, AICP, Forgey Planning (via e-mail only w/encl: max@forgeyplanning.com)

Mohsen Salehi, AICP, ITE(F), Salehi Consulting Services (via e-mail only w/encl.: mohsen@corbeldesign.com)

Matthew S. Simmons, Maxwell, Hendry, Simmons (via e-mail only w/encl: matts@mhsappraisal.com)

Amy Baker, Town of Fort Myers Beach Clerk (via e-mail only w/encl: amy@fmbgov.com)

Nancy Ann M. Stuparich, Esquire, Vose Law Firm LLP, Town Attorney (via e-mail only w/encl: nstuparich@voselaw.com)

Noel Davies, Applicant's Attorney (via e-mail only w/encl.: noel.davies@daviesduke.com)

Karen Woodson, Town of Fort Myers Beach Council Member (via e-mail only w/encl.: karenwoodson@fmb.gov)

Scott Safford, Town of Fort Myers Beach Council Member (via e-mail only w/encl.: scottsafford@fmb.gov)

John R. King, Town of Fort Myers Beach Council Member (via e-mail only w/encl.: johnking@fmb.gov)

Vice Mayor Jim Atterholt, Town of Fort Myers Beach Council (via e-mail only w/encl.: AtterholtJ@fmbgov.com)

Mayor Dan Allers, Town of Fort Myers Beach (via e-mail only w/encl.: allersd@fmbgov.com)

ENCLOSURE 1

Expert Planning Report prepared by Max Forgey, AICP, Forgey Planning, dated February 3, 2025, and Mr. Forgey's CV

**DARYL MAX FORGEY, AICP
LAND USE PLANNER & EXPERT WITNESS
max@forgeyplanning.com
239.560.5864**

Local Planning Agency
Anita Cereceda, Chair
Town of Fort Myers Beach
2731 Oak Street
Fort Myers Beach, FL 33931
239.765.0202

February 3, 2025

SUBJECT: JUSTIFICATION FOR DENIAL OF COMMERCIAL PARKING LOT AND FOOD TRUCK PARK REZONING APPLICATION (CASE NO. DCI REZONING 20240137.2) AND FOR DENIAL OF AN AMENDMENT TO THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING, PREVIOUSLY APPROVED BY RESOLUTION 07-28 FOR PARCELS LOCATED AT 2500 AND 2510 ESTERO BLVD., GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0120A.0100; 19-46-24-W3-01302.0000, TO ADD PARCELS 2518 ESTERO BLVD. AND 2543 COTTAGE AVENUE, GENERALLY IDENTIFIED AS STRAP NUMBERS 19- 46-24-W3-01301.0000; 19-46-24-W3-0120A.013A IN FORT MYERS BEACH

1. Purpose of Report and Qualifications of Expert

Purpose: This report was prepared on behalf of the PELICAN WATCH CONDOMINIUM ASSOCIATION, INC. ("Pelican Watch"), Randy Briesath, President; which operates and controls the Condominium Property, comprised of forty-eight (48) residential condominium units and common element property, located at 2530 and 2532 Estero Blvd., Fort Myers Beach, Florida; EDWIN T. FRENCH III, owner of properties at 2548 and 2550 Cottage Avenue ("Mr. French"); and THOMAS S. AND DEBRA S. DANFORD, Managers and Members of Coastal Cottages LLC, owning residential property located at 2520 and 2522 Cottage Ave., Fort Myers Beach, Florida ("the Danfords").

This letter addresses the rezoning application for the proposed food truck park located at 2500/2510/2518 Estero Blvd. and 2543 Cottage Ave., Fort Myers Beach, FL. This report identifies inconsistencies with the Fort Myers Beach Comprehensive Plan, Land Development Code, and other potential adverse impacts on the community, and will propose findings of fact to justify the denial of this application.

Qualifications: The undersigned has an MPA in Urban and Regional Planning from the O’Neill School of Public and Environmental Affairs at Indiana University, Bloomington, and has been a member in good standing of the American Institute of Certified Planners (AICP) since 1993, with extensive experience in land use planning and regulatory review. Notable projects include authoring key elements of the Lee County, City of Cape Coral, and Charlotte and Osceola County Comprehensive Plans. Additionally, the undersigned has provided expert witness services in rezoning and land use cases across Florida, focusing on compatibility analyses, environmental impacts, and procedural compliance.

2. Quasi-judicial nature of rezoning cases.

This rezoning case involves a quasi-judicial action, as distinguished from a legislative action, such as any amendment to the Town’s Comprehensive Plan. W. Thomas Hawkins, in his magisterial *Land Use Law in Florida* [Routledge, 2021] posits that “Florida courts call as-applied land use actions quasi-judicial, and subjects those decisions to strict scrutiny, a standard which...requires competent and substantial evidence and testimony showing that the decision meets applicable requirements of law. Additionally, parties affected by quasi-judicial decisions are entitled to procedural due process protections to which parties affected by legislative decisions are not entitled [pg. 35].

Hawkins further states that:

“Procedural due process ‘serve[s] as a vehicle to ensure fair treatment through proper administration of justice where substantive rights are at issue.’ The ‘core’ of procedural due process is ‘the right to notice and meaningful opportunity to be heard’. And the opportunity to be heard requires ‘a meaningful opportunity to contest [a possible government deprivation] usually before it is imposed.’” [pg. 47].

Hawkins identifies six indicia for the conduct of quasi-judicial hearings by local governments:

“In Florida, case law dictates how local governments must conduct quasi-judicial hearings. Parties to quasi-judicial hearings are generally entitled to: (1) receive notice of the hearing; (2) an opportunity to be heard; (3) present and rebut evidence; (4) cross-examine witnesses; (5) a tribunal which is impartial in the matter; and (6) be informed of all the facts on which the commission acts.” [pg. 47]

In any quasi-judicial case, neighboring property owners should be afforded an opportunity to speak and be heard about the short and long term impacts of a proposed land use on their own use and enjoyment of their properties. The January 9th hearing did not afford that opportunity; they hope that the February 11th continuance will invite a high level of participation.

3. The subject property and proposed uses.

The following table summarizes the Zoning Map and Future Land Use Map designation for the subject and surrounding properties and their existing uses.

Direction	Zoning Map	FLUM	Existing Uses
Subject Property	CPD, CB and RM	Boulevard	Vacant
North	RM	Boulevard	Vacant
East	CG	Boulevard	Pelican Watch Condo
West	RM and CB	Boulevard	(One) Food Truck and vacant
South	RM	Boulevard	Vacant

4. Staff Reports. There are two applications for rezoning of this subject property which are addressed in two separate staff reports, both of which are dated January 9, 2025:

1. **DCI Rezoning 20240137.1**, to amend the existing CPD RES 07-28 to: 1) expand the boundary to include and rezone Lot 1 (2518 Estero Boulevard) from Commercial Boulevard to CPD; and 2) expand the boundary to include and rezone the remainder of Lot 13 (2543 Cottage Avenue) from Residential Multifamily (RM) to CPD [8 pages]; and
2. **DCI Rezoning 20240137.2**, to amend the existing CPD RES #07-28 with the expanded boundaries approved in Ordinance 25-xx to approve “Option B” – Master Concept Plan and Updated Schedule of Uses to allow for the development of a food truck park with outdoor seating and a commercial parking lot [12 pages].

These reports will be analyzed in paragraphs 5 and 6, below.

While both Staff Reports contain detailed analysis, and both recommend approval with conditions, the analysis minimizes some important considerations which will be addressed in this report. Specifically, the Staff Reports:

- a) Do not address the adequacy or inadequacy of the Owners’ existing entitlements, which are the same as those of the residents of the Pelican Watch, and of Mr. French and the Danfords. These neighboring property owners contend that the applicants’ Future Land Use Map (FLUM) designations and zoning category are appropriate entitlements for the subject property and should not be amended.
- b) Contain no analysis of the potential impacts of the changed use on neighbors in the immediate vicinity. Despite the very short notice afforded to the residential neighbors, including Pelican Watch residents and Mr. French and the Danfords, these neighbors raised a host of potential impacts to the use and enjoyment of

their properties, including antisocial behavior, trespassing, public drunkenness, unauthorized parking, noise, odors, debris, electric light pollution., rodents, and other nuisances.

- c) Do not address the statutory definition (Sec. 163.3164(9)) of compatibility, with its strong emphasis on coexistence of different uses in relative proximity over time. The undersigned contends that the applications, as proposed, are categorically incompatible with the statutory definition and should be denied for that reason alone.
- d) Rely upon the research performed by the Applicants and Applicants' experts to apply the ordinances of nearby communities with very different geographies and commercial patterns. The uses of Lee County's ordinance is particularly problematic, because Lee County prohibits operating on undeveloped lots. requiring the developer to comply with Sec. 34-2017(a), "High turnover parking lots" and Sec. 34-2018 "Joint use of parking lots" of the City of Fort Myers Beach Code. This will require the developer to address vehicle fluid seepage from both the food truck vendor vehicles and patrons using the site for parking.

5. Rezoning 20240137.1—the expansion of boundaries. Property owner, Empire Holding Company, requests an expansion of the CPD boundaries on the existing .52+/- acre parcel previously approved in Resolution 07-28. Subsequent to the approval of the resolution, the property owner purchased two additional adjoining properties with dwelling units which brought the subject property to an area of .69 +/- acres. The two dwelling units were destroyed by Hurricane Ian in 2022. The Fort Myers Beach Comprehensive Plan assigns a Future Land Use Map (FLUM) designation of "Boulevard" and designates the neighborhood as "Civic Complex."

The Staff Report addresses "Neighborhood Compatibility" on page 2. The report states the distance between the subject property and the commercially intensive Times Square, and refers to adjoining streets, but does not address the impact which the proposed development might have on the immediate vicinity. Moreover, it does not cite the statutory definition which appears in Sec. 163.3164(9):

"Compatibility" means a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition."

The proposed use will not be compatible with the "single and multifamily properties" referred to in the report. Neighboring residents and property owners testified at the January 9, 2025 LPA hearing about the potential direct undue negative impact upon the use and enjoyment of their properties which would be caused by this development. Specifically, they cited their reasonable

concerns about noise, trash, antisocial behavior, disruptive traffic and illegal parking, and annoying electric light. Because the applicant proposes a permanent, instead of a temporary, use of the property by food trucks, the possibility of coexistence in relative proximity over time is negated.

Noise is a matter of particular concern in determining whether a proposed development is compatible with existing uses. In this case, the most intrusive use is immediately adjacent to the Pelican Watch pool which is dawn/dusk operation per Florida Department of Health. Extreme incompatibility will occur during winter months when dusk is much earlier than the proposed hours. The height disparity between the residential homes (being rebuilt Post Ian) and Pelican Watch makes noise mitigation nearly impossible. Similarly, the sole reliance on a mere 7.5-foot buffer between Pelican Watch's fence, which has not been rebuilt to date following its destruction in Hurricane Ian, along the NE property line cannot enhance compatibility between the proposed development and residential neighbors, including the single family lots owned by Mr. French and the Danfords.

6. Rezoning 20240137.2—the Food Truck Park. In this case, Staff's analysis turns to the details of the food truck park itself. Staff observes on page 1 that: "The proposed "Option B" depicts improvements to the site to provide layout containing a mobile vendor/ transient merchant park with outdoor seating/ entertainment/ recreation area and a commercial parking lot...designed for five (5) improved pads." It is noteworthy that this describes a proposed use on a less than seven-tenths of an acre (.7-acre) parcel of land. The analysis further states that "[a]dditional outdoor seating is also proposed along Estero Boulevard to further activate the public realm" and that "[t]he proposed mobile vendor/ transient merchant park will provide island residents and visitors an opportunity to access a destination for socialization near the beach." It is further noteworthy that the opportunity for socialization has never been wanting on Estero Island and that testimony from the Pelican Watch residential neighbors, Mr. French, and the Danfords about the existing impacts of visitors between Estero Boulevard and the beach are too much of a good thing. The "public realm" in this situation means public interaction and commerce, which are not undesirable in themselves, but which require a high level of mitigation in the form of an exceptionally long catalogue of staff-proposed conditions.

The Staff Report makes no mention of the investment-backed expectations of neighbors to the proposed development, including Mr. French who intends to rebuild two single family units at considerable expense on his properties which will be severely compromised by intense outdoor development in close proximity. The applicants have relied upon the food truck ordinances of the Cities of Fort Myers, Cape Coral, and Bonita Springs as their models, and the Staff Report has validated that their use as good examples for Fort Myers Beach. There are two reasons for caution in applying these standards. (1) The fact that these communities have ordinances strongly suggests that Fort Myers Beach should also have an ordinance. (2) Despite the proximity of these

municipalities, they are not barrier island communities with the exceptionally fine-grained land use pattern of land use found on Estero Island.

The Applicants did not cite the Lee County Land Development Code (LDC) as a model. Sec. 34-2017, cited below, should be considered as model language:

“Sec. 34-2017. - Parking lot surface.

(a) High turnover parking lots.

(1) Parking aisles. Except as provided in Subsection (d) of this section, all high turnover parking lot aisles must be provided with a **paved, dustfree, all-weather surface**.

(2) Parking spaces. All parking spaces, except those seaward of the coastal construction control line, must have a paved, dustfree, all-weather surface from the aisle to the parking block or curb. All disabled parking spaces, including disabled parking spaces seaward of the coastal construction control must be paved with asphalt or concrete to provide a smooth surface without gaps or holes that create a danger to the user. For all other parking spaces, the term "paved" will be interpreted to mean and include **asphalt, concrete, paving block and other similar types of treatment**. Parking spaces, excluding disabled parking spaces, located seaward of the coastal construction control line must be stabilized with treatments approved by the Director.” [Emphasis added.]

This would require the developer to address vehicle fluid seepage from both the food truck vendor vehicles and patrons using the site for parking.

Fort Myers Beach resident Jerry Weaver summarized the justifications for denial of this application as follows: “As a Ft. Myers Beach resident I feel our town mission should be to promote and create an environment for restaurants, cafes and delis with permanent structures (like we used to have). These type of businesses cannot begin to justify the initial expense when competing against food trucks. Just another reason why many communities have rejected food truck courts.”

The undersigned concludes, based upon competent substantial evidence and careful review of the Staff Reports, that this application is not ready for adoption and will not be until the Town reaches out to the residents of Pelican Watch, Mr. French, the Danfords, and other neighbors to adopt a fitting ordinance regulating the siting and operation of food truck parks.

7. Issues identified in the January 9, 2025 LPA hearing. The Town’s Local Planning Agency (LPA) conducted a quasi-judicial on January 9, 2025. Following testimony, the LPA was deadlocked by a 3-3 vote and decided to continue the case to February 11, 2025 at 9:00 AM. The undersigned welcomes the opportunity to rehear this application on February 11th and to offer fresh evidence and analysis.

The undersigned watched and listened to the entire three-hour, forty-eight (3:48) minute hearing on You-Tube and offers a summary of the proceedings, including issues identified by the participants, as an **Attachment to this report**. Times cited in [brackets] are approximate. Due to the sometimes poor audio quality, it was not always possible to accurately quote each speaker.

8. Comprehensive Plan Consistency

Existing Future Land Use (FLU) Designation:

- **Boulevard:** Intended for mixed-use development that balances residential and light commercial activity while prioritizing pedestrian-oriented spaces and limited intensities.

Inconsistencies with Comprehensive Plan:

- **Policy 4-B-1:** The proposed amendment introduces overbuilding risks, contradicting the policy's emphasis on small-town character preservation and judicious planning.
- **Policy 4-C-3:** The lack of adequate pedestrian infrastructure, including sidewalks and trails, undermines this policy's goal to promote walkable, connected activity centers.
- **Objective 11-B:** The project does not provide sufficient parking, creating potential spillover effects on adjacent residential streets. Proposed deviations (e.g., reduced buffer widths) weaken protections for surrounding properties.

9. Adverse Community Impacts

Lay testimony is allowed, and appropriate, in quasi-judicial hearings. Since the January 9th LPA hearing, neighbors have provided several written communications that expressed their concerns with this proposed development. Their responses have been exceptionally articulate and speak to their individual concerns. Some residents, including Sue and Vince Todd, summed their concerns in a list of noxious effects ("Instead of nice peaceful, beautiful views of sunsets over Sanibel Island, we will be forced to tolerate food trucks, loud music, traffic, garbage, odors, birds, rodents, and public sanitary facilities none of which belong in a family residential neighborhood") A sample of their comments appear in this section.

Noise Pollution:

The proposed food truck park, with outdoor seating and entertainment, will operate seven days a week (7:00 AM to 10:00 PM), with live entertainment until 9:00 PM. Noise levels are likely to exceed acceptable thresholds for adjacent residential properties. The most intrusive use is immediately adjacent to the PW pool which is dawn/dusk per Florida Dept of Health. Extreme incompatibility during winter months when dusk is much earlier than the proposed hours. The

height disparity between the residential homes (being rebuilt Post Ian) and PW makes noise mitigation nearly impossible.

Residents and property owners have expressed concerns about noise disturbances, particularly during evening hours, which would significantly impact their quality of life and privacy. These include Steve and Sue Whitehead ("all this noise, lights and music blaring all evening, and waking us up early in the morning"), Mavis Sutton ("The noise and food odors will be pervasive and not welcome by our owners or our renters"), Pat and Dick Ooykaas ("The noise will be unbearable to sit on our lanais if they are allowed to be open from 7 in the morning until 10 at night"), Kim and Pam Stickley ("This is primarily a residential area where people in their units can sit in the evening and enjoy the view. If they have loud music this takes that away from us"), Rick Bruner ("50 yards from my lanai and directly adjacent to our pool will totally impact me and all our neighborhood residence for the reasons we moved here to enjoy the ambience of the beach lifestyle"), and Barbara White ("Open-air food truck parks often bring prolonged and amplified noise, including music, crowd chatter, and vehicle sounds, particularly during evening hours. This noise is disruptive to the residents of our condo, many of whom value the peace and quiet of our neighborhood").

Traffic and Safety:

Mohsen Salehi, the client group's transportation expert, makes these observations about the impact of additional traffic upon the neighborhood:

"The applicant has argued that since the approved resolution 07-28 allows intensities higher than the proposed Food Truck Park and the associated uses, the required traffic impact statement should be waived, without any substantiation on behalf of the applicant. Considering the fact that **the segment of Estero Blvd between Center St (north of the proposed development) and Tropical Shores way (south of the proposed development) has been experiencing LOS F for a number of years it would make traffic Impact analyses essential** for any development impacting this failing segment of Estero Blvd further.

"The applicant's assertion as to 'Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development and the staff response on page 9 of 12 in the staff report "presented to LPA on January 9, 2025, indicating that "[t]he "Option B" is less intense than the currently approved "Option A" and should not place an undue burden on transportation services would require substantiation (i.e., Saying so, does not make it so.). Particularly since there are unknowns such as the number of food trucks having a floor (i.e., minimum of five (5 food trucks)) but not a ceiling or maximum."

A sampling of lay testimony on this concern was received from Dick and Pat Ooykaas (“The traffic will increase because there will be parking access for the beach. People not knowing that Cottage is a dead end into our parking garage will inadvertently drive through it causing a hazard to our owners who have under building parking spaces. We have two of them”), Kim and Pam Stickley (“Our building has parking below the building where we can drive through and exit at the end. I am afraid people will see this as a way to drive under our building to avoid the congestion at the entrance to the food court. Most of us have young grandchildren who will be walking to the beach and crossing where they would be driving. I’m not sure how we could prevent this from happening”), and Barbara White (“A food truck park in close proximity to a residential area is likely to draw significant vehicle traffic, exacerbating congestion and creating parking challenges in our neighborhood”).

This application should not be granted without a traffic impact analysis that will project the impacts of both the minimum (five trucks) and the maximum (hitherto unspecified) number of “food trucks,” which may be used to sell items other than food and beverage. Additional traffic and safety issues, which were cited in the January 9th hearing, include:

- The site’s limited vehicular access via Chapel Street raises concerns about increased congestion and safety hazards, particularly for pedestrians and cyclists.
- The requested deviations (e.g., reduced driveway spacing) compromise traffic flow and exacerbate safety risks on Estero Boulevard, a critical evacuation route.
- Increased parking overflow, as described by the Whiteheads, could inhibit emergency vehicle access and exacerbate local traffic issues.
- The applicant proposes a publicly accessible “comfort station” consisting of restrooms, outdoor shower/foot rinse, hand washing and water fountain will either be integrated within the proposed park support structure or as a stand-alone structure on-site. Public access to the “comfort station” exceeds the scope of the proposed use and FLUM designation. Further, the “comfort station” exacerbates the existing issue of vagrancy and uncontrolled pedestrian traffic for the abutting property owners, while providing no measures to guarantee its use to be limited to certain hours of operation.

Aesthetic and Environmental Concerns:

- The inclusion of crushed shell parking surfaces, while cost-efficient, fails to meet aesthetic and functional expectations for this prominent location.
- Inadequate buffering along property lines increases visual and acoustic impacts on adjacent residences.
- Concerns were also raised regarding turtle nesting disturbances due to excessive lighting, which violates the environmental integrity goals outlined in the Comprehensive Plan.

10. Procedural Deficiencies

Incomplete Justification for Deviations:

- Several requested deviations from the Land Development Code lack substantial justification. For example, **Deviation #4** seeks to place parking in a non-compliant location without demonstrating how this serves a legitimate public purpose.
- The lack of sufficient documentation supporting deviations like buffer reductions undermines the credibility of the application.

Lack of Community Engagement:

- Despite claims of public input, no substantial evidence has been provided to show community support for this project.
- The January 9, 2025 LPA meeting indicated a strong opposition presence, with residents articulating concerns about compatibility and adverse impacts. The continuation to the February 11 hearing suggests unresolved issues requiring further scrutiny.
- Correspondence from the Pelican Watch Condominium Association reflects continued frustration with the lack of meaningful outreach or resolution efforts by the developer, despite the city's encouragement of such discussions.
- The Neighborhood Company has repeatedly refused to address mitigation efforts aimed at creating a meaningful sound barrier between the areas where live music is contemplated to be played seven (7) days a week from 7:00 a.m. to 9:00 p.m. There is no buffer offered by the applicant to address the concerns of abutting residential properties, including Pelican Watch Condominium Pelican and Steve and Susan Whitehead, 2563 Cottage Ave, and every mitigation request to address this issue has been denied by the applicant.

11. Recommended Findings of Fact

Finding 1: Neighboring property owners, including residents of Pelican Watch, Mr. French, and the Danfords were not afforded sufficient procedural due process and had no opportunity to engage counsel in a timely manner or cross examine witnesses at the January 9, 2025 hearing.

See items (a), (b), and (ee) in the Attachment below for a reference to the testimony received in the January 9, 2025 hearing concerning the inadequacy of public notice.

Finding 2: The Fort Myers Beach Comprehensive Plan does not provide specific guidance for the siting of Food Truck Parks. Given the potential conflicts between outdoor food truck vendors

and customers and their residential neighbors, Fort Myers Beach should not authorize Food Truck Parks at this or any other location until the Town has had the opportunity to avail the community of the planning process to adopt appropriate standards within the Comprehensive Plan and Land Development Code.

See paragraph 6 above for more information.

Finding 3: The proposed rezoning application is inconsistent with the Fort Myers Beach Comprehensive Plan, particularly Policies 4-B-1 and 4-C-3, as it introduces uses incompatible with the “small-town character” of the community.

Finding 4: The proposed development fails to meet the statutory definition of compatibility under Florida Statutes Sec. 163.3164(9), introducing a high-impact commercial use that cannot coexist in a stable manner over time with adjacent residential neighborhoods.

See paragraph 5 above for more information.

Finding 5: The proposed rezoning fails to adequately address traffic safety concerns, as deviations for driveway spacing and lack of parking provisions undermine transportation safety on Estero Boulevard, a critical evacuation route. Public comment at the January 9, 2025 LPA hearing provided competent substantial evidence from knowledgeable neighbors to support the contention that the residential neighborhood is already beset by serious on-street parking problems that are likely to be exacerbated by the use as proposed.

See items (p), (gg), and (jj) in the Attachment below for a reference to the testimony received in the January 9, 2025 hearing concerning traffic and parking. Additional expert analysis will be presented in Mohsen Salehi’s testimony.

Finding 6: The proposed rezoning does not meet environmental protection standards outlined in the Comprehensive Plan, as increased lighting and insufficient buffering would adversely impact turtle nesting areas and neighboring properties.

Finding 7: Procedural deficiencies, including inadequate justification for requested deviations and insufficient community engagement, fail to satisfy requirements for equitable and transparent land use decision-making.

Finding 8: Community opposition, as expressed in documented testimony from Pelican Watch residents, from Mr. French, and from the Danfords, highlighting significant concerns about noise, aesthetic, and safety impacts, underscoring the project’s incompatibility with surrounding land uses.

See items (ff), (gg), (hh), (ii), and (jj) in the Attachment below for a reference to the testimony received in the January 9, 2025 hearing concerning regarding nuisance impacts.

12. Conclusion and Recommendations

The proposed rezoning application would introduce incompatible commercial use into a transitional residential area, failing to meet the intent of the Comprehensive Plan and Land Development Code. The adverse impacts on neighboring properties, combined with procedural deficiencies, justify denying the application.

Recommendations:

- **Deny the Application:** The Town Council should reject the proposed rezoning and protect the existing character of the surrounding community based upon the above Recommended Findings of Fact.
- **Develop Clear Standards for Food Truck Parks:** Incorporate standards for the siting and operation of Food Truck Parks in the Fort Myers Beach Comprehensive Plan and Land Development Code, ensuring compatibility with adjacent uses.
- **Enhance Public Engagement:** Future development proposals should include transparent and meaningful engagement with affected stakeholders, such as the Pelican Watch Condominium Association and other nearby residents. As noted by the LPA chair, attempts at resolution should be well-documented and form part of the application package.
- **Consider Site-Specific Concerns:** The site's unique location and adjacency to historical properties and residential neighborhoods demand heightened sensitivity in terms of noise, safety, lighting, and environmental protections.

Respectfully,
Daryl Max Forgey, AICP

AICP #051,330

ATTACHMENT: Digest of the January 9, 2025 Local Planning Agency Hearing

Times cited in [brackets] are approximate. Due to the sometimes poor audio quality, it was not always possible to quote each speaker verbatim.

- a) Disclosures offered by the LPA members lacked definition. [18:00 et seq.] Individual LPA members stated on the record that they had received emails from the applicants or met with the applicants and their professionals, but offered no details about their encounters, e.g. presented no summaries of their conversations and offered no notes or recordings.
- b) Town staff recommended a lengthy list of conditions of approval “in the packet delivered this morning [i.e. January 9]” [27:00] The actual number of conditions was 27.
- c) According to Staff Planner Judith Frankel AICP, “we don’t have specific regulations governing food truck parks as an entity.” [28:05 et seq.] She noted that Town of Fort Myers Beach regulates individual food trucks, but not food truck parks, as City of Fort Myers does. Bonita Springs and Cape Coral also regulate clusters of food trucks.
- d) The Town Attorney noted that the regulations for this subject property would apply “only to this application.” [29:55]
- e) The applicants also seek approval of a commercial parking lot of 48 spaces. [31:44]
- f) As proposed, paid parking could be 24 hours per day. [35:35]
- g) At first, the proposal for food trucks was temporary only, to allow wiped out brick-and-mortar businesses to operate for a few years while rebuilding their old restaurants and shops. Staff said no, according to applicant spokesperson. [45:00]
- h) Applicants James and Debbie Hotha declared their intention to “do something to create income” [43:00 et seq.] They further stated that it would “not be a late night party place.”
- i) Applicants request a CPD amendment [52:00] requesting some of the old zoning.
- j) Compatibility slide [55:19] is problematic because it mentions “prior” and “future” uses, but downplays the largest existing use which would be impacted by the proposed use—the residences at Pelican Watch.
- k) There was an extended discussion of hours of operation, the minimum and maximum number of trucks and how noise, odor, and other nuisances would be regulated and enforced, and other matters. [57:00 et seq.]
- l) Applicant stipulated that no beverages stronger than beer or wine would be sold. [59:00]
- m) The minimum required number of parking spaces was 26, and not 45. [1:09:28]

- n) Amplified music would not be allowed after 9:00 PM and amplified sound would be directed away from residences. [ca. 1:16:00 et seq.]
- o) Applicants' representative stated that the trucks didn't have to be food trucks; they might, for example, sell hardware, and the parking lot would be supervised. [1:17:10]
- p) Ca. 1:18:00 there began a lengthy discussion of what ifs—would overnight RV parking be allowed? Would there be spaces reserved for customers? Would there be credits and parking vouchers?
- q) Ca. 1:26:00 there began a discussion about vegetation, drainage and paving materials, including crushed shell.
- r) At 1:31:12 and thereafter, there was an extended discussion of temporary uses (condition #12), emergency generators (#17), and licenses (#15). Vape selling would be prohibited.
- s) At 1:34:00 and thereafter, there was an extended discussion about evacuation and the uses for the site during states of emergency.
- t) At 1:36:50 there commenced a discussion of conditions #24 and #27, and the right of first refusal, of outdoor lighting and undesired access to the Pelican Watch property.
- u) Beginning at 1:39:30, there was an extended discussion of traffic signage, lighting, and sea turtles.
- v) Beginning at 1:48:45, there was a discussion of fencing and other buffering issues. At 1:49:31, the applicant stated that he hoped to open the development in time for next year's [2025/6] season. Some LPA members expressed concern about what happens if the proposed development did not open. An LPA member recommended that sunsetting would be a good idea in fairness to brick and mortar operations and that brick and mortar and food truck operations have different overhead. Patrick Vanasse, for the applicant, said that the highest cost was the cost of land.
- w) Beginning at 2:00:00 Judith Frankel criteria for approval from the Town Land Development Code (LDC). She found that: (1) Site was vacant prior to Ian. (2) Adjacent properties were added to the subject property. (3) Staff "did not feel" that it would not impact neighboring uses. (4) The proposed use was compatible with neighboring uses. (5) The proposed use "complies with Town ordinances and codes." Ms. Frankel presented a series of slides beginning at 2:07:00 in support of her claim.
- x) At 2:08:40 Ms. Frankel restated her earlier observation that "we could create an ordinance if this is desired."
- y) At 2:12:30, Ms. Frankel observed that the proposed use would be compatible with existing residential uses. Pelican Watch clients emphatically disagree.

- z) At 2:14:28, Ms. Frankel stated that Food Truck Court is not defined in the Comprehensive Plan.
- aa) At 2:19:00, an LPA member observed that “there are a lot of conditions here, which is unusual.” There were, in fact, 27 conditions, which strongly suggests how difficult it has been for the applicant to make this proposal fit the site and the vicinity.
- bb) At 2:21:00, Judith Frankel wrapped up with references to sound and light, and buffering. Underlying zoning applies, and we are creating “new zoning that lives with the land” and would apply to a new owner. There will be a permanent structure with bathrooms.
- cc) At 2:24:30, “you can’t sleep in cars overnight; we may want to put that in.” Question: who will enforce? Concerns about crushed shell—compaction and runoff. Honeycomb or grid patterns could be installed.
- dd) At 2:26:30, grease (condition #16). Restaurants are required to maintain a grease trap. Need to work with Code Compliance; we want to protect the sewer system. Applicant has thought about grease traps, but the odor would be a serious problem in open air.
- ee) At 2:43:23, in citizen comments, Randy Brieseth summarized his group’s opposition, observing that he has been the president of the PCHOA since 2012. He urged the LPA not to vote on that date [Jan 9th] and that he and his neighbors had learned of the application for only two days and had only one day to act, compared to the applicant’s year. Engaged counsel yesterday [Jan 8th]. Request continuance. Will present on noise and traffic.
- ff) At 2:47:07, Gary Fields, with 40 years of experience in Minnesota. Issues—quality of life, property values, deceptive drawings don’t illustrate Pelican Watch.
- gg) At 2:50:48, Susan Bon Figli of 2434 Cottage raised parking issues, observing that people habitually park on Chapel Street. The applicant is building a commercial parking lot. Is this a food mall? There will be beer and wine. Hurricane prep is a good idea, but no guarantee that it will work. There will be smells. Even cinnamon buns and bacon can get powerful outdoors. Noises, smells, trash, and sometimes only one person to enforce.
- hh) At 2:55:00 et seq. Dave and Monica Tor. This use belongs in Margaritaville, or in tourist and industrial designated zones. DT: “Commercial access that goes through my two properties.” This is a residential neighborhood; there is no ordinance in place. MT [2:58:38]: Where are the truck owners? Side street parking—people won’t pay for parking, but will eat there. Cottage Street is full. Brick and mortar is OK; there were rats at the old Mucky Duck.
- ii) At 3:01:00 Ed French of 2538 Cottage where he has lived ca 55 years. Good project, wrong place. Parking on my property; hosing off beach chairs.

- jj) At 3:03:00 Tom and Deb Danford at 2522 Cottage. We're trying to rebuild our properties. You have gotten letters. People won't pay to park when they can block streets. Smells. Drunks. Traffic. What can we do to improve the neighborhood?

DARYL MAX FORGEY AICP
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Max Forgey is an experienced land use planner with more than three decades of professional experience and success in administration of local government comprehensive planning strategies, land development and regulatory controls, governmental relations, and public policy communications. Clients include governmental organizations and private property owners. He is the sole proprietor of FORGEY PLANNING LLC, a planning consultancy which provides expert witness services in land use cases and is allied with LAND SMART LLC, a Florida-based consortium of land use professionals which provides a broad range of professional assistance to public and private sector clients.

His professional knowledge encompasses creating and developing community and small-area plans, urban design and architectural standards, land development entitlements, project management, and expert witness testimony. Max has worked on more than 35 cases across 25 Florida counties and municipalities, frequently teaming with some of Florida's most respected land use and administrative lawyers, appearing before local planning agencies, city and county elected bodies, hearing examiners, administrative law judges, and circuit court proceedings.

Max also actively participates in and leads speaking engagements at professional development conferences and symposia through the Promised Lands section of the American Planning Association Florida chapter, with the American Institute of Certified Planners, the Florida Planning and Zoning Association, and other organizations. He is currently collaborating with other planning professionals to craft a continuing education program, provisionally called Urban Planning Institute, to familiarize elected and appointed officials and local government staff with planning law and practice.

Qualifications

- LAND SMART LLC, Managing Member of a Cape Coral, Florida-based consortium
- FORGEY PLANNING LLC. Owner of an urban planning and land-use consulting practice.
- Master of Public Affairs (MPA) in Urban and Regional Planning, Indiana University.
- Member American Institute of Certified Planners (AICP).
- Member Florida Planning and Zoning Association (FPZA).
- Qualified as an expert witness in Lee County Hearing Examiner proceedings.
- Former Planning and Community Development Director in Charlotte County.
- Former Planning Commissioner (LPA), City of Cape Coral, Florida.
- Contract planner for the Town of Kenneth City.

Accomplishments

- Lead author of Kenneth City Evaluation and Appraisal Report (EAR) which was transmitted to the Florida Department of Commerce on October 21, 2024.
- Established FORGEY PLANNING, an urban planning and land use consulting practice.
- Developed a template for auditing the effectiveness of existing local governments comprehensive plans and zoning code for internal consistency of plan policy framework.
- Authored "The Platted Lands Challenge" report for the six-county area of Southwest Florida offering policy guidance for platted, scattered-lot properties.
- Development of implementation strategies which employ automation to create linked mixed media tools for restructuring and updating local government planning and zoning regulations.

Certification

AICP (American Institute of Certified Planners) Certification #051,330 Florida Chapter, APA Member in good standing since 1993. A national professional certification maintained by the American Planning Association. AICPs must first meet educational standards and then pass an examination covering all aspects of professional planning practice, and are expected to maintain their membership through a self-directed program of study that is monitored by the national organization, which includes regular training in law and ethics.

Professional Experience

Forgey Planning

Cape Coral, FL

Owner. 2008-present. A solo planning practice concentrating comprehensive planning work for Lee and Sarasota Counties, the City of North Port, the Captiva Community Panel, and the Town of Kenneth City, among others. Developed a template for auditing the effectiveness of existing local governments comprehensive plans which has been applied in Sarasota County and the City of North Port. An expert witness since 2013, working on more than 30 cases in 25 Florida counties and municipalities, appearing before planning commissions, city councils, county commissions, hearing examiners, administrative law judges, and circuit court. Qualified as an expert witness in Lee County Hearing Examiner proceedings and recognized as a lobbyist in Collier County.

Zoning Technologies

Cape Coral, FL

President. 2011-2017. A start-up subsection 'S' corporation that specialized in restructuring and updating local government comprehensive plans and developing implementation strategies which employ automation to create linked tools (e.g. application forms, automated worksheets, case reports, and adopting resolutions). The Zoning Technologies expert system prototype products were marketed statewide and were demonstrated at the American Planning Association (APA) national conference in Atlanta in 2014.

Osceola County, Florida

Kissimmee, FL

Planning Coordinator. 2005-2008. Authored key elements of the Osceola County Comprehensive Plan and most of the County's 2008 Evaluation and Appraisal Report.

Clay County, Florida

Green Cove Springs, FL

Senior Planner. 2003-2005. Authored the county's Interlocal Service Delivery Agreement Report (ISDAR) mandated by the Florida legislature, identifying all service overlaps between and among all local governments within Clay County.

Lake County, Florida

Tavares, FL

Planning Director. 2001-2003. Staff liaison to the Environmental Lands Management Advisory Committee, a citizen organization created by the Board of County Commissioners to study the creation of an environmental land program. Recommended policies were ratified in November 2002, when Lake County voters approved a one-third mil assessment for the acquisition of environmental lands.

Southwest Florida Regional Planning Council

Fort Myers, FL

Planner. 1997-1998. Reviewed local government plan amendments throughout the six-county area and authored "The Platted Lands Challenge" report.

Charlotte County, Florida

Port Charlotte, FL

Community Development Director 1995-1997; Planning Director 1990-1995. Early in his tenure, Gulf Development Corporation (GDC), the County's largest land subdivider, declared bankruptcy, shifting responsibility for completion of roads, bridges, drainage works, and utilities, to the public sector and forcing a host of development decisions upon the local government and public agencies. He had three memorable achievements during these seven years:

- Managed the research, preparation, and adoption of the County's Evaluation and Appraisal Report (EAR) and Comprehensive Plan. Aggressively negotiated with the Florida Department of Community Affairs (DCA) to remove the Plan's not-in-compliance finding.
- Led the staff team that rewrote the Charlotte County Comprehensive Plan and was the point person in the successful four-year effort to negotiate a stipulated settlement agreement between the Board of County Commissioners and the Florida Department of Community Affairs to find Charlotte County's Comprehensive Plan in compliance with Florida's Growth Management Act.
- Advocated against the rezoning of 42 parks (illustrated as such on GDC sales maps and the County's Future Land Use Maps) to residential uses. The Company's agents eventually relented on their policy position and donated 41 parcels to the people of Charlotte County.

City of Cape Coral

Cape Coral, FL

Deputy Planning Director. 1985-1990. Authored and supervised preparation of key elements of the 1988 Comprehensive Plan (the City's first plan under the 1985 Growth Management Act) and the City's 1989 Land Development Code.

Education

Indiana University

Bloomington, IN

Master of Public Affairs (MPA) from the O'Neill School of Public and Environmental Affairs, 1982.
Concentration in Urban and Regional Planning.

Bachelor of Arts (BA). 1976. Undergraduate degree in English Literature and History.

Important Cases, Continuing Education, Writing & Teaching

- Subcontracted with Bruce Hoch of New Jersey-based CPG Corplan on the *Economic Development Plan for the City of Cape Coral*. The final report was presented to City Council on January 22, 2025.
- Co-presented a panel "*Sometimes a Word is Worth a Thousand Pictures: Communication Skills for Planners*" with Tony Palermo, AICP, and Doug Kelly, AICP, at FPZA annual conference in Charlotte Harbor, June 5, 2024. His segment "The Rhetoric of Planning" focused on the words that form a persuasive narrative.
- Program chair for APA Florida/ FPZA "*The Perfect Storm Eight Months Out: A Symposium for Professional Planners, Design Professionals, Plan Commissioners & Regular People*" at Charlotte County Event & Conference Center Punta Gorda May 12, 2023.
- Presenting a panel "*Incorporation, Annexation, and Disincorporation*" with Jim Studiale, AICP, and Luke Lirot, Esq. at APA Florida state conference on Orlando September 7, 2022.
- Co-presented a panel "*Legislative and Quasi-judicial: What Every Planner Needs to Know*" with Attorney Andrew Dickman, AICP, at annual conference of Florida Planning and Zoning Association on Captiva Island June 3, 2022.
- Program Chair for "*The Swamp Peddlers*", an APA Florida/ Florida Planning & Zoning Association symposium conducted on August 6, 2021 in Punta Gorda. Keynote speaker Jason Vuic and other presenters explored the legacy of land sales scams in Southwest Florida on the twentieth anniversary of the General Development Corporation bankruptcy.
- Designed and co-presented "*Land Use 101*", a seminar for planning commissioners, elected officials, and new planners, hosted by the City of Cape Coral on June 16 and July 14, 2021 with

co-presenters Vince Cautero, AICP, the City's Community Development Director, and Attorney Ralf Brookes.

- Expert witness for client West Villagers for Responsible Government (WV4RG), a citizen organization which challenged the annexation of the 8730-acre non-contiguous West Villages subdivisions into the City of North Port. The City Commission rejected the Villagers' challenge by a unanimous vote, but following appeal presented by attorney Luke Lirot, the Twelfth District overturned the City's order denying petition for contraction in *West Villagers for Responsible Government v. City of North Port*.
- Moderated a panel for law credit at the September 9, 2020 Zoom-facilitated American Planning Association's Florida state conference. Co-presenters were attorneys Karen Consalo, Thomas Hawkins, and Andrew Dickman. *"The Rules are Very Different Here: How to Reform Florida's Land Use Decision-making Process"* surveyed the inconsistencies among local governments' handling of land use decision-making and proposed a new Environmental Land Management Study (ELMS) to improve those processes.
- Attended and participated in American Planning Association Florida chapter's 18th annual *Public Policy Workshop* at Florida State University, Tallahassee February 2020.
- Drafted update of Town of *Fort Myers Beach Sign Ordinance* to reflect SCOTUS *Reed v. Gilbert* opinion for Weiler Engineering Fall 2019-Winter 2020.
- Program chair for *"Planners in Peril: Law, Legislation, and Ethics for Design Professionals,"* an APA Florida Promised Lands section symposium December 6, 2019 at Bonita Springs City Hall.
- Program chair for *"How High is the Water, Ma?: Rising Sea Level on the Florida Gulf Coast and what we can do about it,"* sponsored by Friends of Boca Grande Community Center, March 22, 2019 at the Boca Grande Community Center Auditorium.
- Member, *Faith Presbyterian Affordable Housing Board*, a not-for-profit corporation which aspires to offer quality housing for low- and moderate-income persons in Cape Coral. Appointed 2018; appointment ended December 2020.
- Received 2018 American Planning Association Florida Chapter, Promised Lands section's first-ever *Wayne Daltry Award for Planning Programs* for developing professional education symposia.
- Prepared *policy audit of Town of Fort Myers Beach Comprehensive Plan* for Weiler Engineering, Summer 2018.
- Program chair for American Planning Association symposium *"Warped Tour '18: Land Use Law for Planners"* March 23, 2018 in Punta Gorda.

- Attended and participated in the hurricane-shortened APA Florida chapter annual conference in Daytona Beach September 4-6, 2017. Led panel with Greg Beliveau, AICP and Jane West Esq. entitled *"How to Build a Better Client."*
- Program chair for Captiva Community Panel/ Florida APA symposium *"Now in My Back Yard: Rising Sea Level on Florida's Gulf Coast and what can be done about it"* January 13, 2017 at South Seas Resort on Captiva Island.
- Co-authored article with Karen Consalo, Esq. *"Best Practices for Local Government Land Use Decision-making"* in Summer 2016 edition of *Florida Planning*.
- Speaker at American Planning Association Florida Chapter Annual Conference in Tampa, September 9, 2016. *"A Pre-tirement Guide for Perplexed Planners: Making the Transition to Solo Practitioner."*
- Attended and participated in CLE International's annual *Land Use Law symposium* in Tampa, August 18-19, 2016, and August 6-7, 2015.
- Speaker at University of Central Florida 2016 Public Administration Research Conference April 8, 2016. Topic: *"What's the Big Idea: New Software that Aids Land Use Decisions."*
- Attended and participated in *APA Florida chapter annual conference* in Hollywood, Florida September 10-13, 2015.
- Coordinator and presenter for daylong FAPA-sponsored symposium *"Everything You Ever Wanted to Know about Florida Land Use"* in Cape Coral May 16, 2014.

Jurisdictions - Expert Witness Work

Bonita Springs	Miramar
Bradenton	Monroe Co (2, incl ALJ)
Cape Coral (5)	North Port
Charlotte County (2)	Orange County
Collier County (4)	Ormond Beach
DeSoto County	Pasco County (2)
Fort Myers Beach (4)	Palm Beach County (ALJ)
Hardee County	Polk County (C court)
Hendry County (C Court)	Punta Gorda (2)
Hernando County	St. Johns County (4)
Highlands County	Sarasota County
Hillsborough County (4)	Sumter County

Hillsboro Beach
Lantana
Lee County (8)

Suwannee County
Venice

ENCLOSURE 2

Expert Traffic Report prepared by Mohsen Salehi, AICP, ITE(F), Corbel Design Consulting Services, dated March 3, 2025, and Mr. Salehi's CV

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March 3, 2025

SUBJECT: Justification for Coordinated Objection Assistance on behalf of Pelican Watch Condo Association to the proposed CPD amendment to expand the CPD boundary and to amend the allowable uses to include a Food Truck Park alternative (Town of Ft Myers Beach Case Nos. DCI Rezoning 20240137.1 and 20240137.2; Project Name: Food Truck Park)

Context of Proposed Food Truck Park

1. PURPOSE OF REPORT & QUALIFICATIONS OF EXPERT

Purpose of this report. This report was prepared on behalf of client Pelican Watch Condo Association who owns 2532 Estero Blvd, as well as his neighbors, Thomas & Debra Danford, and Ed French of Fort Myers Beach, FL 33931. Pelican Watch Condo Association President is Randy Briesath who also resides at this address and whose use and enjoyment of the property, along with his neighbors including Thomas & Debra Danford, Ed French will be adversely affected by the proposed CPD amendment as well as amendments allowable uses to include a Food Truck Park alternative, with negative and precedent setting implications for the Town of Fort Myers Beach Comprehensive Plan relevant Goals, Objectives, and Policies, if approved. Pelican Watch property and its residential neighborhood adjacent to the property subject to the proposed CPD amendment and the allowable uses including the proposed Food Truck Park alternative would be adversely impacted.

This report sets forth the justifications for denial, by the Town's Local Planning Agency (LPA). This report supplements testimony which will be provided in person by the author, Mr. Briesath, Mr Danford, and Mr. French, as well as other neighbors and residents in the immediate vicinity and consultants including the author, Max Forgey, and Matt Simmons..

Qualifications and professional experience. The respective qualifications and professional experiences of the undersigned professional can be summarized as follows and copies of his resume is enclosed with this report.

1. Mohsen Salehi, AICP,¹ ITE(F),² Salehi Consulting Services. Mr. Salehi holds a master's degree of City & Regional Planning (Urban Design/Infrastructure Major), from Clemson University and a bachelor's degree of Architectural Engineering (Design/Construction Major) from Southern Polytechnic State University (formerly a division of Georgia Institute of Technology). Mr. Salehi's career spans over 30 years of public- and private-sector experience with an extensive track record in transportation/infrastructure planning and urban design, low impact development and redevelopment projects, complete streets/context-sensitive design solutions, traffic calming/roadway safety audits, traffic and parking studies, development

¹ American Institute of Certified Planners ("AICP"). AICP is the only organization that provides independent verification of planners' qualifications across the United States. AICP certification is a sign of competence and integrity for planners, requiring knowledge of planning principles and practices, continuing education, and adherence to a strict code of ethics.

² Institute of Transportation Engineers Fellow ("ITE(F)"). ITE(F) have been members of ITE for at least five years; have at least 10 years of professional experience; have attained significant professional stature that may be demonstrated by having a license or certification based on education, examination, and experience, or by comparable evidence of professional statutes as determined by the ITE Board; have had responsible charge of important transportation engineering or transportation related work, including scientific, educational and managerial activities, for at least five years; have demonstrated an active commitment and contribution to the work of ITE and the profession; and provided three professional referenced as part of the application.

review services, and expert testimony for public agencies and community organizations. Mr. Salehi's public-sector work included assisting Spikowski Planning Associates in the preparation of the Fort Myers Beach Comprehensive Plan taking effect January 1, 1999.



2. JUSTIFICATIONS FOR DENIAL OF THE CPD AMENDMENTS

The Fort Myers Beach Land Planning Agency should deny the proposed Food Truck Park in conjunction with the public parking lot and associated uses due to their adverse impact on Estero Blvd level of service (LOS) as well as incompatibility with the adjacent residential neighborhood and the potential parking spill over from the proposed development onto adjacent residential neighborhood local roads and adjacent properties based upon the following findings of fact:

1. Although a Food Truck Park, in and of itself could serve a short term purpose of providing an alternative food service for tourists and residents as well as the labor force engaged in reconstruction/redevelopment of the island, during the post hurricane(s) reconstruction, and may indeed reduce traffic to and from other food establishments during the reconstruction, its location at the failing segment of Estero Blvd would be highly questionable. Furthermore, its long term viability at this location is also questionable. Perhaps, while existing restaurants and food establishment are being reconstructed throughout FMB, as a stop gap measure, food trucks may serve a purpose, but despite the time being right for food trucks, the location for food trucks in the midst of an established residential community adversely impacts the quality of life for the neighborhood and would be incompatible.
2. It should be pointed out that upon approval, any future redevelopment of this CPD zoned site more than likely results in more intensity and additional trips along an already failing segment of Estero Blvd unless the approval is conditioned upon a trip cap less than or equal to the proposed Food Truck Park and associated uses.

3. The dual use of the proposed Food Truck Park parking spaces when the proposed Food Truck Park is in-active, further complicates the case, in the absence of any designated parking spaces for each use, particularly during peak hours of the proposed Food Truck Park operation. This may, upon reaching full capacity of all parking spaces, would lead to parking spill over onto adjacent residential streets or private parking spaces within the adjacent residential neighborhoods as well as further congestion along Estero Blvd for those searching for alternative parking which would compound the problem contrary to Objective 7-F of the Comprehensive Plan.
4. Currently there are no regulations for "Food Truck Parks" in Fort Myers Beach, and utilizing other local municipalities in different setting and dissimilar to coastal towns such as FMB is questionable. Furthermore, since in the absence of local regulations, County Regulations would prevail, Lee County Ordinance 22-01 governing Mobile Food Vendor operation, clearly states that the operation would have to be located at ".permitted location – may not be located on undeveloped property and may not be located within 50 feet of a residential lot unless screened appropriately". The proposed Park distance from two residential developments, currently under construction is estimated at only thirty one (31) feet in violation of Ordinance 22-01, and accordingly even "screening" at a distance well below fifty (50) feet requirement would not be adequate to mitigate noise and air pollution associated with parking and food truck park operation for existing and future residents and adversely impact the neighborhood quality of life..
- 4 Table 18 of 2024 Concurrency Report page 40, defines Road Segment Level of Service Qualitative Characteristics for LOS F as: Highly unstable operations with forced or breakdown flow, average travel speed 25% or less of free flow conditions; unstable operation unacceptable to most drivers; high levels of congestion; poor signal progression and long cycle lengths with frequent cycle failures.
 - **POLICY 4-B-1 OVERBUILDING:** Judicious planning could have avoided the kind of overbuilding found at Fort Myers Beach by limiting construction to match **road capacity and the physical environment**. Since such planning came too late, **the [T]own must deal with today's congestion plus the impacts of future development that has vested rights to proceed. These conditions have shaped the vision of this plan, as development rights once granted are not easily or lightly reversed; great care has been taken in this plan to balance important public and private rights.**



Residential Neighborhood Adjacent to Food Truck Development

- 5 The intensity of the proposed development violates **Policy 4-B-1**, because this is precisely the kind of “OVERBUILDING” that ignores “road capacity and physical environment” limitations to accommodate the proposed development at this particularly residential neighborhood which can least afford. The operation of the Park would adversely impact both externally, Estero Blvd level of service, and internally impacting the neighborhood for emergency response contrary to the judicious planning required to avoid overbuilding. It further fails to adequately deal with “today’s congestion plus the impact of future development that have vested rights to proceed.” The potential overbuilding at the site of the proposed Food Truck Park is also significant.
- 6 ***The Town’s Comp Plan per Goal 7, views Estero Blvd peak season mobility as integral to the mobility of the entire Island.***
 - **GOAL 7: To improve peak-season mobility without reducing the permeability of Estero Boulevard to foot traffic or damaging the small-town character of Fort Myers Beach. The [T]own seeks to reduce speeding, improve evacuation capabilities, and improve mobility through balanced transportation improvements such as a continuous system of sidewalks and bikeways, a network of trolleys and water taxis linked to off-island systems, and parking options matched to road capacity.**
- 7 The proposed development is not consistent with Goal 7 of the Comp Plan and adversely impacts and does not improve mobility or evacuation capabilities for the Town. The project will adversely impact quality of life for the adjacent residential neighborhood and mobility along Estero Blvd, by overcrowding the impacted residential community by the proposed Food Truck Park and associated uses as well as the proposed public parking’s traffic impact to and from the proposed development, impeding the viability of Chapel St and Cottage Ave as residential

streets while adversely impacting peak season mobility of Estero Blvd, which is inconsistent with Goal 7 of the Town Comprehensive Plan.

- 8 It should also be pointed out the applicant proposed traffic signage and the proposed landscaping buffer along Chapel St and Cottage Ave would be necessary, adjacent to the proposed development, but it would not be sufficient to protect adjacent residential properties, and would not minimize parking spill over to other residential streets and private properties within the neighborhood and the proximity to Beach Access #26.

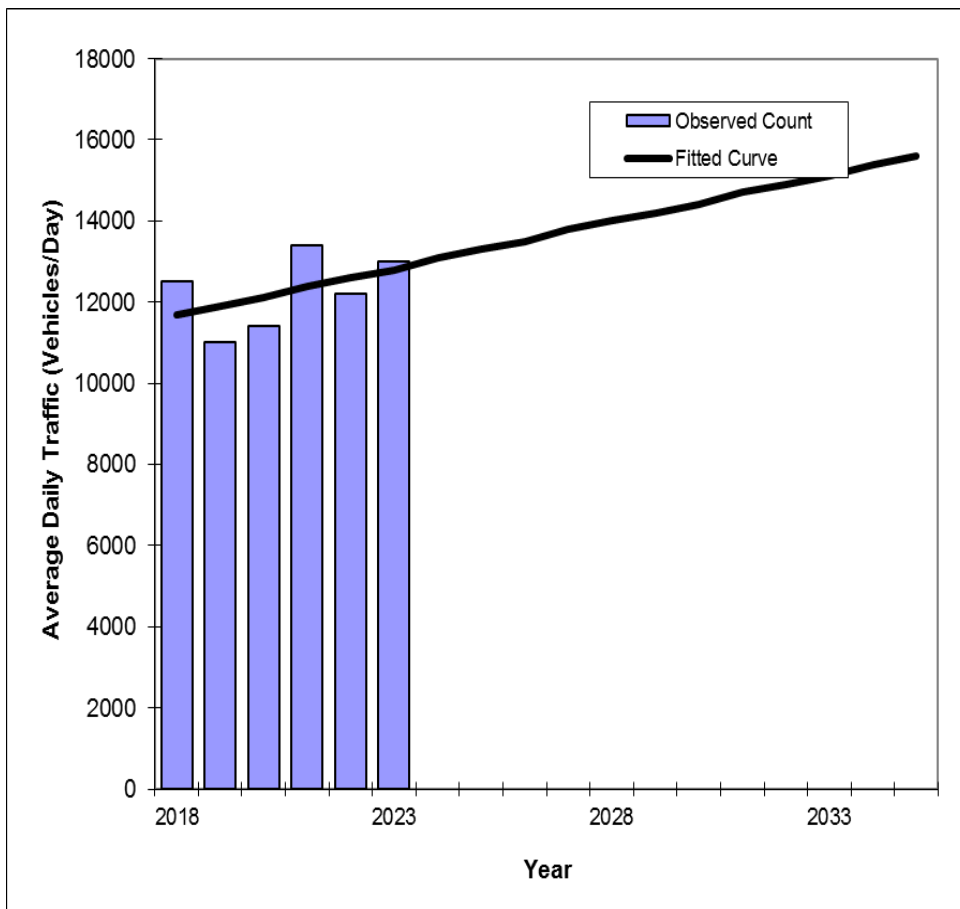
Policy 7-J-2 Traffic Impact Analyses

Traffic Trends - V03.a

ESTERO BLVD --

FIN#	1234
Location	1

County:	Lee (12)
Station #:	6044
Highway:	ESTERO BLVD



Year	Traffic (ADT/AADT)	
	Count*	Trend**
2018	12500	11700
2019	11000	11900
2020	11400	12100
2021	13400	12400
2022	12200	12600
2023	13000	12800
2025 Opening Year Trend		
2025	N/A	13300
2030 Mid-Year Trend		
2030	N/A	14400
2035 Design Year Trend		

** Annual Trend Increase:		231
Trend R-squared:		22.13%
Trend Annual Historic Growth Rate:		1.92%
Trend Growth Rate (2023 to Design Year):		1.98%
		1-Feb-
Printed:		25
Straight Line Growth Option		

2035	N/A	15600
TRANPLAN		
Forecasts/Trends		

*Axle-Adjusted

Estero Blvd Traffic Trends

- 9 The traffic trends for Estero Blvd, based on the available data would indicate an alarming traffic congestion in the next five (5) to ten (10) years in violation of Policy Additionally since there is no data available to indicate the full impact of the Margaritaville resort (the opening for the resort was on December 2023 and it is not clear whether one month in 2023 would be sufficient to assess the full impact of this development on Estero Blvd Traffic), not to mention, externally, the impact of the Harbour Marina in San Carlos Island on Estero Blvd traffic.
- 10 Without any TIS submitted by the applicant for the proposed development, there is no evidence that the proposed development has taken into account the impact of any concurrent and/or potential developments that have impacted or will impact traffic flow along Estero Blvd (e.g., Primarily, Margaritaville, and to a lesser extent Bay Harbour Marina in neighboring San Carlos Island) contrary to "Policy 7-J-2" on traffic impact analyses and measures to offset traffic implications of the proposed development (Also see LDC **Section 10-287(1)(b)&(c)**).

The applicant has argued that since the approved resolution 07-28 allows intensities higher than the proposed Food Truck Park and the associated uses traffic impact statement should be waived without any substantiation. However, the fact remains that the segment of Estero Blvd between Center St (north of the proposed development) and Tropical Shores way (south of the proposed development) has been experiencing LOS F for a number of years making traffic Impact analyses essential and a necessity particularly for this failing segment.

Traffic Mitigation Plan

- 11 The proposal does not comply with the Town's requirement for a Traffic Mitigation Plan either, per **Sec 10-287 (1)(b)&(c)**, which states:
 - (1)The function of the Traffic Mitigation Plan is to:
 - ...
 - (b) Relate the various needed improvements to the occupancy and use of developed land , particularly regarding the relative timing of occupancy and availability of the road improvements; and
 - (c) Clearly identify the parties who will be responsible for the cost of the improvement

12 No traffic impact study or traffic mitigation plan has been devised as such to fully mitigate anticipated future traffic to and from the proposed Food Truck Park. Therefore, the proposed development is inconsistent with the Comprehensive Plan's Goal 7, Policy 7-J-2 and LDC Sec 10-287 (1)(b)&(c). Furthermore, the outdated January 2008, TIS for the approved development per Option Ordinance 07-28 contains errors:

A) Page 3 of 5, reference to 2007 Concurrency Report, applies additional trips to non-failing segment ($656/671=0.98$ Future Vol/LOS E) of Estero Blvd, between Vorhis St and Tropical Shores Way, as opposed to the failing segment ($883/671=1.13/\text{LOS F}$) between Tropical Shores Way to the south of proposed Food Truck Park and Center St to the north.

B) Per A) above, the error further invalidates the calculation for "100th Highest Hour LEVEL OF SERVICE CALCULATION" in the TIS which was provided for the original application approved Option A.

C) It is questionable per A and B above, how the January 2008 TIS may substantiate the assertion that the proposed Food Truck Park even with lower intensity compare to the approved Option A, and indicate less impact on this already failing segment of Estero Blvd per 2024 Concurrency Report, seventeen (17) years later.

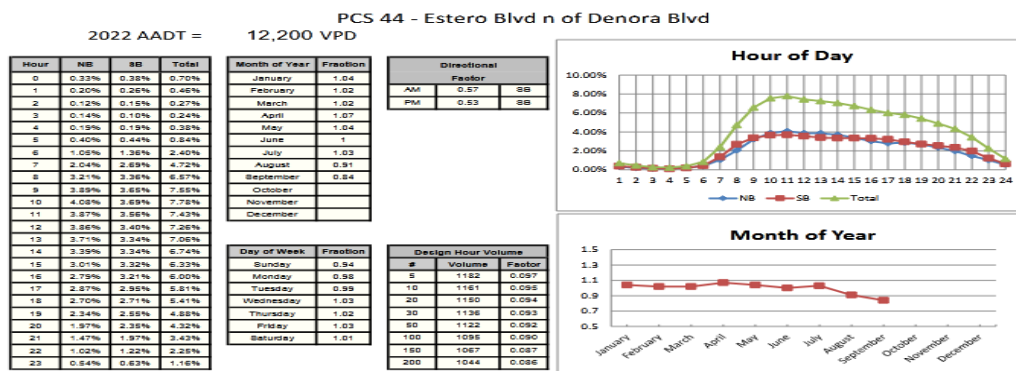
13 The traffic complication and localized congestion due to the Food Truck Park/public parking and the associated uses, more than likely will compromise the safe movements of vehicles along Estero Blvd, Pelican Watch Driveways, Chapel St, and Cottage Ave, as evidenced by persistent LOS "F" for this segment of Estero Blvd. The parking operation maneuvers to compensate for the proposed development being filled to capacity or saturated all the onsite parking of the proposed development would probably lead to the possible unauthorized parking spill over to adjacent properties including the Pelican Watch property and the neighboring residential properties parking spaces. Even any available off site parking location would further complicate the traffic flow along already congested Estero Blvd as well as Chapel St intersection. Additionally, although the applicant's request for a waiver of the LDC Sec. 10-286 Traffic Impact Statement (TIS) was initially denied by the Town Staff on 4-24-24, subsequently per staff Report presented to LPA on January 1, 2025 TIS requirement was waived for the proposed Food Truck Park and the associated uses.



Chapel St /Beach Access 26 Context

- 14 The applicant assertion as to “Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development and the response on page 9 of 12 “ in the staff report “ presented to LPA on January 9, 2025, indicating that “The “Option B” is less intense than the currently approved “Option A” and should not place an undue burden on transportation services”, would require substantiation (i.e., Saying so, does not make it so.). Particularly since the proposed development parameters have changed a few times already, such as the number of food trucks having been changed from minimum of five (5) food trucks to now a maximum of five (5) food trucks, a positive revision, while the support structure for the proposed development that has already increased from 1,500 to 2,500 Sq Ft, remains as such.
- 15 The Town Council Resolution 07-28 approved the applicant’s Option A, stipulating a maximum of 23,067 square feet, consisting of 9,952 square feet of commercial and office plus (3) residential units with a total of 13,115square feet in two (2) buildings, not to exceed a maximum building height of 40 feet above base flood elevation/3 stories.

16 Despite the assertion submitted by the applicant under the proposed “Recommended Conditions” that “Access to and from the property for mobile vendors only via Estero Blvd access point will not be allowed during typical peak season traffic times, which are 8 am-11 am and 4 pm to 7 pm.” According to the graph above (based on 2022 data not beyond by the County), which indicates a typical traffic profile for Estero Blvd, containing no peaks and valleys, typical of most urban corridors, but rather it would form a plateau extending from 10am to 6pm (See Comp Plan Transportation Element, Appendix B, Page 7-B-19, Figure 13). Considering the proposed development hours of operation per the proposed “Recommended Conditions” item 7, from 7am-10pm, which would overlap with historical and typical peak volumes of Estero Blvd between 10am to 6pm (See the latest available table/chart below) adverse impact on Estero Blvd would be expected. Furthermore, If the proposed development is approved, vendors may not have access to Estero Blvd food trucks’ exclusive driveway, from 10am to 6pm peak hour plateau due to the impact that it would have on Estero Blvd traffic flow at this failing segment Estero Blvd. Therefore the food trucks exclusive access along Estero Blvd would have to be limited to either before 10am or after 6pm daily, to minimize the impact on traffic flow along Estero Blvd.



17 Additionally the town staff response on page 6 of their report to LPA on January 1, 2025, under Deviation #3 stating: “Applicant should provide site signage indicating the restricted use and installing gating to restrict access during operation hour. Gate should be located a minimum of 20 feet from the property boundary to avoid issue of vehicle stacking on Estero Blvd.” does not seem to have been taken into account in. The most recent revised MCP “Option B”.

18 It is not clear how many additional food trucks beyond the applicant’s proposed minimum of five (5) food truck parking spaces could be accommodated at this location and what would be the trade-offs for the potential conversion of paid public

parking to additional food truck parking spaces, as well as the impact of such conversions might have on the adjacent residential neighborhood quality of life.

- 19 In any event, in the absence of any TIS for the proposed development from the applicant, the following parameters are derived from the applicant MCP Option B narrative for an estimate for the proposed development's potential PM peak hour trips:

Land use		Units(X)	ITE Code *	Trip Rate	Peak Hr Trips
Food Truck/Food Cart Pod		5	926	6.16	5*6.16=30.80
Support/Fast Casual Restaurant		2,500/1000=2.5	930	12.55	2.5*12.55=31.38

Source: Trip generation rates above are based on the Institute of Transportation Engineers publication, Trip Generation Report, 11th edition.

The 63 peak hour trips generated in the table above (30.80+31.38=62.18) (See Attachment A- ITE Trip Generation "11th edition" which would be more intense than 27 PM Peak Hour generated for development parameters per the applicant 2008 TIS, contrary to assertions that the proposed development would be less intense waiving TIS requirement at this stage. Furthermore, directionally adjusted factor of 55.40% (See Attachment B/FDOT) would result in an additional 35 trips (62.18*0.554=34.44) to already failing segment of Estero for a total of 757 (722+35=757) peak direction, bi-directional conversion using the same directional factor of 55.4% results in (757/0.554=1366.43) 1,367 exceeding the 1,300 peak capacity per Policy 7-I-2 (or volume to capacity ratio of 1.13) for the year 2023.

- 20 According to Policy 7-I-2 The peak capacity of Estero Blvd's congested segments is 1,300 vehicles per hour. The minimum acceptable level-of-service standard for Estero Blvd shall be that average of monthly traffic flows from 10:00 A.M. to 5:00 P.M. during each month do not exceed that level more than four calendar months in any continuous twelve-month period.

09800	ESTERO BLVD	BIG CARLOS PASS BRIDGE	PESCADORA AVE	2LN	E	726	A	264	0.36	A	277	0.38	(H), constrained
09900	ESTERO BLVD	PESCADORA AVE	VOORHIS ST	2LN	E	726	D	648	0.89	D	681	0.94	(H), constrained
10000	ESTERO BLVD	VOORHIS ST	TROPICAL SHORES WAY	2LN	E	726	D	648	0.89	D	681	0.94	(H), constrained
10100	ESTERO BLVD	TROPICAL SHORES WAY	CENTER ST	2LN	E	671	F	722	1.08	F	759	1.13	(H), constrained
14400	ESTERO PKWY	US 41	THREE OAKS PKWY	4LD	E	2,000	B	921	0.46	B	1,092	0.55	non-county maint; T and T DR/Cyp Vw CPD

2024 Concurrency Estero Blvd Segment

21. Based on latest available data from the Lee County 2024 Concurrency Report (Appendix B, page 57 of 62) the level-of-service (LOS) for Estero Blvd between Tropical Shores Way (south of the proposed development) and Center St. (north of the proposed development) indicates LOS F for 2023 as well as LOS F for 2028 future forecast for the same segment.

Based upon the above findings indicating the insufficiency of the documents submitted by the applicant to clearly indicate the full impact of the proposed development including: 1) the lack of the required TIS necessary to gauge the traffic impact of the proposed development on this persistently failing segment of Estero Blvd; 2) the lack of a traffic mitigation plan to address the residential neighborhood concerns for their quality of life, beyond Chapel St and Cottage Av inclusive of Estero Blvd traffic and parking and un-parking of vehicles to and from the proposed Food Truck Park/paid public parking and other associated uses.

Considering all of the above and my testimony and my fellow consultants, Max Forgey, AICP, and Matt Simmons, and Katie Berkey, JD, AICP, David Moscoso, JD, as well as our clients, Randy Briesath, Ed French, and Thomas & Debra Danford and other concerned neighbors, the undersigned recommends denial of this application.

Respectfully,

Mohsen Salehi, AICP, ITE(F)

cc: Randy Briesath
Ed French
Thomas & Debra Danford
Katie Berkey, JD, AICP
David Moscoso, JD
Max Forgey, AICP
Matt Simmons

MOHSEN SALEHI, AICP, ITE(F)
Corbel Design Consulting Svcs
Ft Myers, FL (239/994-1320)
Mohsen@corbeldesign.com

ACADEMIC BACKGROUND

Masters Degree of City & Regional Planning, Urban Design/Infrastructure Major, Clemson University, Clemson, SC, 1984

Bachelors Degree of Architectural Engineering, Design/Construction Major, Southern Polytechnic State University (formerly a division of Georgia Institute of Technology), Marietta, Georgia, 1980

SPECIALIZED PROFESSIONAL COMPETENCE

Mr. Salehi's career spans over 30 years of public- and private-sector experience with an extensive track record in transportation/infrastructure planning and urban design, low impact development and redevelopment projects, complete streets/context sensitive design solutions, traffic calming/roadway safety audits, traffic and parking studies, development review services, and expert testimony for public agencies and community organizations.

Salehi Consulting Services, 1997-present

Provide full-service infrastructure/transportation planning services to public- and private-sector clients throughout southeast and southwest Florida, including continuous focus on Complete Street concepts.

- **Consultancy for Corbel Design, Architecture & Planning, 1997-present**
Providing services for architectural projects Traffic Impact Studies (TIS), parking issues, and other traffic related matters.
- **Florida Main Street Program, 1997-present**
Member of resource teams dispatched to Clewiston, Clearwater Beach, and Dania Beach communities with traffic circulation and design services, PM Bob Field, 410-323-4465. Presented at FMS annual conferences in Ft. Pierce (1999)& Fort Walton Beach (2002), Stuart (2014), & St Petersburg (2015).
- **Florida Redevelopment Association (FRA), 1997-present**
Provide technical services for parking and flood insurance issues. PM Carol Westmoreland, @850-701-3608.
- **Roadway Safety Audit, Bonita Springs, 2012-13**
Conducted roadway safety audit for completing 1.1 mile section of Old SR 41 from Bonita Beach Road to Collier County line. PM Domingo Noriega, P.E. @813-503-7743.
- **Bayshore Corridor Redevelopment Overlay, Collier County, 1999-00**
Developed an overlay to create incentives for urban design and traffic calming for tax base enhance-ments. PM Jim LaRue @ 239-334-3366.
- **Development review & transportation concurrency services, Comp Plan & LDC for LaRue Planning & Management Services' public sector clients including Village of Estero, Boynton Beach, North Bay Village, El Portal, Moore Haven, & City of Okeechobee. PM Jim LaRue @ 239-334-3366.**
- **Consultancy for CALTRAN Engineering Group for Miami Downtown Development Authority Complete Streets**

Project, SE/SW 1st; Charlotte County: Countywide Parking Study (2019), Deep Creek Community Sidewalk Master Plan (2020), PM Juan Calderon @786-456-7700.

Traffic Consultant, City of Bonita Springs (Public Works), 2000-11, Provided transportation planning services, reporting to City Manager Gary Price @239-980-9400.

- **Bonita Springs Bikeways/Walkways Facilities Plan Update, 2008-09**
Prioritized facilities funding based on Complete Street Decision Matrix.
- **Project Management Services**
 - Traffic Circulation Study, 2008-09
 - I-75/BBR interchange improvements (Addition of left turns and sidewalks relocation behind overpass supports), 2007-08
 - East Terry I-75 overpass widening , 2005
- **Development review & urban design services, 2008-09**
- **Expert testimony, 2000-11**
Testified before Bonita Springs City Council, Planning & Zoning Board, & Local Planning Agencies.

Project Manager, Lee County Community Redevelopment Agency (CRA), 1995-97

Managed several concurrent projects reporting to County Manager Roger Desjarlais @239-533-2221.

- **Old 41 Corridor**
Responsible for \$3.1 million TIF funded for planning and design from Imperial River Bridge to Oak Creek Bridge in Bonita Springs (0.3 miles)
- **Palm Beach Blvd/I-75 interchange**
Conducted \$500,000 Storefront Grant program & redevelopment concept plan for Dos Rios.
- **CRA liaison for local redevelopment planning committees.**

Section Manager, Lee County Dept. of Transportation and Engineering (DOT&E), 1990-95

Responsible for DOT&E's Alternate Modes Section.

- **Annual budget of \$1 million and \$2.8 million in federal funding under Intermodal Surface Transportation Efficiency Act (ISTEA) including:**
 - Six Mile Cypress Bikepath (8.3 miles)
 - Stringfellow Bikepath (12.1 miles)
 - Estero Blvd Sidewalk (4.2 miles)
 - Ten Mile Canal Linear Park (3 miles)

- Funds used for planning, design, and construction of safe, routes to schools (including design-build of Lehigh Acres Pedestrian Bridge over ECWMD canal as an alternative to bussing due to hazardous walking conditions), transit (installation of bike racks on LeeTran busses), public parks (free access for bicyclists and pedestrian to Lakes Park) & commercial facilities for walking, cycling & promotion of demand management solutions in Lee County
- Acted as liaison before Bicycle/Pedestrian Advisory Committee (BPAC), Chairman Ed Benjamin @239-410-5186.

Consultant, Neighborhood Planner/Architectural Consultant, 1989-90

- Responsible for redevelopment & revitalization of 2.1-mile Dekalb Ave. corridor & Reynolds-town neighborhoods
- Conducted building energy audits, Designed ADA compliant solutions for private schools

Urban Planner, City of Atlanta Bureau of Planning (BOP), 1987-89

Reported to Reemberto Rodriguez @240-777-5307.

- Responsible for Urban Design/Land Use Section of BOP.
- Coordinated land use amendments to the City's redevelopment plan and transit oriented developments (TOD)/parking limitation districts in the vicinity of transit stations (MARTA).

Urban Designer, Central Area Study II (CAS II), City of Atlanta, 1985-87

Reported to Reemberto Rodriguez @240-777-5307.

- Responsible for traffic & parking data collection, analyses for a public private joint planning effort for re-development of downtown Atlanta.
- Supervised 10 interns.
- Provided urban design services.
- Participated in three design charettes.

PROFESSIONAL AFFILIATIONS

- American Institute of Certified Planners (AICP) Member
- Institute of Transportation Engineers (ITE) Fellow
- American Society of Civil Engineers (ASCE) Transportation & Development Institute Member
- Southwest Florida Branch of American Public Works Association (APWA) Member

PROFESSIONAL AWARDS & CERTIFICATIONS

- Florida Planning Association/Promised Lands Section Scholarship Award for FPC 2020
- Florida Planning & Zoning Association's 2002 Certificate of Merit for Greater Pine Island Community Plan Update
- 1999 Outstanding Public Report for Town of Fort Myers Beach Comprehensive Plan
- Florida Department of Transportation (FDOT) Pre-qualified for System Planning (13.4), Corridor Planning (13.5), & Land Planning/Engineering (13.6) 2013-15.

PRESENTATIONS & PUBLICATIONS

- Florida Main Street Program, *Implications of New Transportation Trends for Main Street Businesses*, August 2015, St. Petersburg, Florida
- Florida Main Street Program, *Visioning Okeechobee*, September 2014, Stuart, Florida
- Florida Redevelopment Association Professional Development Program, *Parking Problem? No Problem!* June 2003, Orlando, Florida
- Florida Main Street Program, *Economic Vitality & the Arts/Arts Enterprise Zones*, March 2002, Fort Walton Beach, Florida
- Florida Main Street Program, *Parking Problems and Solutions*, October 1999, Fort Pierce, Florida
- American Planning Association Conference, Peachtree Street: The Linear City, *May 1989, Atlanta, Georgia*
- Clemson University Graduate School 1984 Master's thesis entitled: *An Alternative Energy Approach in Optimizing Growth within Built Environments*

SAMPLE EXPERT WITNESS TESTIMONY SERVICES

- Town of Ft Myers Beach, in opposition to Application 20230152, Moss Marina/The Arches on behalf of LLC Magnum. Provided traffic impact analyses, April 2024
- City of Ft Pierce Commission, in Opposition to Case#18-4390002 Cumberland Farms Major Amendment to PD, Provided traffic impact analyses testimony, August 2019
- The Circuit Court of Lee County, in Support of Case# 18-CA-003805, Chris Patton V. Town of Ft Myers Beach/TPI-FMB Rezoning Case, Provided land use and traffic impact analyses report, 2018-19
- The Circuit Court of Lee County, in Support of Case# 18-CA-001938, Lani Kai Island Resort Vs. Town of Ft Myers Beach, Provided parking calculations, 2019
- Florida Division of Administrative Hearings, in support of DOAH Case No.: 18-003613, ARGO V. Village of Estero Provided deposition testimony in support of the Village Comp Plan Transportation Element, February 13, 2019
- Lee County Hearing Examiner, in Opposition to Port Sanibel CPD Amendment, provided traffic impact analysis report and testimony, July 18, 2017
- St. Johns County Board of County Commissioners, in opposition to Case# 2016-03, COMPAMD Watermarke /Beachcomber, provided traffic Impact analysis and testimony, September 20, 2016

SAMPLE PROJECTS

Bonita Springs: MPO's Congestion Monitoring Report

http://www.mpo-swfl.org/content/CMR_081009.pdf

Pine Island Community Plan Update

<http://spikowski.com/Pine%20Island%20Report-September30.pdf>

Fort Myers Beach Access & Circulation

<http://www.spikowski.com/SummaryReport%20w-o%20App%20C-D.pdf>

Miami Downtown Development Authority SE/SW 1st St

Complete Streets Project/ Aerial Drones footage for:

- SW First St at SW First Ct - curb extension with cones
<https://vimeo.com/165801251>
- SE First St at SE Third Av - ped island with cones
<https://vimeo.com/165801250>

ENCLOSURE 3

Value Impact Study prepared by Matthew S. Simmons, State-Certified Residential Real Estate Appraiser, State-Licensed Real Estate Broker, and Managing Partner, Maxwell, Hendry, Simmons, dated January 31, 2025, and Mr. Simmons' CV



MAXWELL HENDRY SIMMONS
real estate appraisers & consultants

Value Impact Study

Proposed Mixed-Use Development

DCI Rezoning 20240137.2

2500/2518/2510 Estero Blvd and 2543 Cottage Ave

Lee County, Fort Myers Beach, Florida, 33931

Published Date of Study: January 31, 2025

File Name: 25010106 – Pelican Watch Condominium Association - Estero Boulevard



Prepared For

Pelican Watch Condominium Association, Inc. ("Pelican Watch"), which operates and controls the Condominium Property, comprised of forty-eight (48) residential condominium units and common element property, located at 2530 and 2532 Estero Boulevard, Fort Myers Beach, Florida;

Thomas S. and Debra S. Danford, Managers and Members of Coastal Cottages, LLC, owning residential property located at 2520 and 2522 Cottage Avenue, Fort Myers Beach, Florida (the "Danfords"); and

Edwin T. French, III 2548 and 2550 Cottage Avenue, Fort Myers Beach, Florida ("Mr. French")

Info@MHSappraisal.com
(239) 337-0555 • MHSappraisal.com
1619 Jackson Street, Fort Myers, FL 33901

Pelican Watch Condominium Association, Inc.
Thomas S. and Debra S. Danford, Coastal Cottages, LLC
Edwin T. French, III

Value Impact Study
Executive Summary

Study Charge

This report provides an analysis and evaluation of the impact to neighboring properties, if any, as a result of the approval and development of the proposed Mobile Vending/Food Truck Park project.

Objectives of the Study

The objectives of the study are to inform the client of any impact to property values as a result of the approval, and ultimate development, of the proposed project. The intent of the study is to sufficiently inform municipal planning staff and elected officials regarding these impacts, if any.

Research Methods

The study includes the following methods and research elements

- Analysis of the Subject Properties and Surrounding Uses/Neighborhoods
- Statistical Analysis of Individual Comparison Pairs and Marketing Trends
- Research of Applicable Academic Articles and Studies

Conclusions

The results of the study indicate that the approval of the proposed mobile vending/food truck park project at 2500/2518/2510 Estero Blvd and 2543 Cottage Ave will negatively impact the surrounding residential uses. These negative impacts extend to the single-family housing most proximate to the proposed project location and also to the residential condominium project contiguous to the south. Each of the research methods that were utilized suggested that conclusion.

Quantitatively, for units located within Pelican Watch, I anticipate diminution in value to be in the range of 8-10% per unit. For context, Pelican Watch has 48 residential units, and among the eight most recent offerings within the project (four sales, three listings, and an expired listing), the median list price has been \$894,500 and the median sales price was \$800,000. Using the median sales price and 9% (the midpoint of our above estimate on pricing impact) as the estimated diminution, this analysis suggests that the cumulative unit value loss within the Pelican Watch project would be \$3,456,000.

However, the most significant negative value impacts would likely apply to the directly adjacent residential parcels located at 2553 and 2563 Cottage Avenue. None of the statistical analysis, academic studies, or other resources researched provided an example of proximity of single-family as close to a mobile vending/food truck park project as what is proposed through DCI Rezoning 20240137.2 and Boundary Expansion case 20240137.1. While it's difficult to point to empirical data from which to draw a conclusion regarding the expected value impact, it's reasonable to opine that the impact to these properties would certainly exceed the 8-10% range

we can anticipate for the units within Pelican Watch. 2548/2550 Cottage Avenue would also fall into the category of a property that could expect value diminution in excess of the 8-10% that could be anticipated (in aggregate) for Pelican Watch units. Impacts that exceed 10% value diminution, potentially significantly exceeding that amount, are also indications applicable to sites designated for future single-family homes to be built. While a single-family home is presently under construction at 2563 Cottage Avenue (and other nearby sites further west of Pelican Watch and on the south side of Cottage Avenue), many vacant residential sites remain in relatively close proximity to the proposed development.

The study suggests that negative impacts to residential property values could extend up to 1,000 feet from a project such as what's proposed under DCI Rezoning 20240137.2 and Boundary Expansion case 20240137.1. Admittedly, the greater the distance from the project, the less impactful it becomes to value. However, for residential homes within 500-1,000 feet of the project, diminution of 1-5% is a reasonably anticipated result. But for vacant sites, the particularly challenging aspect is that the diminution ranges being discussed above are applicable to existing homes. When a vacant site is sold and the eventual improved structure is known, or at least anticipated, to be impacted by an external value influence, the only way a potential buyer of that site can mitigate the diminished value for what will be built is to translate that value loss to the land component. The inputs that constitute the construction costs are going to be the same (generally speaking) regardless of external influences, so a buyer of a vacant site for future residential development will discount the value of the land as significantly as possible with the knowledge that the only total project cost input they can use to blunt the eventual value diminution to a future home is a discounted price for the land component. This dynamic is well understood within the development community and a common example of it is the volatility in land prices (on a per unit basis) when larger tract home developers acquire land for development of future communities. The eventual cost inputs will be unimpacted by external factors, so if interest rates (the cost of money) increases significantly, the developer must diminish the underlying land value as much as possible to mitigate that factor. A similar dynamic exists for single-family sites that will be built with a use that is anticipated to suffer from a negative externality. I believe that will be the case as it relates to vacant residential sites in close proximity to the proposed development, and value diminution of as much as 30-40% (for the land component) would potentially be necessary to offset the value diminution applicable to an eventual single-family home.

Research of communities in Florida and around the country where this dynamic and contiguity already exist suggest that negative impacts to properties surrounding this project can be expected. The study results have been determined through the methods described above and the quantitative processes undertaken are statistically relevant for the project.

This is only a summary of the complete findings and conclusions of the study. The reader is encouraged to review the entirety of the report as the opinions and conclusions may only be understood in the context of the specific research parameters, methods and limitations of the individual methods.

Sincerely,



Matthew S. Simmons
State-Certified Residential Real Estate Appraiser, RD5762
State-Licensed Real Estate Broker, BK3214690

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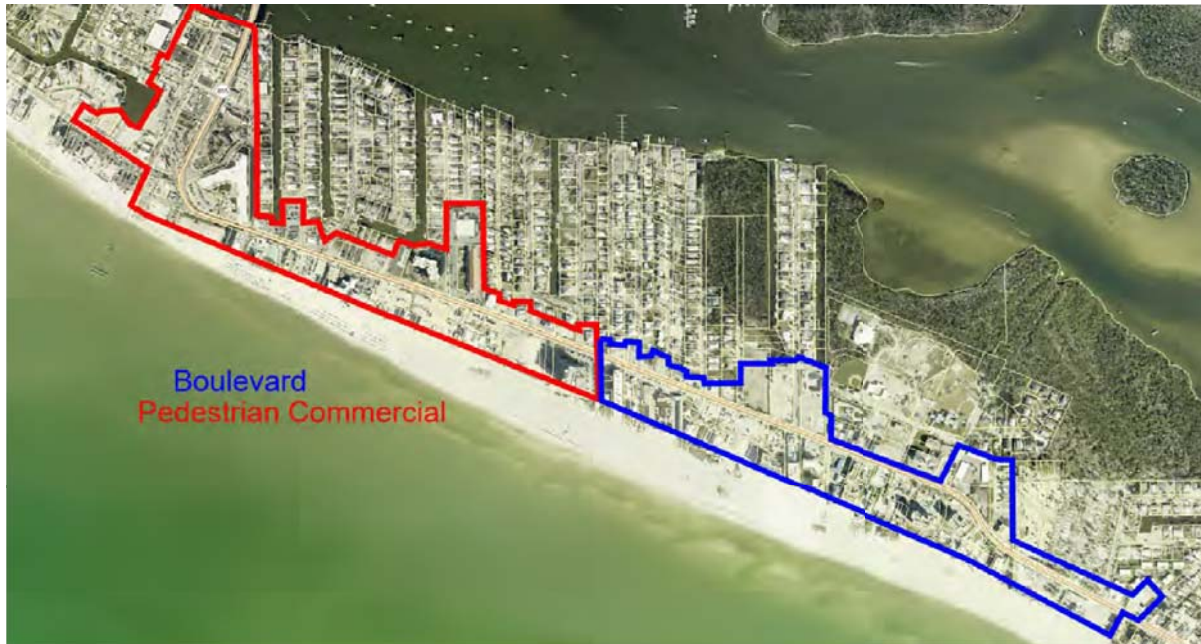


SEC. I: INTRODUCTION

OWNERS OF RECORD:	Empire Holding Corp Trust (proposed development site) Various owners applicable to the properties under study
ADDRESS:	2500/2518/2510 Estero Blvd and 2543 Cottage Ave, Fort Myers Beach, FL, 33931 (proposed development site)
TAX ID:	19-46-24-W3-0120A.0100, 19-46-24-W3-01301.0000, 19-46-24-W3-01302.0000, and 19-46-24-W3-0120A.013A (proposed development site)
ZONING / FUTURE LAND USE:	<u>Proposed Mobile Vending/Food Truck Park</u> CPD (Commercial Planned Development – Seeking to amend the existing CPD RES#07-28 to provide for a Master Concept Plan, Schedule of Uses and Conditions of operation to allow for development of a mobile vending/food truck park with outdoor seating, consumption on premises and a commercial parking lot.) RM (Residential Multi-Family – (One parcel seeking to be added into an amended CPD) CB (Commercial Boulevard – (One parcel seeking to be added into an amended CPD) <u>Pelican Watch and Adjacent Residential Properties along Cottage Avenue</u> RM (Residential Multi-Family) Each of the properties referenced above are within the Commercial Boulevard Future Land Use category.
PUBLISHED DATE OF THE VALUE IMPACT STUDY:	January 31, 2025
CLIENT:	Pelican Watch Condominium Association
PROJECT CONCEPT:	The purpose of the study is to determine the value impact of the mobile vending/food truck park, if any, to properties surrounding the subject site. The study will emphasize determination of impacts, if any, relative to the Pelican Watch Condominium project. However, the study scope will not be limited only to potential impacts at Pelican Watch. The impacts anticipated for surrounding single-family properties along Cottage Avenue are also evaluated within the scope of this study.



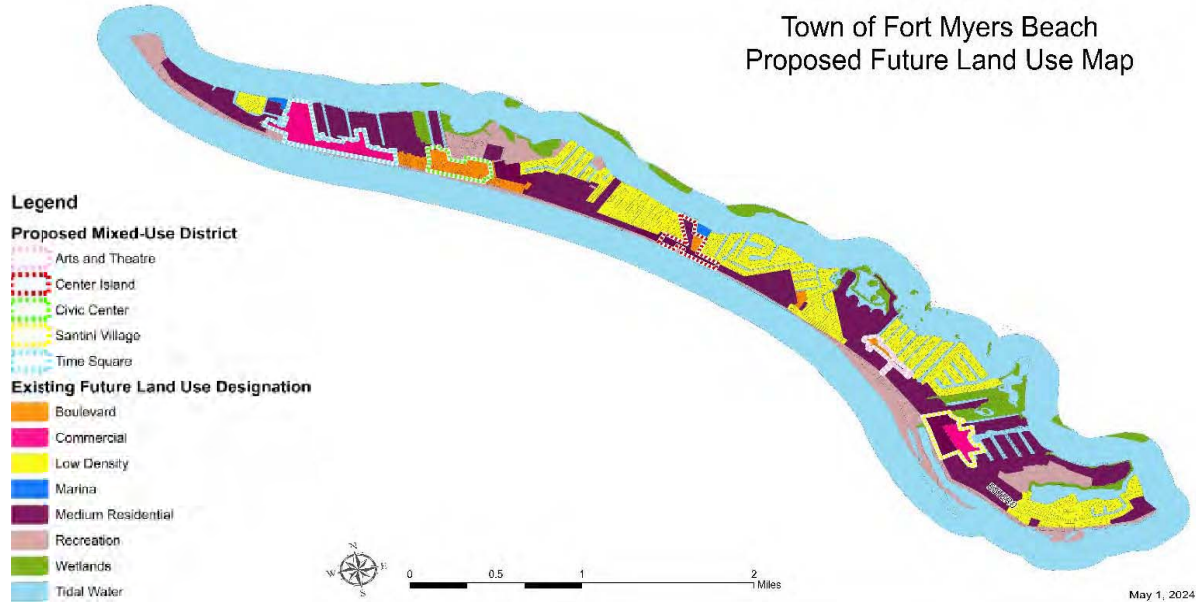
SEC. II: NEIGHBORHOOD CHARACTERISTICS



The area of study consists primarily of the "Downtown" and "Boulevard areas of Fort Myers Beach but is geographically bound to the Town of Fort Myers Beach. The geographic area includes 8 specified uses, but the majority use within this study area is Boulevard and Pedestrian Commercial. Both uses permit various commercial activity, but most intensive commercial uses are limited to the Pedestrian Commercial/Downtown area of the island. This distribution of uses is also consistent with the Future Land Use designations within the study area. The other six use types on the island are dispersed throughout.



The zoning designations within the study area execute a vision similar to the Future Land Use with commercial zoning making up a majority the Downtown area. The Boulevard Land use area has a greater variety of uses including RM, CPD, CB, and CR.





PELICAN WATCH

On the parcel southwest of the proposed mobile vending/food truck park is a Condominium Building named Pelican Watch. This project was built in 1981 and is 6 stories. Pelican Watch offers a variety of amenities including a community pool, clubhouse, spa, and beach access. The community pool for Pelican Watch is within a few feet of the property line separating the association property from the proposed project.



At present Pelican Watch has 3 units listed for sale. These listings range from \$750,000 to \$950,000. For sales within the project are reflected within the local multiple listing service as having closed escrow between June of 2023 and November of 2024. The sale prices of those units range from \$570,000 to \$900,000, with the median sales price among the four closed sales being \$800,000. However, it's worth noting that the 8-stack for units within Pelican Watch offer a larger floor plan, a corner unit location, and have typically sold at prices higher than the median price point within Pelican Watch. Contributing to this dynamic is the fact that units within this stack offer sunset views. The 8-stack within Pelican Watch is the stack of units that is closest to the proposed project and is the area of the project that's anticipated to suffer the most significant pricing consequences associated with the proposed project.

It should also be noted that a unit within the 8-stack was listed for sale over the past six months and two potential buyers expressed interest, but then inquired about what was going to be built on the proposed mobile vending/food truck park site. When they became aware of the proposed project, both buyers backed away from pursuing a purchase of the unit. This was confirmed by the listing agent for the unit. While anecdotal evidence, it illustrates the negative external influence referenced within this study.



AERIAL VIEW



The aerial image above further illustrates the proximity of the proposed project to residential uses (both single-family sites and the Pelican Watch Condominium).



FORT MYERS BEACH COMPREHENSIVE PLAN

New Policies for Commercial Development

The following items summarize the new commercial policies for Fort Myers Beach:

- The concept of avoiding commercial intrusions into residential areas will be maintained. The plan's prohibition against new commercial uses in residential areas will be made much more specific through the Future Land Use Map in those geographic areas where that policy is clearly appropriate. For instance, in the new "Low Density" category, commercial rezonings will not be allowed. In the "Mixed Residential" category, they will be severely limited (but not forbidding lower-impact uses such as offices and motels).
- The CRA plan for the Times Square area (including Old San Carlos) has withstood intense public scrutiny and is a sound basis for the town's continuing policy there, especially the incremental redevelopment of existing buildings at ground level with little or no setback to side property lines and with shared parking. The new Future Land Use Map incorporates the CRA plan in its new "Pedestrian Commercial" category. The successful evolution of this plan will require additional work beyond this comprehensive plan, including:
 - Further development of the shared-parking concept for the rear portion of lots on both sides of Old San Carlos (or, if not feasible, its rejection in favor of a parking garage);
 - Use of "dry-floodproofing" for the ground floor of commercial buildings; and
 - Refinement of the Land Development Code's redevelopment overlay district to simplify its use.
- The intense commercial activities at Times Square need not and should not extend into continuous linear development down Estero Boulevard. The current mixed-use character of land along Estero Boulevard down to the Gulfview Shops is desirable and should not be thought of as a transitional phase that will become continuous commercial development. In areas such as this where mixes of commercial and residential are desirable, the Future Land Use Map provides a new category called "Boulevard" with clearer policy language to guide future zoning decisions (which would require planned development zoning). Through the range of categories being provided on the Future Land Use Map, landowners will know whether commercial uses are clearly encouraged, completely forbidden, or allowed under certain circumstances.
- Some very early commercial buildings remain in use along Estero Boulevard, and many existing cottages have been converted for commercial purposes. The resulting environment is pleasant and will attract many more pedestrians once adequate sidewalks and street trees are provided. This plan will result in a combination of strengthening and loosening of existing regulations to support the re-use of older buildings. Revisions to the Land Development Code might include relaxed setbacks for cottages; allowing additional cottages to be moved in as they become available; and historic districts that ensure that new buildings and expansions maintain the historic character. Good examples of adaptive re-uses include the Huston Studio at 2101 Estero Boulevard (see Figure 10) and the Hussey Realty tourist information center at 2450 Estero Boulevard.

FUTURE LAND USE ELEMENT

JANUARY 1, 1999

PAGE 4-28

Excerpts such as these from the Comprehensive Plan are relevant in that they demonstrate how potential buyers rely upon municipal planning documents to make informed decisions regarding the intent and future character of areas where they choose to reside.

The following is an additional comparison to the character of the subject's location on Fort Myers Beach, in contrast to the Downtown Pedestrian area of Fort Myers Beach where uses such as the proposed mobile vending/food truck park project may be reasonably anticipated:

Commercial Boulevard

Character:

"The Commercial Boulevard district is primarily a mixed-use district with less-intense commercial areas, historic cottages, and a mix of housing types." Page 4-12

"This designation is intended to maintain the existing mixed-use character along portions of Estero Boulevard..." Page 4-18

Density:

"New residential development is limited to six dwelling units per acre, except for legally existing structures, which can remain at up to ten units per acre." Page 4-18

Purpose:



"This district preserves a blend of residential and commercial properties, with a focus on maintaining compatibility and preserving the public realm." Page 4-12

Design:

"All commercial development proposals must be designed to complement adjacent residential uses and enhance the pedestrian environment..." Page 4-18

Downtown Core Area

Character:

"The Times Square area, also known as the downtown core area, serves as the lively, pedestrian-friendly nucleus of commercial and tourist activities." Page 3-5

Infrastructure:

"Improvements include pedestrian malls, sidewalks, bike paths, and shared parking areas to reduce congestion and improve access." Pages 3-5 to 3-6

Land Use:

"The Downtown Core Area boasts a revitalized entertainment area with tree-shaded outdoor cafes, pedestrian streets, and an 'old Estero Island' character." Page 3-6

Redevelopment:

"The Core Area Master Plan envisions expanded entertainment options, marina facilities, and revitalization of Old San Carlos Boulevard and Crescent Street." Page 3-15

Commercial Boulevard

Mixed-Use Character:

"The Commercial Boulevard designation along Estero Boulevard is intended to maintain the existing mixed-use character, which includes historic cottages, a variety of housing types, and small-scale businesses." Page 5-12

Infrastructure and Streetscape Improvements:

"Improvements along Estero Boulevard shall prioritize safety and usability for pedestrians and cyclists, while maintaining compatibility with adjacent residential properties." Page 5-14

Boulevard Policy and Designation:

"The Commercial Boulevard policy encourages sensitive commercial development that complements the residential character of nearby areas and enhances the public realm." Page 5-15

Downtown Core Area

Revitalization Focus:

"The Downtown Core Area, particularly Times Square, serves as the vibrant center for tourism and local commerce, with an emphasis on outdoor dining, pedestrian plazas, and entertainment." Page 6-1

Pedestrian and Streetscape Enhancements:



"Sidewalks, bike paths, and shaded pedestrian corridors are key features of the Downtown Core Area, ensuring a walkable and inviting environment for visitors and residents alike." Page 6-4

Distinct Districts Within the Core:

"Old San Carlos Boulevard and Crescent Street are integral parts of the Downtown Core, with unique redevelopment goals aimed at preserving their historic and community-oriented character." Page 6-5

Integration of Public Spaces:

"The redevelopment of Marina Plaza and Lynn Hall Park includes plans for expanded public spaces, enhancing connectivity and creating a unified recreational and commercial experience." Page 6-6



COMPARABLE PROJECTS COMPARISON

Finally, one of the challenges inherent in a study such as this is to find reasonable comparable situations where uses such as what's being proposed are in close proximity to residential uses. Ultimately, few examples were found to demonstrate this dynamic, and none of the examples include the factors of both proximity and an elevated view such as what would be present at Pelican Watch. Below are examples of nine projects throughout the state of Florida, and their respective proximity to residential uses. Again, however, none of these examples reflects proximity as close as what's being proposed under DCI Rezoning 20240137-2.

Name	Address	Proximity to Closest Residential Structure
Backyard Social	16371 Corporate Commerce Way, Fort Myers	0.47 Miles
Slipaway Food Truck Park & Marina	1811 Cape Coral Pkwy E, Cape Coral	100 ft (Apartments across street) / 200 ft (Home across Canal)
Celebration Park Naples	2880 Becca Ave, Naples	300 ft (Home across Canal)
The Village Garden Food Truck Park	1480 A1A S, St. Augustine	400 ft (Home - no view of building due to trees and vegetation)
Food Truck Backyard	1325 SW 70th Ave Unit Patio, Miami	100 ft (Multiple Homes nearby but trees and brush block view)
Food Truck Wynwood	210 NW 22nd Ln, Miami	.2 Miles (Apartments - no direct view)
World Food Trucks	5805 W Irlo Bronson Memorial Hwy, Kissimmee	.3 Miles (Apartment Complex with no view of Food Trucks because of Tree's/Brush)
Boxi Park Lake Nona	6877 Tavistock Lakes Blvd, Orlando	250 ft (Apartment Complex across the street)
Rooftop at Riverside	27333 Old 41 Rd, Bonita Springs	400ft (Homes - No direct view)



SEC. VI: APPLICABLE ACADEMIC RESEARCH AND STUDIES

The following is a sampling of pertinent studies reviewed in the context of this Value Impact Study:

"The Impact of Temporary Uses on Property Prices: The Example of Food Trucks"

Authors: Julia Freybote, Yiping Fang, and Matthew Gebhardt

Published in: Journal of Property Research, 2017

Summary: This study investigates the effect of food truck pods on nearby single-family home values in Portland, Oregon. The findings indicate that proximity to food trucks negatively impacts sales prices, primarily due to increased parking shortages and trash issues in the neighborhood.

"Examining the Economic Impact of Park Facilities on Neighboring Residential Property Values"

Authors: Yong-Suhk W. Lee, Nicholas T. Taylor

Published in: Urban Forestry & Urban Greening, 2019

Summary: This study applied hedonic regression models to examine the impacts of park facilities on neighboring residential property values in Minneapolis, Minnesota. The analysis suggests that certain active park facilities, especially skate parks and children's play areas, tend to introduce negative impacts on nearby property values.

"How Much Impact Do Parks Have on Property Values?"

Authors: John L. Crompton and Sarah Nicholls

Published in: Parks & Recreation Magazine, 2020

Summary: This review of 33 studies examines how proximity to parks influences residential property values. While many studies report positive impacts, some indicate that parks with active uses can have negative effects due to noise, congestion, and reduced privacy.



SEC. VIII: ADDENDA.

QUALIFICATIONS: MATTHEW S. SIMMONS

Educational Background and Training

Bachelor of Science in Business Management (2008) Florida Gulf Coast University, Fort Myers, Florida.
Appraisal Board Course I - ABI, Steve Williamson's Real Estate Education Specialists (2003) Orlando, Florida.
Real Estate Transactions, Florida Gulf Coast University (2003) Fort Myers, Florida.
Various Appraisal Institute Courses
Appraisal Board Course II - ABII, Academy of Real Estate (2005) Fort Myers, Florida.
63 - hour Sales Associate Pre-License Course, Career Web School (2008)

Experience

Gulf Coast Appraisal and Consulting Services, Inc., Cape Coral, Florida - Associate (2003)
Gulf Coast Appraisal and Associates, Inc., Cape Coral, Florida - Associate (2003-2005)
Maxwell & Hendry Valuation Services, Inc., Fort Myers, Florida - Residential Division Manager (2005-2013)
Maxwell, Hendry & Simmons, LLC, Fort Myers, Florida - Partner (2013-Present)

Professional Affiliations

State-Certified Residential Real Estate Appraiser, RD5762
State-Licensed Real Estate Broker, BK3214690
Qualified as an expert witness in the Florida District Court: 7th Judicial Circuit, 20th Judicial Circuit
Qualified as an expert witness in U.S. District Court: Middle District of Florida
Qualified as an expert witness in St. Croix County, Wisconsin
Realtor Association of Greater Fort Myers and the Beach, Inc. - Member (2009-Present)
National Association of Realtors - Member (2009-Present)
Real Estate Investment Society REIS - President (2015)
Sanibel-Captiva Chamber of Commerce - Member (2006-Present)
Southwest Florida Museum of History Foundation - Board Member (2014-2016)
HUD FHA Approved Appraiser
Associate Member of the Appraisal Institute (2011-Present)
Florida Real Estate Appraisal Board - FREAB - Gubernatorial Appointed Board Member (2012-2016)
Florida Real Estate Appraisal Board - FREAB - Chairman (2014)
IMAG History & Science Center - Board of Directors (2016-Present)
L.E.A.D. Foundation of SWFL - President (2017-Present)

Re-certification

As of the date of this report, I, Matthew S. Simmons, have completed the requirements under the continuing education program for the State of Florida.





MATTHEW S. SIMMONS		
SAMPLE OF TRIAL RELATED WORK (UPDATED THROUGH EARLY 2021)		
DATE	CLIENT	REFERENCE
4/2006	Dykema Gossett PLLG	US Bankruptcy Court N.D. Illinois, Eastern Dawson v. James S. Economou and Carol Economou; Case No. 05-B-13171
		appraisal, related trial preparedness
5/8/2006	Lee County Attorney's Office	Order-of-Taking in regard to Matlacha Park
6/2006	Berger Schatz	Boado v. Boado; appraisal, related trial preparedness
8/9/2006	Lee County Board of County Commissioners	Order-of-Taking hearings and related updates, file review for Parcels 1005, 1015, 316A, and 333, Imperial Street, Lee County, Florida
2/2008	First Bank	First Bank v. Ofelia Marcelo; appraisal, testimony, related trial preparedness
4/2008	Rubinstein & Holz	Krill v. Krill; appraisal, testimony, related preparedness
8/2008	Melissa Skeen	Silverglide v. Silverglide; appraisal, related trial preparedness
10/2008	Henderson Franklin	Leli v. Marsala; appraisal, deposition, related trial preparedness
10/2008	Powell Law Offices, P.A.	Dennis Mark Clark vs. Steven Gribble and Gasparilla Properties, Inc.; appraisal, related trial preparedness
2/2009	Bank First	Bank First vs. Guy Pagsoligan; appraisal, testimony, related trial preparedness



2/2009	Gibbons, Neuman, Bello, Segall, Allen, Halloran & Wright	Valley Bank v. Chris Hernandez; appraisal, testimony, related trial preparedness
2/2009	Troutman & Sanders, LLP	Taylor, Bean & Whitaker Mortgage Corporation vs. Lennar Corporation; appraisal, related trial preparedness
5/2009	Henderson Franklin	Warfield v. Stewart; appraisal, related trial preparedness
6/2009	John Nowell	John Nowell vs. Chad Turner; appraisal, related trial preparedness
9/2009	Stewart & Keyes	General Mortgage Associates Inc. vs Chapman and Associates, Inc., Dave Beckman, Julio Alvares, and Associates in Appraisal, Inc, and Patricia W. Sempstrott; appraisal, related trial preparedness, depositions, mediation
3/2010	Hale Law Group	Victor Rardin and Marianne Rardin v. Michael Sklorenko and Paula Sklorenko; appraisal, related trial preparedness, testimony
4/2010	Henderson Franklin	Quantum Funding Corp. v. Lisa A. Musial; appraisal, related trial preparedness
5/2010	Shendell & Pollock	IndyMac Bank FSB v. Viking Appraisal; appraisal, related trial preparedness
11/2010	Hale Law Group	Goldenberg v. Smith; appraisal, related trial preparedness
11/2010	Shelly Finman	Kennard v. Kennard; appraisal, related trial preparedness
1/2011	Carey, O'Malley, Whitaker, & Mueller	Fifth Third v. Landmark Homes; appraisal, related trial preparedness



2/2011	First American Bank	First American Bank v. Purdy; appraisal, related trial preparedness
5/2011	Pavese Law Firm	Petrella v. Lee County; appraisal, related trial preparedness
4/2012	Lapin & Leichtling, LLP	U.S. Bank v. First American Bank; appraisal, related trial preparedness
2/2012	Angella Hill, P.A.	SCEWCD v. Kozak; appraisal, related trial preparedness, testimony
4/2012	DeBoest Stockman	Iberia Bank v. O'Brien; appraisal, related trial preparedness
4/2012	DeBoest Stockman	Iberia Bank v. Birmingham; appraisal, related trial preparedness
4/2012	S. Alan Johnson Law, LLC	NCUA v. Kenneth Chang; appraisal, related trial preparedness, testimony
4/2012	Bayer Jerger & Underwood	Brinley v. Brinley; appraisal, related trial preparedness
5/2012	Andrew S. Epstein, P.A.	Gibbons v. Sizemore; appraisal, related trial preparedness
5/2012	Roetzel & Andress	Reliance Bank v. Medinis; appraisal, related trial preparedness, testimony
5/2012	Law Office of Matthew D. Uhle	Brosh v. City of Bonita Springs & Centex Homes; appraisal, deposition, related trial preparedness
7/2012	Bush, Ross, P.A.	Fiore v. Hilliker; valuation related consulting work



7/2012	Rogers Tower	Iberia Bank v. Fleischhauer; appraisal, related trial preparedness, testimony
7/2012	Carlton, Fields, P.A.	Dinello v. DiLoreto; appraisal, related trial preparedness
8/2012	Rogers, Tower	Century Bank, FSB v. Cathy Phillips; appraisal, related trial preparedness, testimony
11/2012	Rogers, Tower	Century Bank, FSB v. Anita Wingerter, Tobias Kurz, & R.A. Grant Corporation
11/2012	Mullin, Hoard & Brown	FDIC v. LSI Appraisal, FNIS, Inc., LPS, Inc., LPS, LLC, and LPS Property Tax Solutions, Inc.; appraisal, related trial preparedness
12/2012	Knott, Ebelini & Hart	Christoff v. Lewis; appraisal, related trial preparedness, testimony
12/2012	Fowler White Boggs	BMO Harris Bank v. Glenn McMaster; appraisal, related trial preparedness
1/2013	Chartwell Law Offices	Dorsey v. Century 21; valuation related consulting work
1/2013	FDIC Mortgage Recovery Law Group	FDIC v. Bank United; appraisal, related trial preparedness
2/2013	Henderson Franklin	Suncoast Schools Federal Credit Union v. Timothy and Kerri O'Leary; valuation related consulting work, testimony
2/2013	McGahee & Perez	Centerstate Bank v. Andrade; appraisal, related trial preparedness
5/2013	Henderson Franklin	Suncoast Schools Federal Credit Union v. Roger E. & Karla R. Carrasco; appraisal, related trial preparedness



7/2013	Mullin, Hoard & Brown	FDIC v. LSI Appraisal, LLC and FDIC v. Corelogic Valuation Services, LLC; appraisals, related trial preparation
7/2013	Julie Rawl	Lance M. McKinney v. Gregory R. Rawl; appraisal, testimony
12/2013	Lefkoff, Rubin, Gleason & Russo, P.C.	US District Court Middle District of Florida; Lautenbach bankruptcy v. Sun Trust Bank; appraisal, related trial preparedness, testimony
1/2014	Lefkoff, Rubin, Gleason & Russo, P.C.	US District Court Middle District of Florida; Sewell bankruptcy v. Sun Trust Bank; appraisal, related trial preparedness
1/2014	Holtz Mashie Decosta, P.A.	Charles Schwab Bank, N.A. v. Conroy & Singer; appraisal, related trial preparedness, arbitration, deposition, testimony
1/2014	Lefkoff, Rubin, Gleason & Russo, P.C.	US District Court Middle District of Florida; Swingholm bankruptcy v. Sun Trust Bank; appraisal, related trial preparedness, testimony
2/2014	Rich Springle	Spriggle v. Spriggle; appraisal, related trial preparedness
2/2014	Lefkoff, Rubin, Gleason & Russo, P.C.	US District Court Middle District of Florida; Bernstein bankruptcy v. Sun Trust; appraisal, related trial preparedness
3/2014	Mortgage Recovery Law Group	FDIC v. Lennar Corporation; appraisal, reviews, related trial preparedness
4/2014	Debra Rowe, Esq.	Sklorenko v. Sklorenko; appraisal, related trial preparedness



5/2014	Henderson Franklin	Suncoast Schools Federal Credit Union v. Charles Arabre; appraisal, related trial preparedness, testimony
5/2014	Pavese Law Firm	US District Court Middle District of Florida; Harrison and Koski bankruptcy v. Cypress Keep HOA; appraisal, related trial preparedness, testimony
6/2014	Quarles & Brady, LLP	City of Cape Coral v. Lentrip; appraisal, related trial preparedness
9/2014	Lee County Property Appraiser	Spivey v Wilkinson; appraisal, related trial preparedness
10/2014	Law Office of Matthew Uhle	Michael McGuigan v. Lee County; appraisal, related trial preparedness
11/2014	Henderson Franklin	Neff lien stipulation motion v. Suncoast Schools Federal Credit Union; appraisal, related trial preparedness, testimony
4/2015	Henderson Franklin	McLean lien stipulation motion v. Heritage Pointe Master Association; appraisal, related trial preparedness, testimony
4/2015	Roetzel & Andress	Cloninger v. Cloninger; appraisal, related trial preparedness, testimony
5/2015	Roetzel & Andress	Thompson v. Thompsons; appraisal, related trial preparedness
5/2015	Stafford Law	DiFiore v. DiFiore; appraisal, related trial preparedness



5/2015	Kass Shuler, P.A.	US District Court Middle District of Florida; Murawski bankruptcy v. Sun Trust Bank; appraisal, related trial preparedness
5/2015	Martin Law Firm	Arigno v. Arigno; appraisal, related trial preparedness
6/2015	Henewey Ross Law Firm	Kohlhare v. Kohlhare; appraisal, related trial preparedness
6/2015	Cohen Milstein	Hauser v. Rice Insulation; appraisal, related trial preparedness
7/2015	Henderson Franklin	Thomas v. Thomas; appraisal, related trial preparedness
7/2015	Angela Sullivan	Sullivan v. Sullivan; appraisal, related trial preparedness
7/2015	Jeanne Chambers	Chambers v. Chambers; appraisal, related trial preparedness
7/2015	Rubinstein & Holtz	Myhre v. Myhre; appraisal, related trial preparedness
7/2015	Tom Moran	Moran v. Moran; appraisal; related trial preparedness
7/2015	Pavese Law Firm	US District Court Middle District of Florida; Marie Paul bankruptcy v. Jubilation Community Associates; appraisal, related trial preparedness
7/2015	Thompson Family Law	Rist v. Rist; appraisal, related trial preparedness
8/2015	Rogers Tower	Norsota Associates, L.P. v. Agado; appraisal, related trial preparedness
8/2015	20th Judicial Circuit	Jugan v. Jugan; appraisal, related trial preparedness



9/2015	Rogers Tower	US District Court Middle District of Florida; Coffey bankruptcy v. Nationstar Mortgage; appraisal, related trial preparedness
10/2015	Roetzel & Andress	DiCicco v. DiCicco; appraisal, related trial preparedness
12/2015	Pavese Law Firm	Moss v. Moss; appraisal, related trial preparedness
1/2016	Jeffrey Berlowitz, Esq.	US District Court Middle District of Florida; Edward P. Reilly bankruptcy v. Island Walk HOA; appraisal, related trial preparedness
1/2016	Bergermann Law Firm	Tawadras v. Patton; appraisal, related trial preparedness
1/2016	Paul Liles, Esq.	Sweet v. Sweet; appraisal, related trial preparedness
2/2016	Sheldon E. Finman, P.A. and Vergermann Law Firm	Longendyke v. Longendyke; appraisal, related trial preparedness
2/2016	Esmond Lewis Law Firm	US District Court Middle District of Florida; Green Bankruptcy; appraisal, related trial preparedness
3/2016	Rubinstein, Holz & King, P.A.	Eleinko v. Eleinko; appraisal, related trial preparedness
3/2016	Cassell & Cassell, PLLC	Warnars v. Warnars; appraisal, related trial preparedness
3/2016	Sheldon E. Finman, P.A.	Bond v. Bond; appraisal, related trial preparedness
3/2016	Dellutri Law Group	US District Court Middle District of Florida; Beverly Morgan bankruptcy; appraisal, related trial preparedness
4/2016	Howard Atkin, Esq.	Cadieu v. Cadieu; appraisal, related trial preparedness
4/2016	Grimes Goebel Grimes Hawkins	Hutler v. Hutler; appraisal, related trial preparedness



5/2016	DeBoest, Stockman, Decker, Broughton & Hagan, P.A.	Hamilton v. Klaus; appraisal, related trial preparedness
7/2016	Pavese Law Firm	Dusseau v. Dusseau; appraisal, related trial preparedness
8/2016	William Hobbs	Hobbs v. Hobbs; appraisal, related trial preparedness
9/2016	Roetzel & Andress	Coral Lakes Homeowner's Association v. Trepkowski; appraisal, related trial preparedness, testimony
9/2016	Roetzel & Andress	Coral Lakes Homeowner's Association v. Ortega/Maldonado; appraisal, related trial preparedness, testimony
1/2017	Roetzel & Andress	Coral Lakes Homeowner's Association v. Barnes; appraisal, related trial preparedness, testimony
4/2017	Bergermann Law Firm	Rison v. Rison; appraisal, related trial preparedness
5/2017		McPheron v. McPheron; appraisal, related trial preparedness
6/2017		Peterson v. Peterson; appraisal, related trial preparedness, testimony
12/2017	Blount Law, P.L	1355 Marlin Drive, LLC v. Harry P.A. Adams-Mercer, and Wendy Mercer v. Michael S. Marino, Harry Michael Zea, and Imagine Home Concepts, LLC; appraisal, related trial preparedness, testimony
2/2018	Calvo & Calvo	Renaud v. Renaud; appraisal, related trial preparedness
3/2018	Calvo & Calvo	Garcia v. Garcia; appraisal, related trial preparedness



3/2018	Bergermann Law Firm	Rison v. Rison; appraisal, related trial preparedness, testimony
4/2018	Bergermann Law Firm	VanVossel v. Bramble; appraisal, related trial preparedness, testimony
5/2018	Calvo & Calvo	Cedeno v. Rosales; appraisal, related trial preparedness
5/2018	Bergermann Law Firm	Navarro v. Navarro; appraisal, related trial preparedness
5/2018	Calvo & Calvo	Fries v. Bolliger; appraisal, related trial preparedness, testimony
5/2018	Bergermann Law Firm	Martin v. Martin; appraisal
6/2018	Hertz Schram, PC	Karnani v. Karnani; appraisal, related trial preparedness
6/2018	Calvo & Calvo	Heggemeier v. Heggemeier; appraisal
6/2018	Delutri Law Group	US District Court Middle District of Florida; Earnest Pittman bankruptcy; appraisal, related trial preparedness, testimony
9/2018	Porter, Wright, Morris & Arthur, P.A.	Goodrum v. Rhodes; appraisal, related trial preparedness
11/2018	Rubinstein, Holz, & King, P.A.	Piggott v. Piggott; appraisal, related trial preparedness, testimony
12/2018	Henderson, Franklin, Starnes & Holt, P.A.	Weiner, Alexandra v. Murty, Timothy; appraisal, related trial preparedness
1/2019	Wicker, Smith, O'Hara McCoy & Ford, P.A.	Bauer v. Heinlein; appraisals, related trial preparedness



1/2019	Roetzel & Andress	NCUA v. Alfonso; appraisal, related trial preparedness
1/2019	Roetzel & Andress	NCUA v. Alfonso; appraisal, related trial preparedness
1/2019	Roetzel & Andress	NCUA v. Beddow; appraisal, related trial preparedness
1/2019	Roetzel & Andress	NCUA v. Haggard; appraisal, related trial preparedness
1/2019	Roetzel & Andress	NCUA v. Hallett; appraisal, related trial preparedness
1/2019	Roetzel & Andress	NCUA v. Hallett; appraisal, related trial preparedness
1/2019	Roetzel & Andress	NCUA v. Krizsan; appraisal, related trial preparedness
1/2019	Roetzel & Andress	NCUA v. O'Ferrall; appraisal, related trial preparedness; testimony
1/2019	Roetzel & Andress	NCUA v. Rosser; appraisal, related trial preparedness
1/2019	Roetzel & Andress	NCUA v. Shane; appraisal, related trial preparedness; testimony
1/2019	Roetzel & Andress	NCUA v. Torres; appraisal, related trial preparedness; testimony
1/2019	Roetzel & Andress	NCUA v. Wehner; appraisal, related trial preparedness
1/2019	Roetzel & Andress	NCUA v. Wehner; appraisal, related trial preparedness
1/2019	Roetzel & Andress	NCUA v. Wiley; appraisal, related trial preparedness, testimony
1/2019	Roetzel & Andress	NCUA v. Wiley; appraisal, related trial preparedness



1/2019	Roetzel & Andress	NCUA v. Youse; appraisal, related trial preparedness
1/2019	Quintairos, Prieto, Wood & Boyer, P.A.	Klayman and 3s Company Florida, LLC v. De Meo, Gordon, Hamilton-Franklin Realty, LLC, Sass, Target Surveying, LLC, Osborne, and Peters; related trial preparedness
1/2019	Martin Law Firm, P.L.	Jacobs v Jacobs; appraisal
3/2019	Cordell Cordell	MacDonald v. MacDonald; appraisal
6/2019	Martin Law Firm	Cook v. Cook; appraisal
6/2019	WCI Communities, LLC	WCI Communities, Inc. v. City of Bonita Springs, Florida; appraisal, related trial preparedness
7/2019	Henderson Franklin Starnes & Holt, P.A.	Suncoast Credit Union v. Griffiths; appraisal, trial related preparedness
7/2019	Sheldon E. Finman, P.A.	Jackson v. Jackson; appraisal
7/2019	Pavese Law Firm	Michael v. Daniel; appraisal
7/2019	Robert E. Tardiff, Jr. P.A.	US District Court Middle District of Florida; Brenda Hall bankruptcy; appraisal
8/2019	Kevin F. Jursinski & Associates, P.A.	Davis v. Berdick; appraisal, trial related preparedness, testimony
8/2019	Holland & Knight, LLP	Miller, Becker, Blanks, etc., v. City of Fort Myers; valuation consulting
8/2019	Sibylle Allendorff and Pennington Law	Allendorff v. Johnson; appraisal, related trial preparedness



1/2020	Jursinski & Murphy Law Firm	Blakely v. Livorsi; appraisal, related trial preparedness
1/2020	Roetzel & Andress, P.A.	Boyd v. Wilk; appraisals, related trial preparedness
4/2020	Sheldon E. Finman, P.A.	Michaels v. Michaels; appraisal, related trial preparedness
4/2020	Gray Robinson	Weatherbee v. Nemeth A/C; appraisal, related trial preparedness
5/2020	Best & Flanagan / Willeke & Daniels	Peet v. Peet; appraisal, related trial preparedness
5/2020	The Law Office Karla Y Campos-Anderson	Melendez v. Melendez; appraisal, related trial preparedness
5/2020	Hagen Law Firm & Absolute Law	Turner v. McClory; appraisal, related trial preparedness
6/2020	Bergermann Law Firm	Coykendall v. Eischeid; appraisal, related trial preparedness
7/2020	The Law Office Karla Y Campos-Anderson	Gallegos v Zelaya; appraisal, related trial preparedness
8/2020	Allen Dell	Robertson v Robertson; appraisal, related trial preparedness
8/2020	Moore Bowman & Reese	Angler's Paradise of Bonita Springs Inc. v City of Bonita Springs; appraisal, related trial preparedness
8/2020	Edward Arasimowicz	Arasimowicz v Arasimowicz; appraisal, related trial preparedness
8/2020	James Campbell	Campbell v Kane; appraisal, related trial preparedness



9/2020	Wilbur Smith	Schwartzel-Rienzo v Rienzo ; appraisal, consultaion, related trial preparedness
9/2020	Jursinski & Murphy Law Firm	Bertschinger Investments LLC v Scratch & Dent Saffron; consultation, related trial preparedness
9/2020	Jursinski & Murphy Law Firm	The Srtach and Dent Shop, inc. v Leco Court Holdings ,LLC ; appraisal report, consultation, related trial preparedness
9/2020	Sheldon E. Finman, P.A.	Brian Just v Megan Just; appraisal, related trial preparedness
9/2020	John D. Mills, P.A.	Burke v. Burke; 2016 appraisal report , related trial preparedness
9/2020	John D. Mills, P.A.	Burke v. Burke; 2020 appraisal reports , related trial preparedness
10/2020	Kevin Schapley & Terri Schapley	Kevin Schapley, Terri Schapley; consultation
10/2020	The Law Office Karla Y Campos-Anderson	Maricela Espinal v Melendez; appraisal , related trial preparedness
10/2020	Leah Meshelle Snyder, P.A.	Mrs. Macpherson v Joseph MacPherson - 2200 NE 14th Ave; appraisal, related trial preparedness
10/2020	Leah Meshelle Snyder P.A.	Theresa Schober v Thomas Cheshire - 1902 Florrie Ct; appraisal report, related trial preparedness
10/2020	Simmons Law Firm	James W. Harris v Constance L. Harris; several appraisal reports, related trial preparedness



10/2020	Rachel Edmonds	Rachel Edmonds v Ryan Edmonds; appraisal, related trial preparedness
11/2020	Kubicki Draper, P.A.	Kevin L. Erwin and Andrea Erwin v Coastal Contracting of Florida, LLC and James K. McStravic Plumbing, Inc.; appraisal, consultation, related trial preparedness
11/2020	Sergio Castro	Castro v Castro; appraisal, related trial preparedness
11/2020	Roger M. Brown Trust	Kevin and Nicole Almeida v Roger M. Brown Trust; appraisal, related trial preparedness
11/2020	Carol Donoghue and Brian Donoghue	Carol Donoghue v Brian Donoghue; several appraisals, consultation, related trial preparedness
2005-2021	Numerous	Multiple representations before the Lee County and Collier County Valuation Adjustment Board over the past ten years. Multiple times providing testimony as a valuation expert on land use, zoning, feasibility, and economic impact related issues before a variety of planning/zoning boards and county commissions.



Matt Simmons

Matt is a native of Southwest Florida and a graduate of the Lutgert College of Business at Florida Gulf Coast University. He joined the appraisal profession in 2003 and joined Maxwell & Hendry Valuation Services in 2005 serving as the residential division manager until becoming a partner in the firm in 2013. Maxwell, Hendry & Simmons provides appraisal and consulting services for commercial and residential real estate in the 5-county region (Lee, Collier, Charlotte, Glades, and Hendry).

Matt's individual practice includes forensic valuation work for eminent domain, zoning matters, family law, foreclosure/deficiency actions, bankruptcy, VAB appeals, and general civil litigation. He leads the firms' efforts in specialized studies, including Value Impact Studies and Economic Impact Studies. Matt also manages the day-to-day commercial valuation service functions of the firm.

Matt is a Past-President of the Real Estate Investment Society, is an FHA/HUD approved appraiser, and has served as a guest lecturer at Florida Gulf Coast University for several years. Matt is qualified as an expert witness in Florida District Court: 20th and 7th Judicial Circuits, in U.S. District Court: Middle District of Florida, and in several jurisdictions outside of Florida. He has also been recognized as an expert on value and economic impacts in several Florida planning jurisdictions regarding applications for zoning and land use changes. He is a licensed broker and consults commercial and residential investors in income-producing acquisitions. In 2012, Matt was appointed by Governor Rick Scott to serve on the Florida Real Estate Appraisal Board. He is the youngest appointee in the history of FREAB and served as the 2014 Chairman. During his term of service he focused on issues of license enforcement and rule-making associated with the Administrative Code applicable to real estate appraisers, instructors, and appraisal management companies.

QUALIFICATIONS: MATTHEW S. SIMMONS

Educational Background and Training

Bachelor of Science in Business Management (2008) Florida Gulf Coast University, Fort Myers, Florida.
Appraisal Board Course I - ABI, Steve Williamson's Real Estate Education Specialists (2003) Orlando, Florida.
Real Estate Transactions, Florida Gulf Coast University (2003) Fort Myers, Florida.
Various Appraisal Institute Courses
Appraisal Board Course II - ABII, Academy of Real Estate (2005) Fort Myers, Florida.
63 - hour Sales Associate Pre-License Course, Career Web School (2008)

Experience

Gulf Coast Appraisal and Consulting Services, Inc., Cape Coral, Florida - Associate (2003)
Gulf Coast Appraisal and Associates, Inc., Cape Coral, Florida - Associate (2003-2005)
Maxwell & Hendry Valuation Services, Inc., Fort Myers, Florida - Residential Division Manager (2005-2013)
Maxwell, Hendry & Simmons, LLC, Fort Myers, Florida - Partner (2013-Present)

Professional Affiliations

State-Certified Residential Real Estate Appraiser, RD5762
State-Licensed Real Estate Broker, BK3214690
Qualified as an expert witness in the Florida District Court: 7th Judicial Circuit, 20th Judicial Circuit
Qualified as an expert witness in U.S. District Court: Middle District of Florida
Qualified as an expert witness in St. Croix County, Wisconsin
Realtor Association of Greater Fort Myers and the Beach, Inc. - Member (2009-Present)
National Association of Realtors - Member (2009-Present)
Real Estate Investment Society REIS - President (2015)
Sanibel-Captiva Chamber of Commerce - Member (2006-Present)
Southwest Florida Museum of History Foundation - Board Member (2014-2016)
HUD FHA Approved Appraiser
Associate Member of the Appraisal Institute (2011-Present)
Florida Real Estate Appraisal Board - FREAB - Gubernatorial Appointed Board Member (2012-2016)
Florida Real Estate Appraisal Board - FREAB - Chairman (2014)
IMAG History & Science Center - Board of Directors (2016-Present)
L.E.A.D. Foundation of SWFL - President (2017-Present)

Re-certification

As of the date of this report, I, Matthew S. Simmons, have completed the requirements under the continuing education program for the State of Florida.



ENCLOSURE 4

Renderings of the existing development and proposed redevelopment in the vicinity of the proposed project, layered onto the Applicant's renderings, which were prepared by Justin Rios, AIA, NASCLA, Director of Pre-Construction and Design, New Path Construction and Consulting

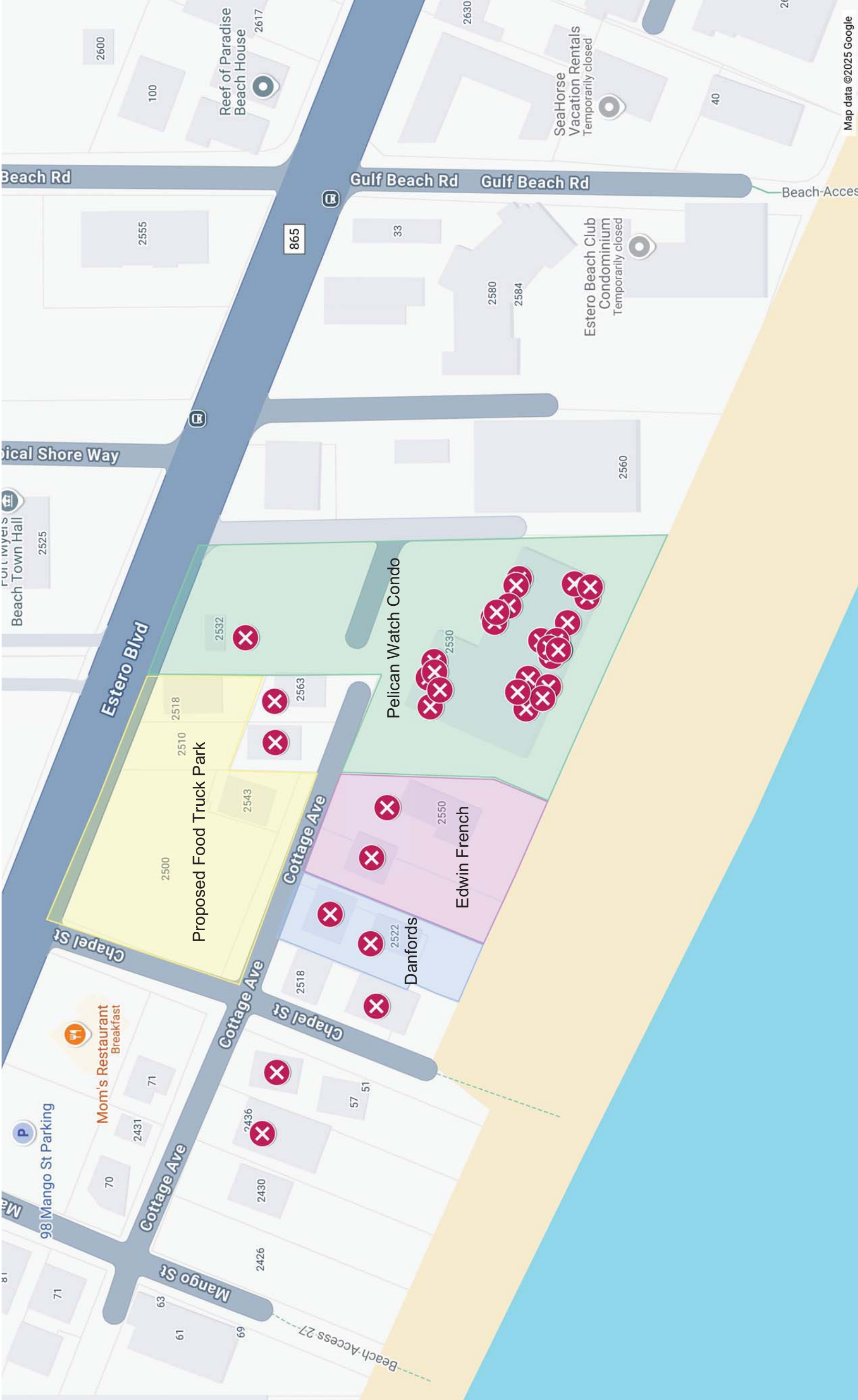




ENCLOSURE 5

AMENDED TO INCLUDE LETTERS SUBMITTED AFTER LPA Hearing
February 11, 2025. With Resident's Locations map and links to Videos and photos.

Empire Holding / Food Truck Park Opposition Letter Map Rev. 2-9-25



Untitled layer



Empire Holding Corp - CPD
Amendments



David and Monica Tezak, 2440
Cottage Ave



Helen Tezak, 50 Chapel St



Pelican Watch Condominium,
2530 and 2532 Estero Blvd



Pelican Watch Condominium
Property



Vince and Sue Todd, Pelican
Partners, 2532 Estero Blvd
#606



Patrick G. and Carolyn M.
McKeown, 2532 Estero Blvd
#605



Richard Robshaw, 2532 Estero
Blvd #608



Randy Briesath, 2532 Estero
Blvd #203



Gary Fields, 2532 Estero Blvd
#601



Tom and Deb Danford, Coastal
Cottages LLC, 2520 Cottage
Ave



Tom and Deb Danford, Coastal
Cottages LLC, 2522 Cottage
Ave



Edwin French, 2548 Cottage
Ave

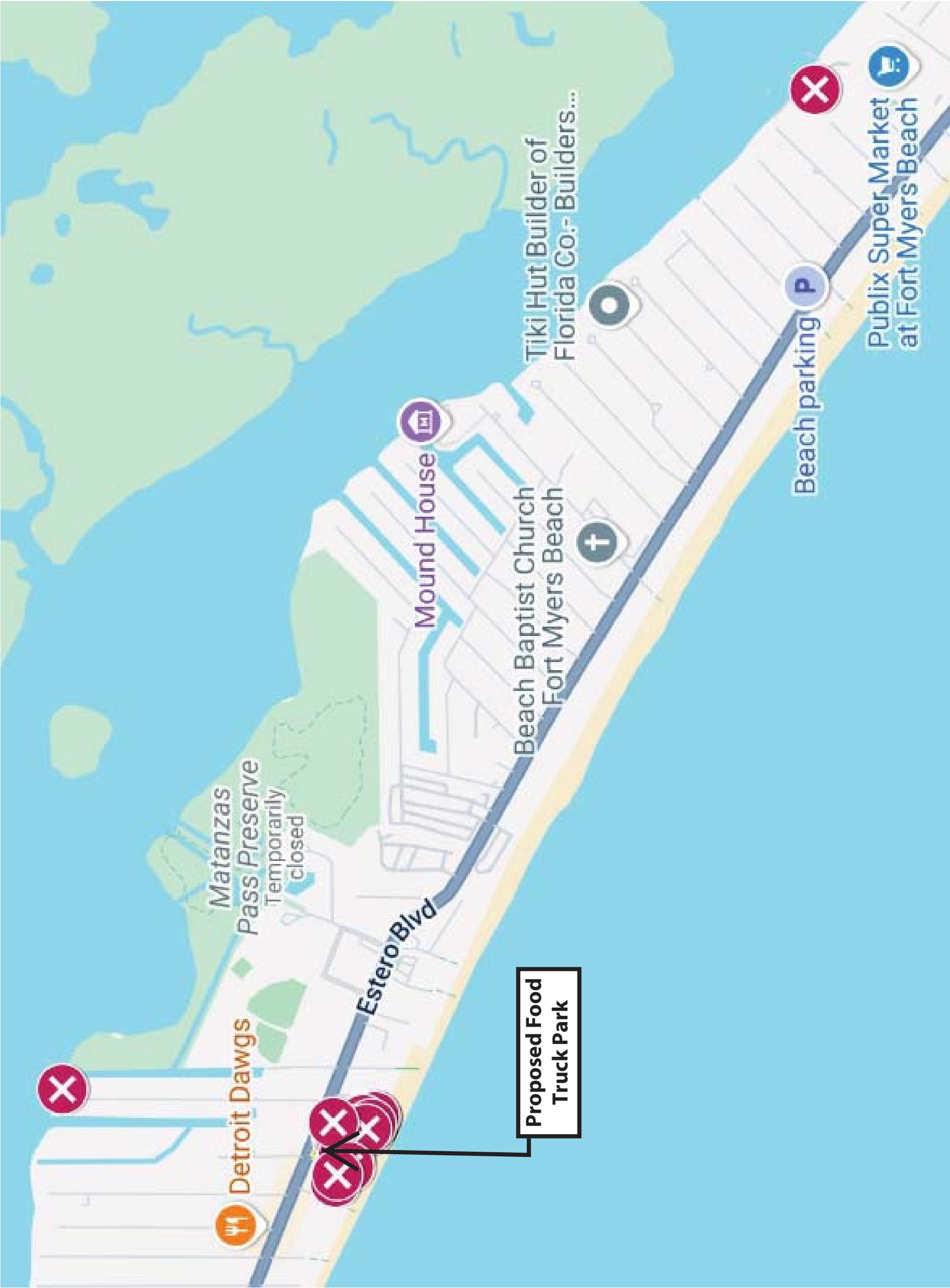


Edwin French, 2548 Cottage
Ave

- ✕ Edwin French, 2550 Cottage Ave
- ✕ Brandon Richards, Ascend Homes LLC, 2532 Estero Blvd #205
- ✕ Rich & Jackie Siefiring, 2532 Estero Blvd # 307
- ✕ Jerry and Darlene Weaver, 2532 Estero Blvd #106
- ✕ Kevin Minor, 2532 Estero Blvd #105
- Coastal Cottages LLC/Danfords
- Edwin French
- ✕ Steve and Susan Whitehead, 2563 Cottage Ave
- ✕ Susan Bonfigli, 2434 Cottage Ave
- ✕ Cecile Carstensen, 2532 Estero Blvd #503
- ✕ Dick & Pat Ooykaas and Ooykaas Family, 2532 Estero Blvd #107
- ✕ Dick & Pat Ooykaas and Ooykaas Family, 2532 Estero Blvd #503
- ✕ Ooykaas Family, 2532 Estero Blvd #502
- ✕ Dick & Pat Ooykaas, 2532 Estero Blvd #603
- ✕ Russell Burgett, 2532 Estero Blvd #101



- Denise Hourigan/Dornfeld Family, 2532 Estero Blvd #505
- Mavis Sutton, 2532 Estero Blvd #305
- Kirk and Leslie Banerian, 2532 Estero Blvd #404
- Lyle & Sheryl Grenz, 2532 Estero Blvd #302
- John & Linda Vredenburg, 2532 Estero Blvd #301
- Joyce LaCava, 2532 Estero Blvd # 201
- Kim & Pam Stickley, 2532 Estero Blvd #501
- Barbara White, 2532 Estero Blvd #108
- Edwin French, 290 Tropical Shore Way
- Ed French, 4753 Estero Blvd #405B
- Gary & Lori Wiltse, 2532 Estero Blvd #507
- Rick Bruner, 2532 Estero Blvd #206
- Robin & Karen Amesbury, 2532 Estero Blvd #306
- Mr. and Mrs. Derek O'Loughlin, 2553 Cottage Ave
- Jan Krause, 2532 Estero Blvd #204



David and Monica Tezak
2440 Cottage Avenue
Fort Myers Beach, FL 33931

Helen Tezak
50 Chapel Street
Fort Myers Beach, FL 33931

January 6, 2025

Fort Myers Beach Local Planning Agency (LPA)
2731 Oak Street
Fort Myers Beach, FL 33931

Re: Formal Objection to Proposed Food Truck Park and Deviations for 2500 Estero Boulevard
(Ordinance 25-XX)

Dear Members of the Local Planning Agency,

I am writing to formally object to the proposed Commercial Planned Development (CPD) amendment and associated deviations for the property at 2500, 2510, and 2518 Estero Boulevard, as outlined in Ordinance 25-XX. The proposed food truck park raises serious concerns related to traffic safety, infrastructure inadequacy, compatibility with the surrounding residential area, and violations of the Fort Myers Beach Comprehensive Plan and Land Development Code (LDC).

Key Objections:

1. Chapel Street is Inadequate for Increased Traffic

Chapel Street, the primary proposed access point for the food truck park, is fundamentally unsuitable for such a high-traffic commercial use.

- **Narrow Width:** The road is only 20 feet wide (paved) with no permitted parking, leaving little room for two vehicles to pass safely, especially delivery trucks or larger vehicles associated with the food truck park. New development requires 50 feet wide paved roads for development.
- **Dead-End Configuration:** Chapel Street ends just 175 feet off Estero Boulevard, making it difficult for vehicles to turn around safely, creating gridlock, and exacerbating safety risks for residents and visitors.
- **Violation of LDC Requirements:** The proposed access point violates LDC Section 10-285, which requires a minimum spacing of 250 feet between accessways on major streets like Estero Boulevard. The proposed Chapel Street access is only 150 feet frontage. An

access point on Chapel Street will backup traffic on Estero Blvd due to the close proximity to Estero Blvd creating additional hazards.

- **Parking Overflow Risks:** The lack of permitted parking on Chapel Street will force overflow parking into surrounding residential areas, disrupting homeowner access and creating unnecessary tension in the community.

2. Traffic Safety and Emergency Access Risks

The proposed development will significantly increase traffic on Chapel Street, creating safety hazards for both residents and visitors. Emergency vehicle access could also be severely impeded due to congestion and the narrow dead-end configuration of the street. This is a direct threat to public safety.

3. Insufficient Justification for Requested Deviations

The applicant has requested six deviations from the LDC, many of which directly impact public safety and neighborhood compatibility. Specifically:

- **Deviation #1 and #2:** Reducing the required 250-foot spacing for access points will compromise safety on Estero Boulevard and Chapel Street.
- **Deviation #4 and #5:** Allowing off-street parking to be placed in inappropriate locations and permitting crushed shell or lime rock surfaces instead of pavement increase risks of flooding, drainage issues, and vehicle damage.
- **Deviation #6:** Reducing buffer requirements from 15 feet to 10 feet undermines necessary noise and visual separation between commercial and residential areas.

The justifications provided by the applicant fail to address how these deviations will negatively impact surrounding residential properties or protect the public interest.

4. Incompatibility with the Comprehensive Plan

The Fort Myers Beach Comprehensive Plan aims to balance residential and commercial uses while protecting neighborhood integrity and ensuring adequate infrastructure. This proposal directly conflicts with these goals:

- The Boulevard zoning category was designed for low-intensity, light commercial uses that complement the surrounding residential character. A high-traffic food truck park with late operating hours and amplified outdoor music does not align with this vision.
- The development places undue strain on infrastructure, particularly Chapel Street, which was never intended to support such intensive commercial activity.

5. Detrimental Impact on Property Values and Quality of Life

The introduction of a food truck park will degrade the residential character of the neighborhood and reduce property values for adjacent homeowners. Increased noise, odors, rodent potential, traffic, and parking overflow will disrupt the quiet enjoyment of nearby properties, diminishing the quality of life for residents.

6. Summary Table of Deviations

Table summarizing the six deviations requested and their negative impacts on the area:

Deviation	LDC Requirement	Proposed	Impact
Driveway Spacing	250 feet from Estero access	100 feet	Traffic hazard, violates safety standards
Buffers	15 feet wide	10 feet	Increased noise, reduced separation
Parking Surface	Paved	Crushed shell/rock	Drainage issues, substandard infrastructure

Requested Action

I respectfully request that the Local Planning Agency recommend denial of this CPD amendment and the associated deviations. The proposed development is wholly inappropriate for the area and will create significant, long-term negative impacts on the neighborhood, public safety, and infrastructure.

Conclusion

The proposed food truck park is incompatible with the residential character of this neighborhood, relies on inadequate infrastructure, and violates critical requirements of the Comprehensive Plan and Land Development Code. I urge the LPA to prioritize the safety, well-being, and long-term interests of Fort Myers Beach residents by recommending denial of this proposal.

Thank you for your time and careful consideration of these concerns.

Sincerely,

David, Monica and Helen Tezak
PO Box 2700
Fort Myers Beach FL 33932

David and Monica Tezak
2440 Cottage Avenue
Fort Myers Beach, FL 33931

Helen Tezak
50 Chapel Street
Fort Myers Beach, FL 33931

1-10-2025

Members of the Local Planning Agency
Town of Fort Myers Beach
2731 Oak Street
Fort Myers Beach, FL 33931

Re: Objection to Proposed Commercial Planned Development (CPD) Amendment for 2500, 2510, and 2518 Estero Boulevard

Dear Members of the Local Planning Agency,

We, David and Monica Tezak (owners of 2440 Cottage Avenue) and Helen Tezak (owner of 50 Chapel Street), respectfully submit this comprehensive objection to the proposed CPD amendment for 2500, 2510, and 2518 Estero Boulevard. This proposal, centered on establishing a beer and wine garden with food trucks as a secondary feature, raises numerous legal, procedural, and community concerns that demand careful consideration and ultimately, its rejection.

1. Spot Zoning and Expansion of CPD into Residential Parcels

The inclusion of two residential parcels into the CPD zone constitutes spot zoning, isolating commercial zoning within a residential subdivision. This rezoning serves private developer interests while disregarding the original residential intent of these parcels as part of the Seagrape Subdivision. Spot zoning undermines the comprehensive plan and sets a harmful precedent for further encroachment into residential neighborhoods.

Legal Basis:

- Florida Statute §163.3177 mandates that zoning decisions align with the comprehensive plan and serve a legitimate public purpose.

- Case Law: City of Miami Beach v. Ocean & Bay Park One, Inc. (1941) invalidated spot zoning that benefited private parties at the expense of the broader public interest.

2. Incompatibility with Zoning and Comprehensive Plan

The beer and wine garden with live music, late operating hours, and high turnover traffic is a far more intensive use than the low-intensity commercial uses permitted under the Boulevard zoning category. The proposal effectively converts the site into an entertainment venue, disrupting the residential character of the area.

Legal Basis:

- Florida Statute §163.3177 requires zoning changes to align with the comprehensive plan’s goals to protect residential neighborhoods.
- Case Law: Snyder v. Board of County Commissioners of Brevard County (1993) requires zoning changes to serve a legitimate public purpose and maintain compatibility with surrounding uses.

3. Lack of a Regulatory Framework for Food Truck Parks and Beer Gardens

The Town of Fort Myers Beach currently lacks formal ordinances governing food truck parks and beer garden establishments. Proceeding with this proposal as a "pilot program" without establishing clear rules is premature and irresponsible.

- **Operational Oversight:** There are no rules to address critical issues such as waste management, parking, alcohol service restrictions, noise mitigation, and hours of operation.
- **Public Input:** The absence of regulations denies the community a say in whether such uses are appropriate for Fort Myers Beach.
- **Enforceability:** Without regulations, there is no mechanism to ensure compliance or mitigate nuisances.

Legal Basis:

- Florida Statute §163.3202 mandates that local governments adopt detailed land development regulations consistent with their comprehensive plan.
- Case Law: Approval of developments without a regulatory framework undermines comprehensive planning (Hillsborough County v. Putney, 2009).

4. Procedural Defects and Due Process Violations

The postcard notice for the January 9, 2025, hearing was postmarked on January 2, 2025, providing only seven days’ notice to affected property owners. This falls significantly short of the

30-day minimum notice requirement under Florida Statutes (Section 166.041) for zoning map amendments.

Proper notice is a cornerstone of due process. Without sufficient time to review the proposal, consult with neighbors, and prepare objections, affected property owners are denied a meaningful opportunity to participate in decisions that impact their properties and quality of life.

This procedural defect **invalidates** the hearing and any decisions made during it. Florida courts have consistently held that insufficient notice constitutes a violation of due process, rendering zoning decisions subject to legal challenge.

Legal Basis:

- Florida Statute §166.041: Requires a minimum of 30 days’ notice for zoning map amendments.
- Case Law: Florida courts, including in Snyder v. Board of County Commissioners (1993), affirm that proper notice and public participation are essential to lawful zoning decisions.

5. Traffic Hazards and Inadequate Infrastructure

Access to the site relies on Chapel Street, a narrow residential road measuring only 30 feet wide (paved to 20–25 feet). The road’s dead-end configuration, lack of parking, and inadequate width is unsuitable for commercial ingress and egress. It also, will lead to off street parking by the venue’s patrons. This will endanger the resident’s ability for ingress and egress their property as well as emergency vehicles. This is demonstrated by the current continual problems and lack of enforcement with Mom’s restaurant and off street parking.

Legal Basis:

- LDC Section 10-285 mandates a minimum separation of 250 feet between access points on major streets like Estero Boulevard, which the proposal fails to meet.
- Florida Statute §163.3180 requires local governments to ensure adequate infrastructure for new developments.

6. Homelessness and Alcohol-Related Public Safety Risks

The area surrounding the proposed development has faced a prevalent homelessness problem for years, creating safety and public health challenges. Establishing a beer and wine garden in this area, which serves alcohol, will likely exacerbate these issues, including:

- **Congregation Risks:** The presence of a bar may attract individuals struggling with substance abuse, increasing the likelihood of disturbances and negative interactions in the neighborhood.
- **Safety Concerns:** Local residents may face heightened risks of trespassing, vandalism, and public intoxication as a result of the establishment.
- **Burden on Public Resources:** The town may experience increased calls for law enforcement and emergency services to address alcohol-related disturbances.

Legal Basis:

- Florida Statute §562.45(2) authorizes municipalities to regulate the location of alcohol-serving establishments to protect public safety.
- Case Law: City of Miami Springs v. J.J.T., Inc. (1985) upheld restrictions on alcohol-serving businesses to safeguard neighborhoods.

Requested Actions

1. **Deny the Application:** Recommend denial of the CPD amendment due to spot zoning, lack of regulatory framework, incompatibility with zoning, procedural defects, and safety risks.
2. **Address Homelessness and Safety Concerns:** Recognize the existing homelessness challenges and assess how introducing a bar could exacerbate public safety issues.
3. **Establish Ordinances First:** Develop clear and enforceable regulations governing food truck parks and beer garden establishments before considering such proposals.
4. **Reschedule the Hearing:** Nullify any actions taken during the January 9, 2025, hearing and provide proper notice in compliance with state and local requirements.

Conclusion

This proposal introduces significant risks, including spot zoning, safety hazards, noise pollution, homelessness-related issues, and the erosion of residential character. The absence of a regulatory framework and procedural defects in notice highlight serious legal and ethical concerns.

We urge the Local Planning Agency to reject this proposal and prioritize the integrity of our neighborhood.

Thank you for your time and consideration.

Sincerely,

David and Monica Tezak
Helen Tezak

Town of Fort Myers Beach

JUL 3 2024

Received by: _____

Jason Smalley
Town of Fort Myers Beach
2731 Oak Street
Fort Myers Beach, FL 33931

Dear Mr. Smalley.

It pains me to have to write you regarding the most inappropriate use of the land located at 2500 Estero Blvd. Prior to Hurricane Ian, the area was roped off to prevent trespassing. Now with the extended lot boundaries, the owner wants food trucks, entertainment, etc., why not rezone it for a circus? The noise level of music from the tent currently located adjacent to the Bottoms Up facility can be heard throughout the neighborhood and is very disturbing. This is a residential area, not a commercial area like Times Square.

If you can recall, it was barely adequate for when it housed the Holmes House restaurant. Now with increased traffic on Estero Blvd. and the number of residences being rebuilt in this neighborhood, it hardly justifies being developed commercially. Your council is charged with land development and use. Please professionally consider the proposed use and reject the owners request. They know not what they do or want.

Vince Todd
Belian Watch
2532 Estero Blvd. # 606
Ft Myers Beach, FL 33931

From: Vince Todd <vtodd@accessa.com>
Sent: Sunday, February 2, 2025 3:35 PM
To: Judith Frankel <jrankel@fmbgov.com>
Cc: Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>; Moscoso, David <DMoscoso@beckerlawyers.com>; Randy Briesath <briesath@theseismicgroup.com>
Subject: Proposed Food Truck Project

Our names are Sue and Vince Todd and are from Indianapolis, IN. We are the owner of Unit 606 in Pelican Watch Condominiums, 2532 Estero Blvd. Fort Myers Beach, FL. We have been an owner in Pelican Watch since 1981. Prior, we were a renter in the trailer park that occupied this exact property. At development/construction completion, we became the first owner to close on our unit. It has been our second home but also our happy place. Our children have been coming here with us since early childhood and love to return now with our grandchildren.

Our unit 606 is on the same side of the building as the proposed project. Instead of nice peaceful, beautiful views of sunsets over Sanibel Island, we will be forced to tolerate food trucks, loud music, traffic, garbage, odors, birds, rodents, and public sanitary facilities none of which belong in a family residential neighborhood.

Please do not destroy our beautiful piece of paradise.

Sincerely,
Vince and Sue Todd

26132914v.1

From: Carolyn McKeown <mckeown44@gmail.com>
Sent: Tuesday, February 4, 2025 6:10 AM
To: jfrankel@fmbgov.com
Cc: Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>; Moscoso, David <DMoscoso@beckerlawyers.com>; Randal Briesath <briesath@theseismicgroup.com>
Subject: 2500 Estero Blvd project

As a resident of Pelican Watch Condominium, I have the following comments to offer to the LPA Committee members, each of whom has the purview to decide and make recommendations for land use on Estero Island. Clearly, you have the charge and responsibility for the welfare of residents and visitors alike in making these decisions, but you also surely must have some consideration for those who have lived here for an extended period and sustained this island before Hurricane Ian, but more importantly, returned to the island to REBUILD their properties. Pelican Watch will soon reach 10 million dollars. Our property values and continued need for comfort and a generally healthy environment should count for something.

As I review the plans for this development, there are no plans for fulfilling the Town's encouragement for all to build "brick and mortar". And the current residential area adjoining 2500 Estero Boulevard properties should not be subjected to a development that will immediately diminish our property values. There are 12 back apartments that will be greatly adversely effected (documented) due to the proximity and total exposure to this "open air" arrangement of noise, music, food odors, public bathrooms, along with excess foot and automobile traffic and the like. This project will also make the 5th parking lot between here and the Sky Bridge. Also, please consider the impact on already existing businesses. Businesses that have found a way to "come back" and hang on after the hurricane and are now trying to reach the Town's goal to build back a "brick and mortar". Mom's has been on the island for over 15 years as has a Charro Brothers as their restaurant was destroyed. Additionally, the Pancake House that has survived and revived! All of these have struggled to make it back to whatever point of recovery they have achieved at this point in time. And this will also detract from the the finished Sandy Bottoms that the Millers have dumped a ton of money into.

Granted, the island was put under a great strain following the destruction by Hurricane Ian, but I do not feel that it is wise nor does it serve the long-range goals of Ft Myers Beach or its residents to co-mingle incompatible developments for the sake of a quick startup. And while food trucks have become a popular draw in many parts of the country, they are appropriate for commercial and light commercial areas. This is a beautiful project but in the wrong location. The 3 food truck developments in the area of Ft Myers Beach that the developer keeps referring to and comparing this development to as similar are all in commercial/light commercial; none are near a residential area. This appears to be a faulty comparison.

The community-at-risk around this development is NOT against development. It is, however, vehemently objecting to that which would immediately deter value of their property, eliminate comfort in their own units with constant "open air" noise, music along with the unwanted foot traffic through the properties. And if signs were are thought to prevent unwanted motorists from reaching the dead end on Cottage Street and then turning to follow the Pelican Watch building entry as an outlet, we wouldn't be protesting that issue today. Prior to Ian, there were two signs

nearing the end of Cottage Street: one said "DEAD END"; another sign said "NO TURNAROUND". Neither worked; people do not respect signs as a rule, so signs are NOT a reliable solution. And I raise the question of "enforcement" for all of these issues? Who/how will this be monitored and guidelines enforced?

So you ask then what we as the surrounding neighborhood be happy with? That's simple. We would support a "brick and mortar structure" ----something that would add value to the Town and beach for years to come. A structure that could be large enough to accommodate possibly entertainment features for families and food alike or even other commercial entities and parking, whatever, but all housed in an indoor arrangement and facing Estero Boulevard to deflect most the sound of music from 9 am to 10 pm at night, food odors, rowdy behaviors and all other inherent issues.

And, incidentally, the previous "rezone" decision made in 2007 was a struggle and went on for several hours (I was present). But that LPA in 2007, was sensitive to the fact that this property is so very close to a long-established residential area that they hence granted a "commercial strip" for a commercial building next to Estero Blvd but designated the back part to retain "residential". They then approved that lot for 3 large (4 br 4 ba) condos. While that arrangement was compatible with the neighborhood, it somehow never came to be.

I have met and truly enjoyed my conversations with each of you. I now ask you to deliberate these thoughts carefully and realize that the "open air" concept is a deterrent to our neighborhood in many ways. Could you put yourself in our shoes for a moment? How would you feel about a food truck court moving in next to your house and consider the constant issues pointed out in this email plus your loss of property value?

I thank you for your time and service to our island.

Carolyn McKeown
Pelican Watch Condo
Unit 605
706-202-4564

26141814v.1

 Outlook

Application Permit # 20240137 (2500 Estero Blvd, Food Truck Park)

From Ed French <e3sudz@outlook.com>
Date Tue 2/4/2025 10:35 AM
To jfrankel@fmbgov.com <jfrankel@fmbgov.com>
Cc Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>; Randal Briesath <briesath@theseismicgroup.com>

 1 attachment (83 KB)
food truck court opposition letter 2.25.pdf;

External email

Good Morning.

I am sending this email to you with my opposition letter regarding Application Permit # 20240137 (2500 Estero Blvd, Food Truck Park) attached.

Thank You,

Ed French III

February 3, 2025

Jason Smalley
c/o Town of Fort Myers Beach Planning and Zoning
2731 Oak Street
Fort Myers Beach, FL 33931

Regarding Project: 2500 Estero Blvd; Food Truck CPD

Dear Mr. Smalley:

I am writing to you today to express my firm objection to the proposed use of the property located at 2500 Estero Blvd. I have been on Cottage Avenue for over 50 years. As the long-standing owner of two properties that are located directly behind the project area that will be directly affected, I have many serious and valid concerns regarding the proposed uses for this project. The most crucial among those concerns are:

- Live outdoor music
- Added foot traffic through the neighborhood
- Added vehicle traffic through the neighborhood
- Commercial lighting from the applicant's property
- The vehicle access point to the applicant's property off of Chapel St.
- The change from a proposed temporary operation to a permanent operation gives me pause
- The operating hours for the paid parking are a concern
- The business hours for the bar and the music
- Who will be enforcing and regulating the 27 constraints that have been placed on this project to make it work? It should not be up to the neighbors to regulate the business and ensure that it is complying.
- Parking overflow on the side streets (Chapel Street and Cottage Ave) is a big concern

While there is value to the Town of Fort Myers Beach for this type of business, it should not be located so close to this type of neighborhood that we have. The potential value of reconstructed homes in the direct area of this project could be at least \$30 million in buildings and properties. While investigating the other food truck courts (Cape Coral, Bonita Springs, and Naples), I noticed that none of them operated in the type of residential neighborhood that we have. They are located in fully commercial or light industrial areas. Our neighborhood, just off of the Boulevard, should only be considered a light commercial area.

A permanent structure type of business similar to what was there before is what would work best for the neighborhood and the community. The other types of businesses that could work there are:

- A brick and mortar restaurant

- A brick and mortar building with a combination of ice cream, bakery, and/or coffee shop
- A brick and mortar combination butcher shop with a restaurant attached
- A brick and mortar liquor store
- A brick and mortar hardware store
- A brick and mortar T-shirt and trinket shop / Surf shop
- A brick and mortar indoor food court
- A brick and mortar reality office or office building

Prior to Hurricane Ian, the area surrounding the project address was and has been primarily a residential area. As people look to rebuild and restore what was lost, it still remains predominantly a residential area. The project as it is proposed would be suitable for a much more commercial area such as the former Times Square area or the new Margaritaville Resort area.

I have had trespassing and security issues with both of my properties for many years. People would daily trespass on my private property to gain access to the beach instead of using the public access walkway. Vagrants have had to be removed from underneath my homes as property was either stolen or damaged. Trespassers have parked illegally on my properties for years. This proposed project would only increase the safety and security risks to both my properties as it would only further encourage people to continue these bad behaviors.

Our little Cottage Ave neighborhood is a diamond in the rough. We understand as a neighborhood that there are things that we will have to put up with. However, this type of business will not help our neighborhood it will only add more pressure than it already has. For many years I have seen the Island grown from what it once was. Hurricane Ian has forever changed our island and the type of people who will not only come to be residents but visitors as well. The food truck court project would be better located in the Time Square business district as opposed to a residential neighborhood.

Thank you,

Ed French III
 2550 Cottage Ave.
 2548 Cottage Ave.
 Fort Myers Beach, FL 33931

From: Brandon Richards <bdrichards34@gmail.com>
Sent: Monday, February 3, 2025 8:25 AM
To: jfrankel@fmbgov.com
Cc: Randal Briesath <briesath@theseismicgroup.com>; Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>; dmoscoso@becklawyers.com
Subject: Vendor Food Truck Park Opposition Letter

Hi Judith. Please see the attached vendor food truck park opposition letter. Please forward this letter to all LPA members. Thank you. Brandon Richards / Pelican Watch 205.

Town of Fort Myers Beach

February 3rd, 2025

RE: 2500, 2510, and 2518 Estero Blvd. and 2543 Cottage Ave., Fort Myers Beach, FL 33931
Strap # 's 19- 46-24-W3-0120A.0100; 19-46-24-W3-01302.0000; 19-46-24-W3- 01301.0000; 19-46-24-W3-0120A.013A
CPD-Zoning - Vendor Food Truck Park

Dear Jason, Judith, FMB Staffers, and LPA Members,

For those LPA members who voted "NO" to the proposed mobile vendor food truck park, THANK YOU. To those staffers who are recommending approval of, and to the LPA members who voted "YES" to allow the proposed mobile vendor food truck park, I respectfully ask that you reconsider and recommended denial of and vote "NO" during the February 11th LPA meeting. I respectfully request this denial and "NO" vote for the following reason:

As discussed at the prior LPA meeting, a significant majority of the current land use surrounding this site is residential with a limited amount of commercial. Given the mix of surrounding land uses, the most suitable project for this site is mixed use with commercial at the front of the site along Estero Blvd. and residential along the back of the site, along Cottage Ave. As I am sure you are aware, there was an approved project of this type in October 2006, and it is on file with the Town (also located within the agenda documents for the LPA meeting). To be clear, I have nothing against a mobile vendor food truck park or parking lot, but given the significant increase in traffic, it should be located within a higher density commercial area, not a neighborhood that has significant residential presence.

As brought up by the applicant during the prior LPA meeting, they do not currently have the capacity available at this time to develop a "larger" project. A project such as a mixed-use project that would complement the neighborhood vs. be a detriment to the neighborhood, therefore, illuding to this project being a means to an end or a short-term project. This should not be a supporting reason to approve this project, as one LPA member did. By voting in this manner, one is voting to add an additional use to a parcel, a short-term use that may have long-term consequences and will follow the parcel by right. This is ever more important, when that use may have a long-term adverse impact on the surrounding neighbors. There is a possibility that this may be a viable long-term venture for the developer. In fact, I am concerned that a vendor food truck park may be a successful project, resulting in constant additional traffic within a neighborhood that has a significant residential presence. Therefore, casting a vote assuming the project has a limited future seems a bit shortsighted and minimizes the greater issue of traffic concerns and the potential value impact on the overall residential neighborhood.

Additionally, one LPA member stated that his reason for a yes vote was because he thought a commercial mobile vendor food truck park and parking lot would benefit the surrounding residential neighbors. This opinion contradicts an objective and unbiased professional / expert appraiser's opinion hired by the surrounding neighbors. This also contradicts over fifty residential neighbors' opinions who live directly adjacent to this project. While I respect everyone's opinion, when it directly contradicts a significant majority, including market driven data supplied within an objective appraisal, I would respectfully ask for reconsideration.

I realize that the Town is anxious to get commercial activity back to a more normalized pre-Ian state, however, I would urge you against approving this mobile vendor food truck park just because it is the only option available at this time. A better mixed-use option that is more suitable long-term for the entire neighborhood will present itself. I ask you to be patient, otherwise, the residential neighbors will forever be stuck with the consequences of a significant increase in commercial activity and traffic. This is avoidable and there will be better options in the future.

Lastly, if I still haven't convinced you that a mobile vendor food truck PARK isn't the best option for this site, and you still plan to vote for this project, I would respectfully ask that you would add a condition to your approval that would require this PARK to have operational hours commensurate with the town of FMB and Lee County PARKS, Dawn to Dusk. This will at least "limit" the negative impact that an increase in significant commercial activity, traffic flow, and noise will have on the surrounding residential neighbors.

In conclusion, I want to thank the Town Staff and LPA for all their hard work and for the time that they put into making these tough decisions for our community.

Sincerely,



Brandon Richards

Pelican Watch 205

From: rms3374@aol.com <rms3374@aol.com>
Sent: Monday, February 3, 2025 4:25 PM
To: Judith Frankel <jfrankel@fmbgov.com>
Cc: Randal Briesath <briesath@theseismicgroup.com>; Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>; Moscoso, David <DMoscoso@beckerlawyers.com>
Subject: Food Court Project

This is Richard and Jackie Siefring of Pelican Watch, Unit #307, 2532 Estero Blvd, Ft. Myers Beach. We have owned this unit since 2007 and, prior to that, a different unit in the building since 1994.

Our condo unit balcony faces to the North West so we would be very severely impacted by the food truck court which would sit just to the right and below our balcony. The food truck court being an outdoor service area would cause a major visual and noise disturbance with music, parking problems, portajohns, trash containers, litter, and possibly trespass onto our property.

We are not opposed to the right kind of development in the right location. During a recent meeting with Empire Holding, I inquired if there is a similar project in a residential setting. I was told there is a similar project in Bonita Springs. I went there to see it and had intention of speaking to homeowners in the neighboring area. Upon my arrival, I observed this area is surrounded on all sides by only commercial properties (public library, police department, auto parts store, grocery store). This food truck project in Bonita Springs is a very different type of location than that being proposed next to our residential building and the residences all sitting waterside of Estero Boulevard from Pelican Watch to Mango Street.

The valuation of Pelican Watch, along with the other properties under construction, represent approximately \$75 million which will have a diminished value if this food truck project is approved. This is harmful to both the property owners and to the Ft. Myers Beach tax base.

Pelican Watch is a residential community, not a rental hotel. These long term owners of Pelican Watch use the pool space in quiet activities of lounging, visiting, reading, etc. and quality of pool use would be greatly diminished with the food truck park sitting approximately 10 feet from this private pool.

Pelican Watch has incurred \$9 million in reconstruction and repairs following hurricanes since September, 2022. There has been no hesitancy to maintain our quality of property and property values.

The food truck court is not a long term infrastructure commitment, nor a major investment in amenities to support a business.

We would be supportive of a brick and mortar, contained establishment, next to our property, as long as adequate dedicated parking and driveways are provided in this space.

Richard and Jackie Siefring
Pelican Watch #307

2532 Estero Blvd.
Ft. Myers Beach, FL 33931
rms3374@aol.com
937 608-1671

26139934v.1

From: [whitehead](#)
To: jfrankel@fmbgov.com
Cc: [Berkey, Kathleen "Katie"; briesath@theseismicgroup.com](#)
Subject: Food truck court
Date: Friday, January 24, 2025 11:50:42 AM
Attachments: [shield-advisory.png](#)
[chevron-light.png](#)
[shield-advisory.png](#)
[chevron-light.png](#)

 External email >

 First time sender >

I am sending this email to emphasize my opposition to the food truck court in my backyard. I bought and lived at 2563 Cottage Ave because I loved the quaint little island it was and that it was the first schoolhouse on the island in 1937, which FMB historical association presented me with a plaque that hung on my house. How can you destroy a quaint little area of cottages which we had behind us and to the left down the block? This food truck court will destroy the quaint island atmosphere. Hurricane Ian completely destroyed my home, but we are slowly rebuilding to keep the cottage look in our area beautiful and pleasant to look at. We had to build now on stilts, and instead of looking at other cottages, we will now look down on a festival of roofs of trucks, noise and music, multiple smells all day and evening, lights blaring (which is also disturbing to nesting turtles during turtle season) which is very important. People will also be parking all over our property looking for spots and this will also make more traffic for us to get out. Fire and rescue and hydrants will also be inhibited. How will we enjoy our privacy and evenings with all this noise, lights and music blaring all evening, and waking us up early in the morning with nauseous smells of different foods, propane, noise, and trash throughout our properties. We will need constant police for traffic and problems and city workers to help keep the area clean. People will be dropping food which will be bringing unsanitary grounds that will bring rat infestation. The carbon footprints are also negative to our area.

Regards, Steve and Susan Whitehead

From: SUSAN BONFIGLI <sabonfigli@aol.com>
To: Amy Baker <amy@fmbgov.com>; Judith Frankel <jfrankel@fmbgov.com>
Sent: Thursday, January 23, 2025 at 03:21:48 PM EST
Subject: More on the Food Truck Park

Hi Amy,

Please forward this email to the LPA members and Town Council members.
Thank you.

Dear LPA Members and Town Council,

Again, I'm writing you regarding the proposed Paid Public Parking lot with accessory food trailer park and open-air beer and wine bar as well as outdoor live music located on Estero Blvd and abutting my residential neighborhood.

I've collected photos of our area including aerial shots captured on leepa.org. I've made notations on these photos showing the streets and two other existing businesses that abut our neighborhood. I've also included a couple of videos related to noises traveling easily in the open-air to our neighborhood. (The aerial shots I included were pre-lan so you can imagine our neighborhood full of homes again as we are a Residential area and some have already started rebuilding their homes.)

I would appreciate it if you could take the time to review the photos/videos and read the details I've posted with each on this Pinterest Page: <https://pin.it/21CmQu0Vn>

Things to note:

Increased Traffic in our neighborhood

The aerial shots showcase the proximity of the parking lot to our neighborhood and can allow you to perceive how the large lot is very likely to have a major traffic impact on our neighborhood streets even though the applicants imply that they can keep the traffic out.

The purpose of a parking lot is to attract cars. Although the idea of a food truck park may lead you to believe pedestrians and bicyclists will be the main visitors, existing traffic associated with Mom's food truck is evidence of the alternative -- it's a vehicle draw. It is foremost a paid public parking lot!

As a paid public parking lot, cars will queue on our streets as:

- 1) Those just looking for beach parking have to pay before actually entering the parking area. People digging into their wallets, locating their phones, distractions in the car, etc.
- 2) The entrance/exit area can't be traversed in both directions simultaneously due to the narrow roadway - Chapel St - and the narrow pathways inside the parking lot. i.e. Cars turning left from Chapel St into the lot are likely to cut in making the exit from the lot impassable by a right-turning exiting vehicle until the entering car completely enters the lot.
- 3) Those not expecting to pay to visit the Food Truck Park, will be caught off-guard. If they don't understand that they are credited the parking fee for making a purchase (or there is some

stipulation that they must spend at least \$X dollars before getting a refund or they are refunded \$Y for every \$Z spent, etc, they will be pondering these payment rules while debating whether or not to enter the parking area. They have to justify the cost or if they will incur no cost, all the while blocking traffic flow on Chapel St.

There are many that will decide the parking cost is not justified but only after turning onto Chapel St. They have no choice but to move forward to Cottage Ave. If they go left, they will have to turn around in a private driveway. If they go right, they will pass on the narrow street past our homes and then turn right onto Mango St only to approach another pay parking lot -- all dealing the delays as mentioned above.

With the lot open 24 hours or even until late at night, our neighborhood streets will be regularly traversed by vehicles that do not belong in our neighborhood. The streets are narrow. There will be back-ups. Vehicles may choose to drive onto private property to reverse direction as there is no room to do so otherwise.

Street-side parking:

Street-side parking is illegal in Fort Myers Beach. However, this does not dissuade those from doing so. As evidenced now, Mom's customers regularly park along the roadway on Chapel St and Cottage Ave. They also park on abutting private property as there is no one there to tell them, "no". There is the existing paid parking lot immediately next to Mom's, but patrons won't park there even though it is the legal alternative. No one wants to pay when grabbing a quick bite.

It's my belief that those parking illegally feel that they will get something quickly and be on their way. No one will even notice their vehicle on the roadway. However, as the parking situation worsens, that's an indicator that the process will take even longer. Now there's a queue of people to place their orders and more orders to prepare in a small trailer kitchen, all increasing the time the cars are illegally parked.

Regardless, these customers are not willing to pay a parking lot fee to pick something up at Mom's. They will choose to park illegally making our already narrow neighborhood streets that much more narrow as we try to pass by in our vehicles.

Should there be an emergency at my home or one of my neighbor's, we will be more at risk as emergency vehicles won't be able to reach us or we may not be able to reach Estero Blvd.

Wine and Beer Service:

When the applicant at the last LPA meeting indicated a justification for 24-hour parking was to allow those inebriated to leave their vehicles overnight, my heart sank. Why are we allowing an open-air parking lot beer and wine service next door to our homes? Are the patrons going to become boisterous so we can hear them as well? The only thing permanent in this Food Truck park is the open-air bar!

Outdoor Amplified Music:

Outdoor amplified music travels. It's not containable. It will be a constant disruption to the neighbors. These are our homes where we've enjoyed peace and tranquility with occasional disruptions, as would be in any neighborhood. Allowing outdoor amplified music means that this will be forever and no reprieve for the neighbors.

Indicating that sound meters can be placed to ensure noise levels are not exceeded misses the point. There will never be peace again in our neighborhood. Constant "acceptable" decibel noise is still constant noise to the neighbors.

The amplification by a single speaker or a couple of speakers streamlines the sound in the direction pointed. Whether a single musician or two musicians, it may as well be a whole band when it's amplified. Note: On one occasion when Sandy Bottom's was open under a tent last year, I could hear the person on the microphone encourage the patrons to "make some noise!" And they did!!!! It wasn't even "amplified" for it reach my home. And should I call in a noise disturbance, if the responding agency doesn't get there at the moment of the violation, there will be no proof.

I would expect that if there is no live music, the food vendor may choose to play amplified music -- their own speaker systems. If each plays music, the conflicting sounds can also reach our homes. Some reading may remember when when Yo Taco and Rude Shrimp were across from Lani Kai and each played loud music that seemed to compete with each other. Just walking or riding my bike by played on my nerves -- never mind having it by my home for hours at a time! (I felt bad for the employees having to hear this noise during their shifts.) I also noticed this noise conflict in Times Square when Yo Taco was there, competing with La Ola.

Odors:

The means of controlling food odors in a food truck park isn't something that exists that I'm aware. As I've mentioned at other meetings/emails, we regularly smell cinnamon buns and bacon at our home. On occasion and for brief moments in a day, these are pleasant smells. But there are times when the smells are overwhelming giving the feeling that there's no oxygen in the air.

Add multiple food trucks with their food odors disbursing and colliding, we will have more opportunity for lost fresh air.

Storm/Wind/Hurricane Safety of our Homes and Property:

It appeared to surprise the applicant at the last LPA meeting that they would ultimately be responsible for ensuring the food trucks would vacate the premises during an evacuation order. And although it seems logical that the owners of these trucks and the other loose items (chairs, tables, umbrellas, sail shades, trash cans, etc), would want to protect these items as to avoid the costs of replacement with a pending hurricane, it's evident that this does NOT always happen in Fort Myers Beach. The impact and costs can also now fall on the neighbors!

It doesn't even have to be a hurricane that makes these open-air, non-permanent structures an issue on that property and for the surrounding properties. Consider the unfortunate experience the Millers had to deal with at both the The Whale and Sandy Bottom's properties when bad weather brought down their huge tent twice! When they were operating Sandy Bottom's last year, there are several times I noticed their furniture blown over after unnamed storms. Mom's port-a-potty tipped during one of these unnamed storms last year, never mind during the hurricanes. (No attempt to remove or strap down for the hurricanes.)

I've noticed the sail shades at MoJo's come down and completely disappear as a result of unnamed storms. I included a photo of the Chamber's trailer showing a flying sail shade on Jan 22 -- yesterday. Just a windy day!

We've also had "normal" storms with lots of rain turning Estero Blvd to a flowing river. Without water surface management put in place at this "food truck park", the modified parking surface and food truck platforms will likely create flowing water off the property compared to the porous sand that's there today, potentially creating new water problems on our neighborhood streets as well as Estero Blvd.

What happens when these unnamed storms happen overnight when no one is attending the food truck park? Is this now just the neighbors' problem?

Safety/Security:

An open parking lot and trailers in an area where activity is low at night and neighbors are sleeping will be an attraction for those with bad intent. We can expect to have more strangers walking our neighborhood in the hours of darkness as they have a great big parking lot to hang out in. The trailers and support equipment (chairs, tables, umbrellas, etc) may be an attractive nuisance to those who are less uninhibited due to alcohol consumption. These same people are likely to access the beach whether it be at the beach access or through one of our neighborhood properties.

Existing Commercial Properties and How They Fit In:

Per the aerial photos, you can see that there is a public paid parking lot and Mom's properties abutting our residential neighborhood. In order to fit in with the neighborhood, the Town set up ordinances to ensure we meshed.

Per Judith Frankel, the 2 existing commercial properties on Estero Blvd abutting our residential neighborhood have ordinances in place to protect our neighborhood.

Ord. 17-03 governs 2450 Estero Blvd: 17-03-2450-Estero-CPD-FINAL-Moms No outdoor entertainment was approved as part of that CPD. Hours of restaurant operation were limited to 1am to 4pm.

Ord. 18-07 governs 2440 Estero Blvd,: 18-07-Mango-St-Parking-Lot-2440-Estero The hours of operation are limited to “sun up to sun down”.

I would expect that the "food truck property" which abuts our same neighborhood have ordinances in place to similarly protect us.

What should be on this property?

The issues above can be eliminated and drastically minimized by having a permanent structure on the property whose purpose to attend to the needs/wants of those parking on this property.

A permanent structure that can contain its business without imposing on the next-door neighbors is appropriate. Parking on the property should be only for those doing business on the property. Noises and smells can be contained. Traffic will be purposeful and contained. Traffic will not be encouraged into our narrow neighborhood streets as those turning on Chapel St. have a purpose -- to turn into the parking area of this permanent structure and stay at this permanent structure. Service vehicles to the property can enter and exit on Chapel St and not traverse the other neighborhood streets.

A permanent structure built to today's codes is better able to protect its contents and keep these contents from impacting neighbors in a storm, be it a named storm or not. The requirements to ensure surface water management will be part of the construction to eliminate excess water flowing onto the streets and thereby impacting neighbors.

Summary:

The Town has respected our neighborhood in the past while still allowing abutting commercial property owners to be successful. Please consider that anything allowed on this property could exist in perpetuity as it is deemed allowable. Parking lots have proved successful low-cost uses for commercial property owners on Fort Myers Beach. There is no enticement to build something permanent in the future as it will be income-producing and have lower taxes than if there was a permanent structure.

Temporary structures will forever be a problem in protecting our neighborhood properties for both name and unnamed storms. The temporary items themselves plus the rain waters will now and forever spill off the property onto neighboring streets and onto our properties.

We already have a commercial public parking lot abutting our neighborhood. Adding another that also sells wine and beer and homes temporary food trucks/trailers introduces and forever allows nuisances to our neighborhood with no one to manage, but us, the neighbors.

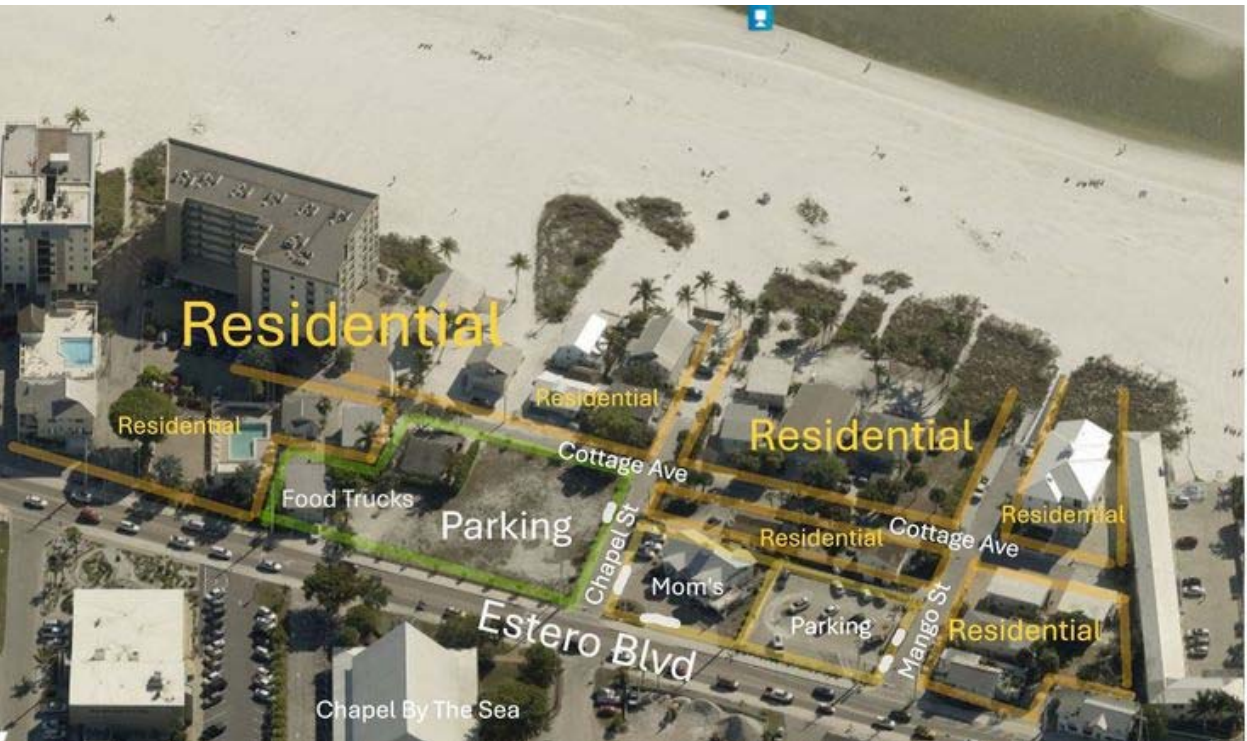
I appreciate you reading what I've written here and on the Pinterest Board linked above.

Appreciatively,
Susan Bonfigli

2434 Cottage Ave

Fort Myers Beach

SUSAN BONFIGLI
sabonfigli@aol.com



Pictures and Videos with Captions Hyperlinked (Pinterest) to Susan Bonfigli Objection E-mail
Dated 1/23/25: <https://pin.it/21CmQu0Vn>



More Appropriate for permanent structure with dedicated parking

The property is better suited for a permanent structure with parking dedicated to the use of the structure. The public that parks on the property should be encouraged to stay on the property and not traverse the residential area which completely surrounds this property.



We do not need to add massive beach parking to our residential neighborhood

Per Judith Frankel, the 2 existing commercial properties on Estero Blvd abutting our residential neighborhood have ordinances in place to protect our neighborhood.

Ord. 17-03 governs 2450 Estero Blvd: 17-03-2450-Estero-CPD-FINAL-Moms

No outdoor entertainment was approved as part of that CPD. Hours of restaurant operation were limited to 1am to 4pm.

Ord. 18-07 governs 2440 Estero Blvd,: 18-07-Mango-St-Parking-Lot-2440-Estero

The hours of operation are limited to "sun up to sun down".

It makes sense that the "Food Truck" property also align with the neighborhood. Outdoor noise, alcohol consumption and other disruptions (ex. smells, service vehicles) are not appropriate. There is no need for all this public parking, encouraging people to wander our neighborhood.

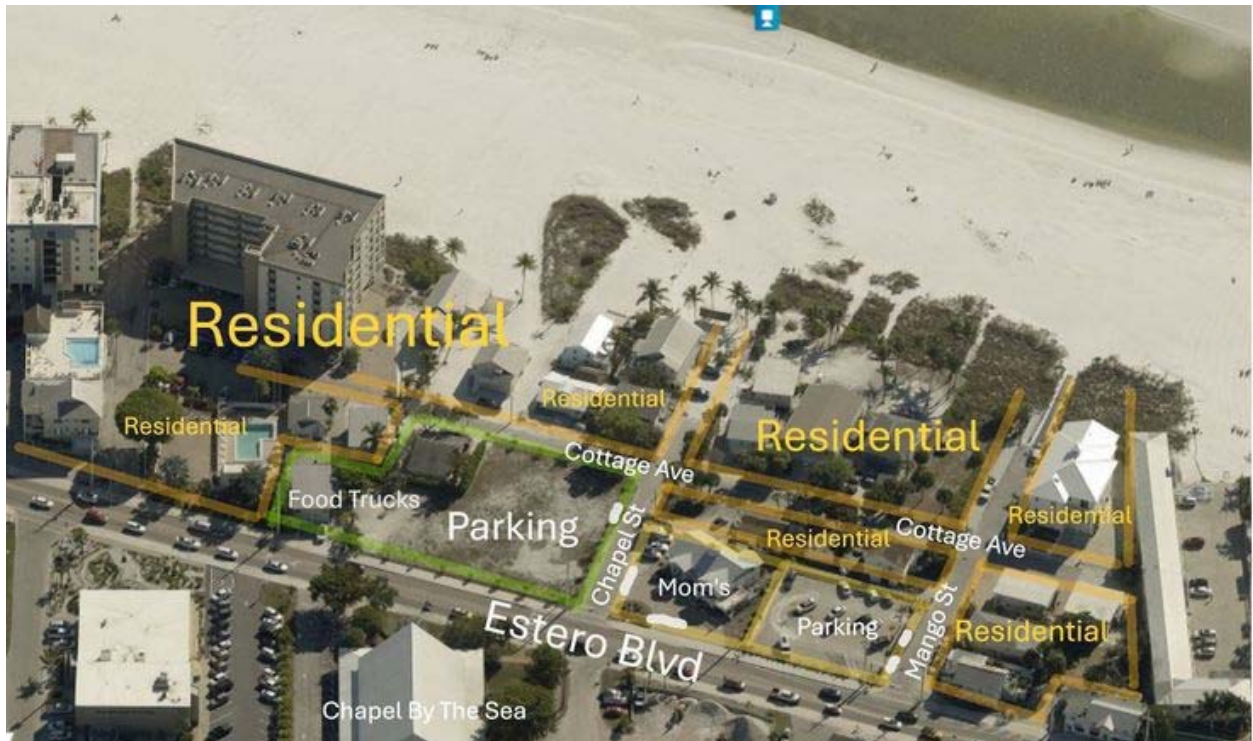


Just one foot truck – starting must at 7:30am ...all day long!
One food truck can put out music that reaches across Estero Blvd to our home beginning at 7:30am and going all day long into the night! If multiple can run music simultaneously, the noise pollution will be atrocious. This is likely when the one-person/2-person band isn't playing. Again, the speakers are open-air and the noise will travel. I had so much anxiety last year with Sandy Bottoms and then the Cuban's food truck -- it was loud and ran "forever". Especially annoying when the singer says, "let's hear you make some noise!"
Again, the video doesn't compare to what is actually heard at our home.



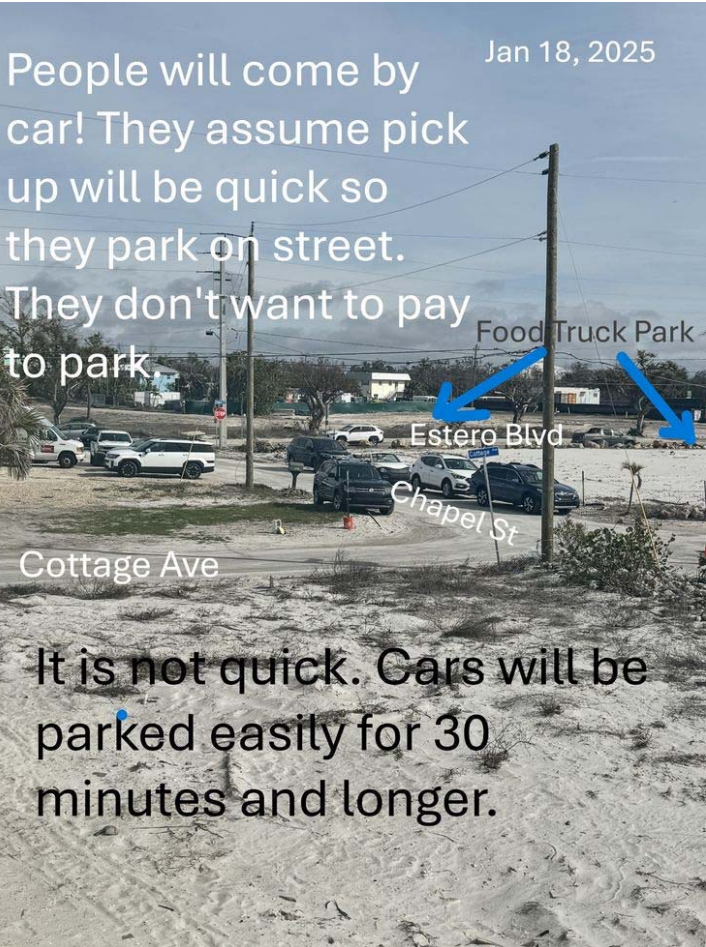
Single speaker is loud even this far away!

Sandy Bottom's set up under a tent last year. There single speaker system directed sounds in a singular direction - toward my home. I could feel vibrations in my home and hear them outside my home!
We don't want to be inundated by noises daily from early in the morning until late at night! We need peace. These are our homes! We are not in a party district and don't want our neighborhood changed into one.
Again, a permanent structure could strategically place speaker pointed so that just those on premises hear it. This won't be possible with an outdoor system. (My cell phone recording did not do justice to what I was actually hearing when making this video. It's more disruptive in person.)



Parking Area Encourages Using Residential Street – Cottage Ave

When potential Food Truck customers drive in Chapel St, they will learn it's pay parking. They will continue onto Cottage Ave not having time to learn that there is a purchase option to reimburse parking fee. Cottage Ave solely serves the residences on this street and should not have commercial traffic which disrupts our neighborhood. Those not willing to pay to park will park roadside on our residential streets. Cars entering Mango already queue up to enter that pay parking lot making it difficult for residents to exit/enter Cottage Ave to Estero Blvd.

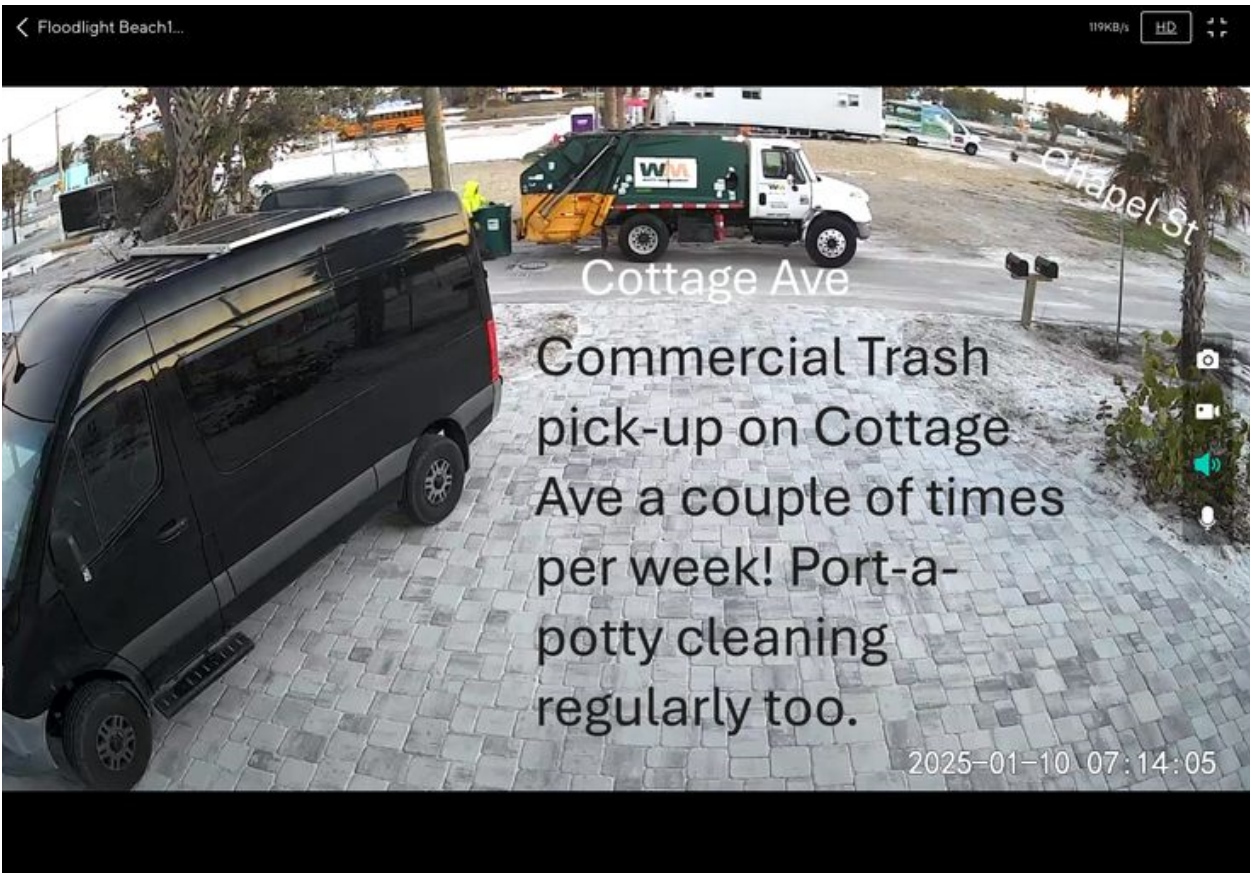


The expectation of just parking for “a minute” is a fallacy.
It's assumed that visitors to the trailer park will be pedestrians and cyclists. I'm sure they will come. But as evidenced by Mom's, cars will come. They will assume quick turn-around and choose to park in any direction along and on the roadways of our residential neighborhood. They will block our streets. This is from January 2025. We're not in season yet.



Recent Parking in all directions and on roadway, including residential streets

As evidenced by Mom's, cars will come. They will assume quick turn-around and choose to park in any direction along and on the roadways of our residential neighborhood. (Turn around is usually quite a while - even 30 minutes as there's a line to wait in first, then the wait time for the order to be prepared.) They will block our streets. This is from January 2025. We're not in season yet. There have been times I've had to squeeze out of my driveway onto Cottage Ave because of the commercial patrons parking on the roadway in front of my driveway.



Commercial Service vehicles traverse our residential street regularly creating noise & disturbances

Cottage Ave does not have any commercial businesses, yet the commercial service vehicles regularly come down our street several mornings a week creating noises that wake us. They tend to park in front of our home as they place and pick-up orders at Moms on these days too.



Things will fly away when attended. Permanent Structures avoid this problem.

We've seen MoJo's deal with their disappearing sail shades. The Millers lost their big tent twice due to big unexpected winds - once at the Whale and then last year at Sandy Bottom's. For the brief time that Sandy Bottom's was operating in 2024, I've seen the chairs and tables blown over more than once. I've seen Mom's port-a-potty tip more than once and when there wasn't a hurricane involved! These things can happen overnight when no one is supervising the business. There could be detrimental impacts to neighboring and nearby properties.

These are generally not issues when a business operates out of a permanent structure.

Having a dependency on multiple people (each food vendor, etc) doing the right thing is putting our neighborhood at risk.



Panoramic view from our residential neighborhood home – parking everywhere!

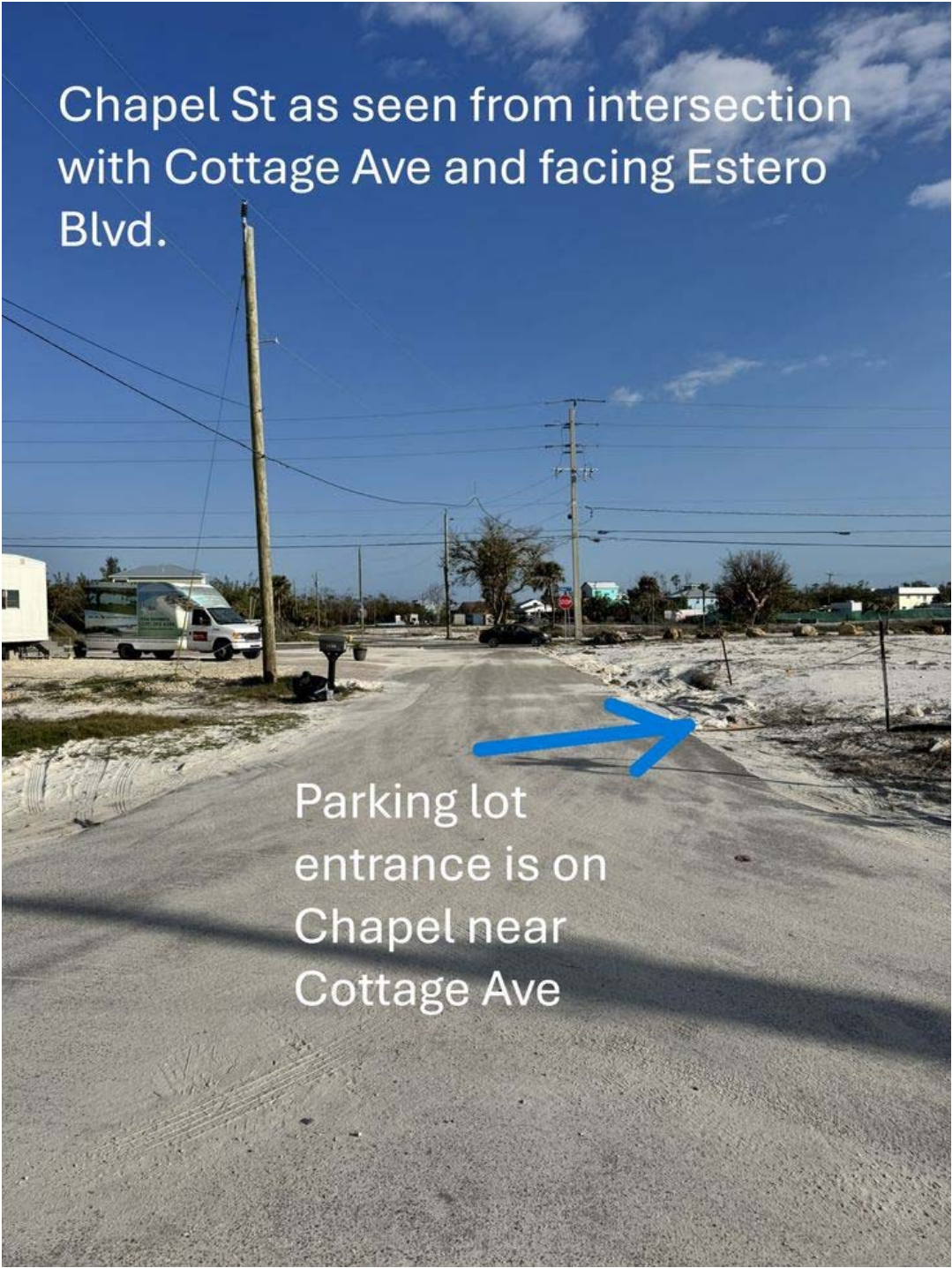
I'm hopeful that homes will be built someday on the properties across the street from our home on Cottage Ave. Unfortunately, they will inherit the view I'm looking forward to being hidden from me in the future. There's the existing parking lot on the corner of Estero and Mango. And now they want to build a huge pay parking lot that will be along Chapel St corning around Cottage Ave on the residential side and Estero Blvd, opposite. That's a lot of public parking lot for a residential area!



View from my home on Cottage Ave. Another huge Parking lot!
The proximity of this proposed food truck park and paid parking area will bring noises, smells, pests, and other nuisances to me and my neighbors all hours of the day and every day of the year!
Open-air alcohol sales do not belong with a parking lot and not by a residential neighborhood.



Not a lot of room for competing vehicles to turn on our neighborhood streets
Our streets are narrow. Parking lots invite cars! This property should not be selling parking which encourages cars. It should be a permanent structure that can allow visitors in cars to park without issue on their property when visiting their property.



Chapel Street is narrow. The parking entrance-exit is close to Cottage Ave
It's very likely that many intending to use the food truck parking lot will enter/exit onto Cottage Ave and circle around to Mango St. The whole purpose of a parking lot is to bring cars! We don't need or want cars traversing our neighborhood!
A permanent structure that has parking dedicated to its patrons is what should be allowed on this property.

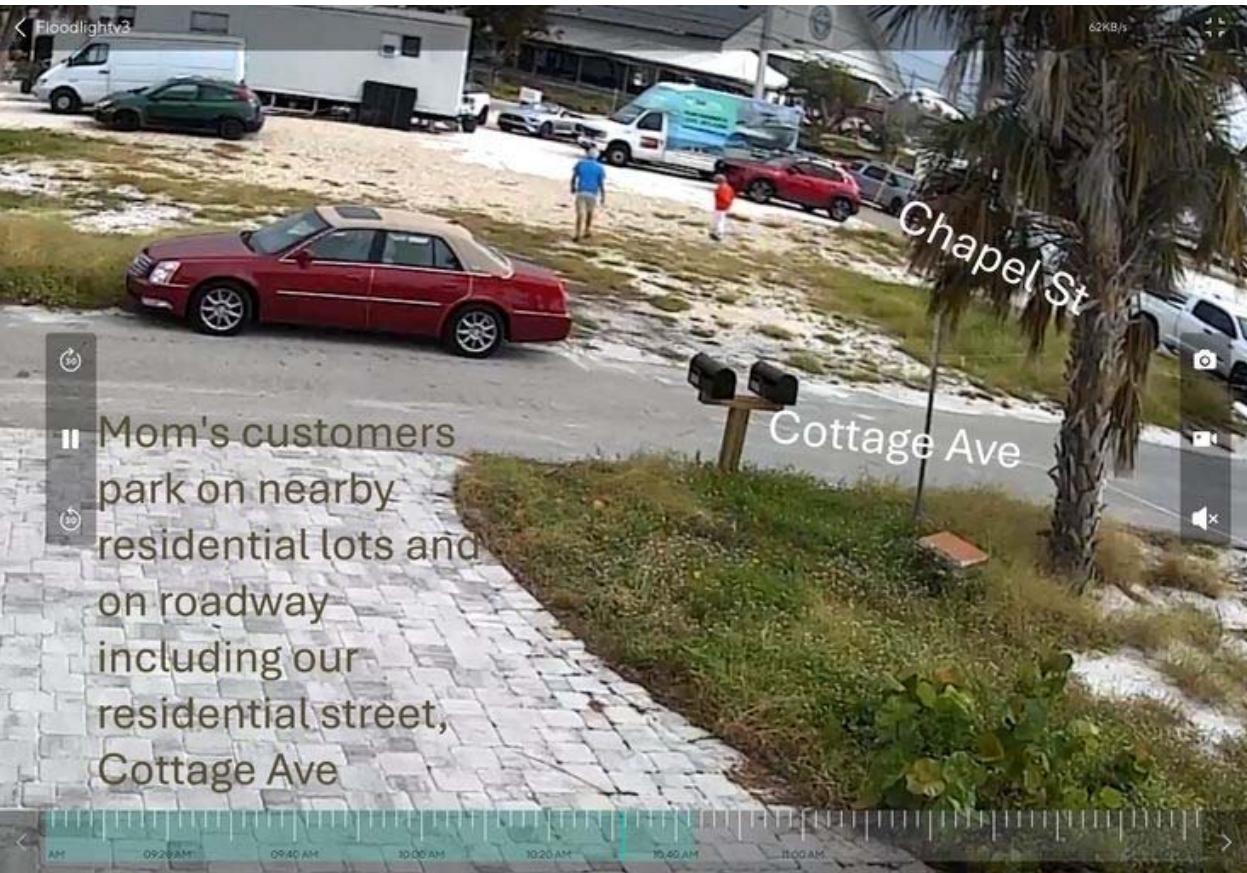


Cottage Ave is a neighborhood street, not a public thoroughfare
Parking lots invite cars! Those in the cars may turn into Chapel St thinking that they'll park for free and eat at the food truck park. What happens when they see it's paid and they would get reimbursed? They are already on Chapel St. They will undoubtedly continue onto Cottage Ave. If they turn toward Pelican Watch, there will be U-turns on private property. If they turn the other way, there will be delays and queues building on Mango St to Estero Blvd. We will have the same issues that Connecticut St through Shell Mound neighborhood deal with, but our problem is brought about by a public paid parking lot!
Make this a permanent structure with its dedicated parking to avoid endless loops of drivers!



Chapel Street is short and narrow. Impacts will be felt on Estero by cars waiting to park.

As with any paid parking, there's a delay associated with finding the access point, determining if the payment is worth it. If worth it, then payment has to be made and access given. Add those trying to exit at the same location onto a narrow street with those cutting the left turn in short, we will have delays! This will make Chapel St a blocked street for the neighbors hoping to reach or exist on Estero. The same already happens on Mango, but that won't last as long as that lot has fewer spaces.



October 2023 – they were parking on the streets then too
Again, not peak season and we have a food truck business serving those who arrive by car. These drivers park on the streets instead of using the pay parking lot immediately next door.



Parking on private property is common as well

Historically, people will choose to park illegally and without concern for the impact on neighbors rather than pay to park...or choose to walk or take a bicycle.

From: Cecile Carstensen <cecile@pelicanwatchrentals.com>
Sent: Saturday, February 1, 2025 5:54 PM
To: jfrankel@fmbgov.com
Cc: Moscoso, David <DMoscoso@beckerlawyers.com>; briesath@theseismicgroup.com;
Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>
Subject: Food Truck Park

To the members of the Local Planning Agency

I am sending this email to you to express my disapproval of the food truck park that is up for vote. I am not going to repeat, although I do agree, the concerns of trash, smells, noise, traffic, loss of property value, etc., as those negatives have already been addressed at the January 9, 2025 meeting and in the many previous emails you received. I am very sorry that so much was invested in this property, but please consider those of us who also invested in this beautiful, quiet part of the island that we expected to remain beautiful and quiet. From the meeting on January 9, I got the impression, I could be wrong, that none of the LPA members reside on Chapel, Cottage, or in any of the surrounding condominiums. What if you did? How would you vote? I think I already know the answer and you do, too. I also feel that by saying “family entertainment center” and “we want it to be a family place...for the little ones” is just a way to try to touch our hearts and have us think “aww, they’re doing it for the kids, how nice”. Other than slushies, and perhaps a few games, I didn’t hear anything that would have the children begging their parents to take them to the food truck park when instead they can be at the beach where they can play in the sand, build sand castles, search for shells, jump the waves and use their imagination. All I heard was food, tools, merchandise, and music children will probably not be interested in. These, as well as the previous concerns, are my reasons as to why I hope you consider the effects this would have on the neighbors and make a conscientious decision to vote NO on this project. Thank you for reading this.

Sincerely,

Cecile Carstensen

Owner of 1/2 of Unit 503 in Pelican Watch since February, 2012

Sent from my iPhone

26131734v.1

From: Pat Ooykaas <pat@pelicanwatchrentals.com>
Sent: Saturday, February 1, 2025 8:21 PM
To: jfrankel@fmbgov.com
Cc: Randy Briesath <briesath@theseismicgroup.com>; Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>; Moscoso, David <DMoscoso@beckerlawyers.com>
Subject: Food Truck Court

To whom it may concern

Myself, my husband and our 3 grown children own unit numbers 107, 502, 503 and 603 in Pelican Watch located at 2532 Estero Blvd

We bought our first unit (107) in November of 2009. The second unit (603) New Year's Eve day 2009. The other two units were purchased a couple of years later.

We bought into this building because of the location. Across from Chapel by the Sea, town hall and the Tops grocery store. 107 is our second home. I'm there every 6 to 8 weeks. We love it there.

This open food truck court that is being proposed, will have an adverse affect on our building. Our 107 lanai is about 100 feet from the property line of the food court. This will affect all the owners in the 7 and 8 stacks.

The noise will be unbearable to sit on our lanais if they are allowed to be open from 7 in the morning until 10 at night.

The traffic will increase because there will be parking access for the beach. People not knowing that Cottage is a dead end into our parking garage will inadvertently drive through it causing a hazard to our owners who have under building parking spaces. We have two of them.

There will be people all over our property. We already have this problem now.

We are afraid that all the home values will decrease in the area because of this project. ie smells from garbage, port a potties, flies and rodents

We are not against a food truck court. We like going to them, trying out different foods. We just don't believe this is the correct spot for it as this is a residential area. Our privacy will be threatened. Our pool is street side which means our quiet days in the pool are over.

When my husband and I first walked into 107, we knew we were going to make an offer on the unit even though we hadn't looked at any other properties yet. It just felt like home. It is our little piece of paradise. This food court will take that away from all of us on these two blocks.

Please consider how you would feel if you owned property next this proposed project as we do .

Thank you.

Dick & Pat Ooykaas
and the Ooykaas Family
Sent from my iPhone

26131768v.1

From: Russell Burgett <burgettr@yahoo.com>
Sent: Saturday, February 1, 2025 3:57 PM
To: jfrankel@fmbgov.com
Cc: Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>; Moscoso, David <DMoscoso@beckerlawyers.com>; Randal Briesath <briesath@theseismicgroup.com>
Subject: Food Truck Court Rezoning

Dear Judith Frankel,
I am writing this email to provide my personal feedback on the proposed zoning change.
Please include the attached letter in the meeting packet for the LPA committee.

Thank you,
Russell Burgett
2532 Estero Blvd, Unit 101
Ft. Myers Beach, FL 33931

Date: February 1, 2025

To: Judith Frankel
Katy Berkey
Randy Briesath

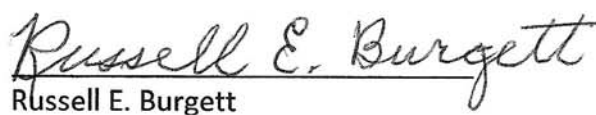
From: Russell Burgett
Owner of unit 101 for 30 years
2532 Estero Blvd. Unit 101
Ft. Myers Beach, FL 33931

How will this change in zoning benefit The Town of Fort Myers Beach? How much tax revenue does a condo like Pelican Watch bring to the city? Currently, it generates approximately a thousand dollars per unit and there are 48 units. How does this compare to the revenue generated by a change in the zoning for the property in question? If left alone as residential it has a much greater tax potential for the city as condo or private/rental homes.

In order to attract evening customers, the food court will need to provide entertainment, especially if it will be dealing with the "late night" crowd (open until 10pm). Does it have liquor licenses already or are they a future request? The evenings will not be quiet times in the Pelican Watch neighborhood and residents may be calling the police about the noise, additional expense to the city. Customers of the food court will be missing the trash containers when they overflow and "garbage" will be blowing around. Who, on this property will be cleaning that up or will it be the city? There is also the attraction of rodents to discarded food. Who pays for the pest control? Since this is a "buy and take away" operation during the daylight hours, the crowd in the evening is more "sit down" and after a few drinks may need a restroom. Who provides the porta-potties and the regular pickup schedule?

Our Pelican Watch property values will take a hit because of the proximity to the food court and the negative impression it will make on future buyers and renters. Please leave it zoned residential.

Signed,


Russell E. Burgett

From: Lee Dornfeld <ldornfeld@outlook.com>
Sent: Saturday, February 1, 2025 10:53 AM
To: jfrankel@fmbgov.com
Cc: Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>;
dmoscoso@becklawyers.com; briesath@theseismicgroup.com
Subject: No- food truck court

Hello,

Please find the attached letter opposing the food truck court.

Thank you,

Lee Dornfeld
Pelican Watch # 505
(502) 445-5289

Denise Hourigan

2532 Estero Boulevard #505
Ft. Myers, FL
dmhdmd@gmail.com

February 1, 2025

Dear Ms. Frankel,

My name is Denise Hourigan, the daughter of Lee and Donna Dornfeld. I am writing this letter on behalf of the Dornfeld family who have owned unit 505 at The Pelican Watch Condominiums for over 35 years. We strongly oppose the rezoning effort that would allow for multiple food trucks, live entertainment and alcohol sales late into the evening. The proposed plans abut our pool area and detract from the serene environment that many retirees have worked there entire lives to enjoy. Many people in our community cite The Pelican Watch as their primary residence and living next to a loud and busy gathering spot from dawn til late night devalues their property. We do remember patronizing a restaurant, The Mucky Duck in that locale. We believe either a restaurant or retail/condo space as originally zoned is a more appropriate option. Please find another site for the proposed food truck/live music venue near the pier or hotels where it is much better suited. Don't allow the residential charm the Pelican Watch has enjoyed for decades be destroyed.

Sincerely,

Denise Hourigan

26131807v.1

From: Mavis Sutton <mavis2532@gmail.com>
Sent: Saturday, February 1, 2025 8:50 AM
To: jfrankel@fmbgov.com; dmoscoso@becklawyers.com; Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>
Cc: Randal Briesath <briesath@theseismicgroup.com>
Subject: food truck park

My name is Mavis Sutton and I own unit 305 in Pelican Watch at 2532 Estero Blvd. I have owned it for 34 years and have so enjoyed the warm family atmosphere of Pelican Watch when I bring grandchildren and now, great grandchildren to the condo. I have been following the permitting process of the mobile food truck park that is proposed to be placed right next to our property. To have this food truck park 10 feet from our pool fence is upsetting. Our privacy at our pool will be gone or, at least, disturbed. I am upset by the idea that there will be patrons of the park watching what is happening at the pool through our fence. The noise and food odors will be pervasive and not welcome by our owners or our renters.

The financial impact will be felt immediately upon the approval of this project as I believe that having this project in our backyard is a detriment to the value of each of our units and it will not be something that renters will want to contend with. Also, the number of cars and people will be increased and that adds more nuisance noise to our area. The music until 10 p.m. is not a welcome event either.

I would ask that you seriously weigh the importance to the beach of having the food truck in this area or having tax-paying owners happy with the environment of Pelican Watch. Please vote this project down.

Thank you for listening.

Mavis Sutton
260/668-2369
mavis2532@gmail.com

26131817v.1

From: Kirk Banerian <kbanerian@comcast.net>
Sent: Sunday, February 2, 2025 8:25 AM
To: jfrankel@fmbgov.com
Cc: Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>; Moscoso, David <DMoscoso@beckerlawyers.com>; Randal Briesath <briesath@theseismicgroup.com>
Subject: letter addressed to LPA committee re. food truck park

Hi Ms. Frankel,

As an owner at Pelican Watch Condominium, please find attached a letter we wrote concerning our opposition to the food truck park plans being presented to the board. Please include this letter in the LPA committee members meeting packets for their upcoming meeting. We plan on attending the meeting in person as well on February 11th.

Thank you and have a great day.

Kirk Banerian, M.D., FACR

February 1, 2025

Dear LPA Committee Members,

We are owners of a condominium at Pelican Watch 2532 Estero Blvd. #404. We have owned our home since August 2015. We began coming to Fort Myers Beach with our young family in 2000 as I (Kirk) began to work for Radiology Regional Centers. We fell in love with the small community of Fort Myers Beach. It became home away from home with every visit. We dreamed of someday being able to afford a place on the beach to enjoy with our family. After years of searching, we found our beloved Pelican Watch. It was across the street from our favorite grocery store, Topps, our welcoming church, Chapel By The Sea. It was down the street from the town's library. We had favorite small businesses we enjoyed supporting, Mom's (Heavenly Biscuit), The Shamrock, The Cigar Hut, Tetley's. Our list could go on but we think you can understand. We were far enough from the hustle and bustle of Time Square but, just close enough to be able to walk and enjoy everything. We could have bought anywhere down the Gulf coast but we chose Fort Myers Beach for its community. People and businesses invested in their community. We supported each other. Businesses provided us with services that improved our quality of life on the beach and we supported their businesses so they could survive. Some of that has gradually changed, as with any community but, we saw some changes as positive improvements. However, Hurricane Ian not only destroyed our community but also seemed to have clouded the focus of leadership on the best parts of what draws people to the community of Fort Myers Beach. We live here for the very reasons we outlined above. We look forward to seeing this town rebuilt with businesses invested in the community and improving the quality of life for those of us that live here. That means brick and mortar establishments not transient businesses where community investment is not a top priority. As an example, if you recall, Topp's supermarket made many monetary investments to the community they served, Fort Myers Beach. Your hometown parades were filled with floats representing those invested in this community, small businesses, churches and school bands walking together. We as homeowners at Pelican Watch have invested millions of dollars to rebuild our home so we can stay in this community. Please consider the list below which outlines how we see the consideration of an open air food truck court destroying our quality of life and the large monetary investment we have made to rebuild.

Food trucks in residential neighborhoods can generate several negative impacts, primarily concerning noise, traffic, parking, litter, and potential impacts on the character of the neighborhood.

- **Rezoning of residential lots.** By rezoning the 2 residential lots, the commercial zone which was along Estero Blvd, would now be encroaching on our existing private residences. The introduction of a food truck court would alter the character of our residential neighborhood, leading to increased commercial activity in an area that is quieter and more residential. We are investing in our building and pool area and by rezoning the residential area, the port a potties, for example, will be within feet of our private property and destroying our investment and quality of life.
- **Noise and Disturbances:** Food trucks generate noise from generators, cooking equipment and music which contribute to increased noise pollution in our quiet residential area, disrupting our peace and tranquility. The late night operations, including stages for bands,

being so close to our home will cause noise disturbances that will affect our sleep, especially for those of us who still work and where sleep is vitally important to our health and well being.

- **Increased traffic and congestion:** Food trucks can attract a large number of customers, leading to increased traffic congestion in our neighborhood, particularly during peak hours. Large amounts of foot traffic and trespassing on our private property is of great concern. The increased traffic and pedestrian activity around food trucks can increase the risk of accidents or injuries in our neighborhood. In addition, many who purchase from the food trucks are going to want to access the beach which leads to trespassing on our property. Also, once on the beach, usually accessed and used by homeowners, there are no public accommodations like restrooms or public receptacles for garbage.
- **Incidents of crime.** There are crimes that occur at food truck parks. Many crimes occur after the parks are closed including vandalism and stolen generators. Unless the area is gated, locked and well-lit this will occur. How does that improve the quality of life for those of us who live here? We continue to have a homeless population that live on the beach. Food truck parks are a perfect place for them day or night. As private homeowners, we are being put in the position to have to deal with safety issues and with those that are vulnerable who need professional help. Again, our quality of life is affected.
- **Parking issues:** Because there are no parking requirements for food truck parks, customers will struggle to find parking, potentially blocking our driveways or creating parking conflicts with us as residents. Trespassing on our private property and using our private parking lot to park may require us to have to take on a great expense of having our private property monitored 24 hours a day, 7days a week. Traffic will inevitably occur on Cottage Street which leads to our private property to include under our building. Once on Cottage there is no way to turn around leading to traffic going under our building to again lead them out onto Estero Blvd. We invested a lot of money in our driveway and brick paver parking lot. It was not engineered to be used for a large volume of cars. In addition, there is the safety concern of the continuous flow of cars under our building and on our pedestrian walkways.
- **Litter and waste:** Food trucks generate a significant amount of waste, including food scraps, food packaging, napkins, and other disposable items. This will lead to increased litter in our neighborhood, impacting its aesthetic appeal and cleanliness. In addition, poor sanitation management leads to rat infestation in the park area and can bleed into neighboring buildings which will affect our quality of life.
- **Wastewater and sanitation:** Food trucks produce wastewater from cleaning, sanitation, and washing, which pose a risk to our local water quality. Food trucks also have the potential to increase their carbon footprint by using too much energy or producing too much waste. Food trucks rely on vehicles, which can contribute to air pollution and greenhouse

gas emissions. Depending on their energy source (e.g., diesel, propane) and efficiency, they can contribute to environmental burdens.

- **Potential for grease and oil spills:** Food trucks may have accidental spills of grease or oil, which can contaminate the environment and pose a health risk to us as residents and to wildlife. This is especially of deep concern being so close to the beach. Protection of the turtles is of great importance to many; hazardous waste, bright lights, loud noises will have a negative impact. In addition, grease and oil, pose a challenge for waste management and environmental sustainability.
- **No investment in the community.** Nothing speaks to commitment to a community like a brick and mortar business. The presence of a food truck court will discourage businesses from making any permanent business investment in Fort Myers Beach. The low overhead and operating costs of food trucks means they do not have the number of employees that a brick and mortar business would have. A business committed to our community employs those who live and work here. This tends to be small independent establishments. Food trucks, unlike restaurants, do not contribute as much to local tax revenue through property taxes, impacting our local budgets and services They are transient businesses that make no commitment to the community.
- **Loss on our investment.** Although this is our home, it is still an investment which we made in good faith for our family and to the community of Fort Myers Beach. Food trucks have been proven to lower property values and also detract from future investments by potential homeowners. Could “food truck” also include an establishment that sells other products besides food as is seen in Time Square, i.e., legalized marijuana, t-shirts and sunglasses? Why would any family buy a home with that potential in their back yard? Some research suggests that food trucks can create negative externalities, the increased traffic, parking issues, and potential for increased crime, can be perceived negatively by potential homebuyers and lead to lower property values. In some cases, the presence of a large number of food trucks in a neighborhood might be perceived as a sign of decline or lack of investment, potentially deterring potential homebuyers and lowering property values.

As homeowners, invested in this community, we hope you see the future of Fort Myers Beach as we do. A shared community of homeowners and businesses invested in the community working to support each others quality of life. We hope your vision can include improving our quality of life to include too for the lives of future generations, small family owned grocery stores, churches, a vibrant community center and a safe community absent of transient establishments.

Thank you,

Kirk and Leslie Banerian
2532 Estero Blvd #404
Fort Myers Beach, FL 33931
kirkbanerian@gmail.com

26131839v.1

From: lylerg@sio.midco.net <lylerg@sio.midco.net>
Sent: Sunday, February 2, 2025 9:50 AM
To: jfrankel@fmbgov.com
Cc: Moscoso, David <DMoscoso@beckerlawyers.com>; Randal Briesath <briesath@theseismicgroup.com>; Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>
Subject: Proposed food truck court

To:
Judith Frankel
Principal Planner Food Truck Court

From:
Lyle & Sheryl Grenz
Unit #302
Pelican Watch Condominium

To all whom it may concern,

We are contacting you with our concerns regarding the proposed Open-Air Food Truck Court along Estero Blvd and adjacent to Pelican Watch Condominiums property.

Prior to purchasing at Pelican Watch in 2018, we would walk past and admired the building and surrounding properties. The screenless lanais, wow!

When we started to consider PW, several other things became added benefits, underbuilding parking spot, location of the pool which was far away enough from the building to be in the sun all day, homes on the north side of the pool to give it a nice residential & private feeling, an enclosed area to spend time poolside visiting with other owners and having guest and grandchildren join us. We are enjoying our little piece of paradise!

Bringing an open-air food truck court next door would change this little piece of paradise and not for the better. Here are several of our concerns.

Our main access to our private parking space is Chapel St. & Cottage Ave. (which dead ends at PW property). With the added traffic of the food court coming and going on the narrow streets coming and going will become challenging. We hope any type of business would thrive, but once that happens, parking becomes premium, which then overflows onto streets and other parking lots.

Our little piece of paradise gives us direct access to the main reason people come to FMB "the Beach". Over the years we have seen incidents where people are not satisfied with public access to the beach, so they have used PW parking and property, which as you are aware is trespassing. Once a person would have the access to an available parking spot at the food court, they also may feel they have the right to use a shortcut to the beach - PW private property. Along with extra automobile traffic, come extra foot traffic. The added foot traffic would add security risk

for us, our grandchildren and guests as they navigate their way from the PW building to the pool area.

With the open-air food courts that we have visited, there have always been problems with where to put the left-over food and trash. Along with leftover food and trash, there is the smell, trash falling out of containers blowing around & rodents become an issue, no matter how hard they've tried. We certainly do not want to attract that to an area where there is a swimming pool area with people lounging.

As we mentioned earlier, the privacy of our pool has made it a place to visit with other owners and guests. The open-air food truck court proposal for music would take that away. Yes, maybe the music may not start that loud, but we all know music brings louder conversations and louder conversations brings louder music, now PW's conversations become harder. PW has 12 to 18 units that would be directly affected by the noise & music on their lanais, because they face in a direction of the food court.

Our little piece of paradise, which we purchased for our family to enjoy for many years, did come with a significant amount of dollars. We don't see how an open-air food court next door would not have a negative effect on it.

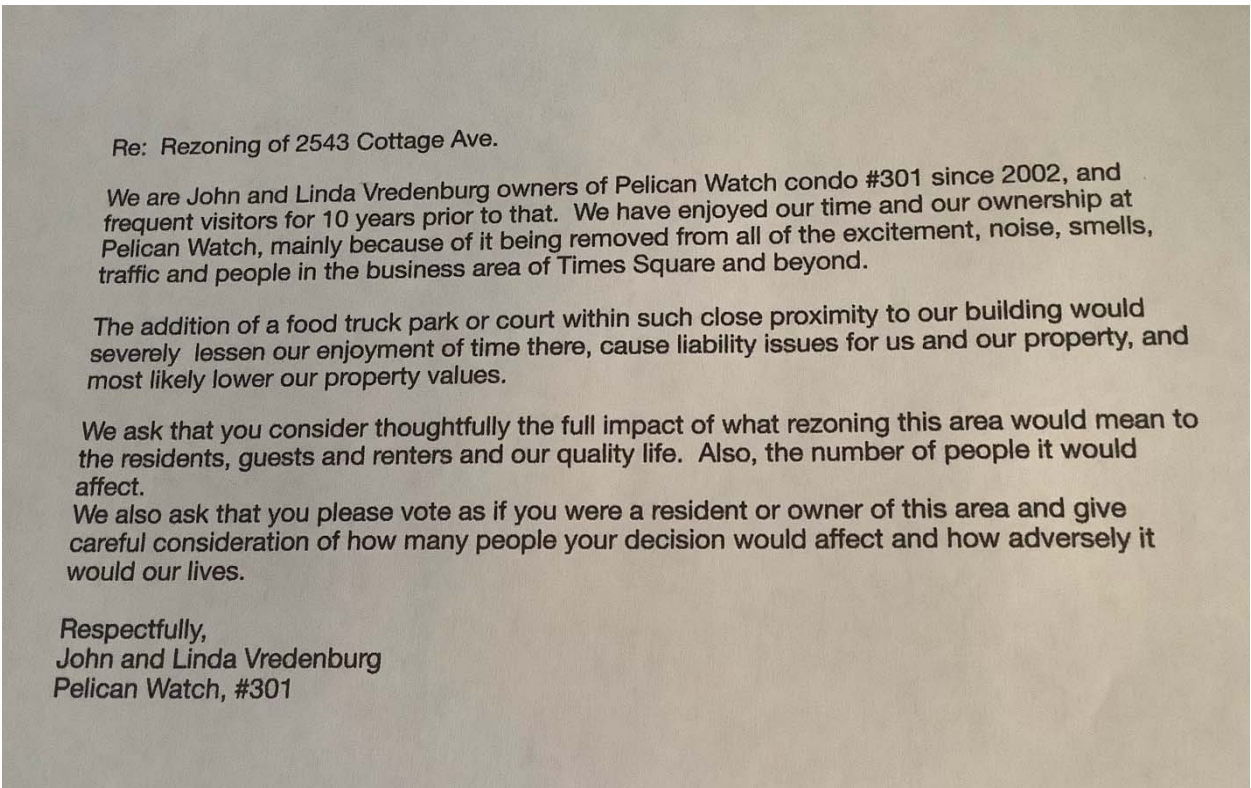
We want nothing more than for FMB to rebuild and thrive after the devastating blow Ian had on it. At a time when food trailers and trailers in general are fighting to stay, why would this be the right fit?

Respectfully,

Lyle & Sheryl Grenz
2532 Estero Blvd #302
Fort Myers Beach, FL 33931

From: John Vredenburg <jvburg7@gmail.com>
Sent: Sunday, February 2, 2025 9:07 AM
To: jfrankel@fmbgov.com; DMoscoso@berkerlawyers-com; Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>; Randal Briesath <briesath@theseismicgroup.com>
Subject: Rezoning Cottage Ave.

I apologize if you were unable to open my first email.
Thank you.
Linda Vredenburg



From: JOYCE LACAVA <flandct@msn.com>
Sent: Sunday, February 2, 2025 11:31 AM
To: jfrankel@fmbgov.com
Cc: Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>; Moscoso, David <DMoscoso@beckerlawyers.com>; briesath@theseismicgroup.com
Subject: Proposed food truck court

Dear Ms. Frankel,

I am the owner of unit #201 - for over 35 years - in Pelican Watch at 2532 Estero Boulevard.

I would like to voice my opposition to the proposed food truck court.

I fear that the residential character and atmosphere of our building will be lost. The lifestyle that we have at Pelican Watch will definitely be affected and changed.

I can only imagine the amount of noise, food odors, and garbage that will be generated. Portable bathrooms are definitely another concern. If alcohol and music are going to be part of the court, that is definitely another issue.

Another concern that I have is the food courts close proximity to our pool area and fence which is a possible liability - not to mention that there goes our enjoyment of our pool if we have to listen to the noise and smell the food odors.

I feel that it is inevitable that there will be vehicles going under our building - which is where the walkway from our lobby to our beach access is. This walkway is used by seniors and parents carrying beach chairs, etc. and children running across to get to the beach.

Also, wondering and concerned if patrons of the food court will be bringing their food and drink and beach furniture and radios on to our area of the beach. What will happen to the trash that will be left behind? We all know that there will be ! Who is responsible for cleaning that up and disposing of it?

My final concern is about how this will affect the value of my property. It will undoubtedly reduce it. I know that I personally would not be interested in purchasing a unit where I would be next door to a food court and where my pool and beach enjoyment would be affected.

I hope that you will take all of these concerns into account when making your decision.

Thank you for your attention to this matter.

Joyce LaCava
Unit #201
Pelican Watch
2532 Estero Boulevard
Fort Myers Beach, Florida

From: kim stickley <stickley10@yahoo.com>
Date: February 2, 2025 at 11:44:26 AM GMT-5
To: jfrankel@fmbgov.com
Cc: Randal Briesath <briesath@theseismicgroup.com>
Subject: Food truck court
Judith

We are writing you to share our concerns with the food truck court proposal on Fort Myers beach as it would be adjacent to our condo at Pelican Watch.

My wife and I have some concerns which are listed below.

1. Traffic congestion

Traffic is all ready heavy in this area and this would make it even worse as people try to pull in and out of the parking lot

2. Parking

We have enough parking in our building for the owners and a few guests.

If they can't handle the crowd they may end up overfilling our lot.

3. Noise

This is primarily a residential area where people in their units can sit In the evening and enjoy the view. If they have loud music this takes that away from us.

4. Safety

Our building has parking below the building where we can drive through and exit at the end. I am afraid people will see this as a way to drive under our building to avoid the congestion at the entrance to the food court. Most of us have young grandchildren who will be walking to the beach and crossing where they would be driving. I'm not sure how we could prevent this from happening.

5. Values

If what we fear could happen if this goes through it would surely drive our property values down at Pelican Watch and at the other nearby building.

Please take this into consideration and vote against the food truck court.

Thanks
Kim and Pam Stickley
owners of unit 501 Pelican Watch since 2015

From: Barbara White <bwhiteks@gmail.com>
Sent: Saturday, February 1, 2025 9:39 AM
To: jfankel@fmbgov.com
Cc: Randal Briesath <briesath@theseismicgroup.com>; Moscoso, David <DMoscoso@beckerlawyers.com>; kberkey@lawyers.com
Subject: Opposition to Proposed Food Truck Park Development Near Pelican Watch Condos

To whom it may concern,

Please find the following letter on behalf of Barbara White, owner of unit #108 Pelican Watch.

Barbara White
2532 Estero Blvd, Pelican Watch unit #108. I have owned the condo since June of 2024 but have rented in PelicanWatch since 2001

January 30, 2025
TO:
FMB Planning Agency members
FMB Town Council
FMB staff
Subject: Opposition to Proposed Food Truck Park Development Near 2532 Estero Blvd, Pelican Watch Condos
Dear Members of the Fort Myers Beach Town Council, Planning Agency members, and staff:
We are writing to express our opposition to the proposed food truck park development located within 500 feet of our condominium at 2532 Estero Blvd, Fort Myers Beach. While we support reasonable and thoughtful development that enhances our community, the open-air format of this proposed project raises significant concerns about its potential impact on the quality of life for nearby residents.

Our specific concerns include:

1. **Noise Pollution:** Open-air food truck parks often bring prolonged and amplified noise, including music, crowd chatter, and vehicle sounds, particularly during evening hours. This noise is disruptive to the residents of our condo, many of whom value the peace and quiet of our neighborhood.
2. **Light Pollution:** The bright lighting required for evening operations can intrude into residential units, affecting sleep and overall well-being.
3. **Odor Issues:** The constant cooking from food trucks produces strong odors that can permeate the surrounding area, making it unpleasant for residents to enjoy their own homes.
4. **Increased Traffic and Parking Problems:** A food truck park in close proximity to a residential area is likely to draw significant vehicle traffic, exacerbating congestion and creating parking challenges in our neighborhood.
5. **Trespassing and Safety:** The presence of an open-air venue nearby could lead to visitors inadvertently or intentionally trespassing onto condo property, raising concerns about safety and security for our residents.

6. **Proximity to Residences:** The proposed location's close proximity to our condo exacerbates all of the above issues, creating an unsuitable environment for a residential community.
7. **Property Values:** We are also concerned that the project with all the above mentioned issues will lower the property value of our condos and damage our substantial investment.

While we are not opposed to development that supports local businesses and enhances community vibrancy, we believe that projects should be designed with sensitivity to the surrounding neighborhood. A food truck park in such close proximity to residential properties, particularly one with an open-air format, is incompatible with maintaining a high quality of life for nearby residents.

We urge the City Council to reconsider the location and format of this proposed development. Alternative sites farther away from residential properties or a different format that mitigates noise, light, and traffic impacts could serve the community's interests without compromising the well-being of its residents.

We appreciate your attention to our concerns and are available to discuss this matter further if needed. Thank you for considering the voices of your constituents in this important decision.

Sincerely,

Barbara White
2532 Estero Blvd, Pelican Watch unit #108
bwhiteks@gmail.com
816-536-1759
Barbara White

From: Gary Wiltse <gwiltse930@gmail.com>
Sent: Monday, February 3, 2025 8:20 AM
To: Judith Frankel <jfrankel@fmbgov.com>
Cc: kberkey@beckerlawyers.com; dmoscoso@beckerlawyers.com; briesath@theseismicgroup.com; Lori Wiltse <ljwsunshine@yahoo.com>; Gary Wiltse <gwiltse930@gmail.com>
Subject: Fwd: Food Truck Court

Food Truck Court Proposed Development

Judith,

My name is Gary Wiltse. My wife and I are owners at the Pelican Watch Condominiums adjacent to the proposed open air food truck court project. We have been owners of Unit 507 since 2021. We have endured many hardships since becoming owners at Pelican Watch such as Hurricane Ian, Hurricane Helene and Hurricane Milton to name a few. Now that we have regained some sort of normalcy and began to enjoy our slice of paradise we are once again facing another issue with this proposed open air food truck court project.

This proposed project if approved will provide many issues for us as well as the Pelican Watch community as a whole. These include:

- unwanted and annoying music and noise. The food court property is visible looking out our lanai and master bedroom window. The music and loud noise would be very problematic for us and our neighbors adjacent to us.
- an over abundance of traffic and trespassing issues on Estero Boulevard and along our adjacent side streets which is already a major issue and will only be made worse. We already have outsiders parking their vehicles on our property and trespassing on our property to access the beach.
- a financial hardship most likely would come with the reduction of property values for our unit and our community as a whole. We have all endured many financial investments and burdens after the extensive damage to our property caused by the hurricanes and now that we are working towards completing all of the repairs and updates we would hate to lose our valuable investment due to this project being approved.

Please consider our issues and concerns when evaluating whether to approve or deny this project. We do not want to see this project move forward in any capacity.

Sincerely,

Gary Wiltse

Pelican Watch Unit 507

231-220-1515

26134901v.1

From: Rick Bruner <rickbruner@gorge.net>
Sent: Monday, February 3, 2025 10:27 AM
To: jfrankel@fmbgov.com; Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>; briesath@theseismicgroup.com; dmoscoso@becklawyers.com
Subject: Food Court Proposal on the 2500 block of Estero Blvd.

To whom it may concern,

I am Rick Bruner, and I am a current owner at the Pelican Watch, adjacent to the proposed food court. I have owned my unit 206, with the Hardin family for 12 years and have been coming here for the last 25 years. I just wanted to state vehemently my opposition to this proposal based purely on the proximity of this project to our complex, pool, and my unit....all within 100 yds at the farthest point to our property... Not only has just the prospect of this project's impacted our real estate price already, but the additional noise that would accompany this "beach bar" would be totally unacceptable. We live 800 yards from the Diamondhead and Beach Bar to the north and as I sit on my lanai, I can hear the music from there..... 50 yards from my lanai and directly adjacent to our pool will totally impact me and all our neighborhood residence for the reasons we moved here to enjoy the ambience of the beach lifestyle. I realize that the Ft Myers Beach has changed over the years and Ian has only expediated that change, but I implore the powers to be to try to keep some of the old Florida charm that brought us all here to begin with..... We have a huge area to our North for the bars, noise, restaurants, and tourism, I just implore you to let our beach neighborhoods retain some of that quiet that brought me from the east coast of Florida to the west coast .

Best regards, Rick Bruner

26136497v.1

From: Robin Amesbury <robinamesbury@gmail.com>
Sent: Monday, February 3, 2025 12:33 PM
To: jfrankel@fmbgov.com
Cc: Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>; Randy Briesath <briesath@theseismicgroup.com>; DMosocoso@beckerlawyers.com
Subject: Consideration of Approval of Food Truck Site Near 2532 Estero Blvd.

My wife and I own unit 306 at Pelican Watch Condominiums at 2532 Estero Blvd. We have been there since early 2021. We do not rent the unit out, we use it as our part time abode.

The proposed food truck project is very near to our building. Our unit is on the North end of the building, so that any noise from the proposed project, whether music or otherwise would have a direct impact on us, impinging on our right to quiet enjoyment of our home.

The area involved here is heavily residential. There have been no commercial enterprises on the Gulf side of Estero Boulevard for a good distance (perhaps a half mile) on either the north or south many years. On the landward side of the Blvd. stood the now demolished church and the now demolished Municipal building and the adjoining space that was supposed to be a future Firehouse. There are few residences on that side of the Blvd near the proposed project. By comparison, there are many. many residential units adjacent to and in proximity to the proposed food truck development on the Gulf side.

Collier county recently approved the development of food truck projects -- but only away from residential oriented sites -- the projects being limited to parks.

We have been told a 10 foot "buffer space" would be provided between our property (near the pool) and the proposed food truck project. Clearly this would result in the destruction of property values.

Please do not approve this proposed project. The site on which it is proposed is not appropriate. In general, a food truck project would be on the low end of choices for maintaining a wholesome upscale reputation for Fort Myers Beach if any such project is adjacent to residential areas. I refer to this as the Honky Tonk risk, and it brings Myrtle Beach in the 1990s to mind.

Respectfully,

Robin and Karen Amesbury

 Outlook

Additional Opposition letters
Submitted Post Agenda

Food Truck Opposition Letter

From Randal Briesath <briesath@theseismicgroup.com>
Date Thu 2/6/2025 3:42 PM
To Judith Frankel <jfrankel@fmbgov.com>; amy@fmb.gov <amy@fmb.gov>
Cc Albuernes, Milena <MAlbuernes@beckerlawyers.com>; Moscoso, David <DMoscoso@beckerlawyers.com>;
Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>

 1 attachment (15 KB)
Opposition Letter 2.4.24.docx;

External email

Judith and Amy,

Attached is Randal and Pam Briesath opposition letter to the food truck development project.

Thank you for your service to our community,
Randy and Pam Briesath

Regarding the proposed food truck court development

Dear LPA committee and council members,

My wife and I have been owners at Pelican Watch since 2012 and purchased our unit to be close to the north end entertainment area but not end up in or adjacent to an outside entertainment venue.

We are supportive of the commercial development of this site for both the sake of the property and the city as a whole. We are supportive of an enclosed commercial development with site specific parking (no paid public parking). The sort of open air entertainment venue being proposed, especially with the developer seeking permanent approval, will forever change the function of the property and the tranquility of the adjacent residences.

We are also concerned that the order of the whole process is a bit upside down. It is our belief that the city should first study and adopt food truck park ordinances and regulations, then allow a developer to fit into those criteria. Right now, the developer is basically helping the city craft these as they go through the application process. We think this is evident due to many deviations and mitigations being sought and offered by the applicant. Actually the number and type of deviations alone tend to speak to the unsuitability of this site for applied for purpose.

Further, the applicant has not nor been required to submit a traffic impact study which seems ironic given the impact this will certainly have on Estero traffic flow.

A main issue, and one that should certainly be considered, and is now verified through expert report, is the detrimental effect on all the adjacent and Pelican Watch property values. We would think that the committee and council would consider a “do no harm” type of approach to residents and owners. This project will have a direct negative impact on us as soon as this project gets approved.

The proximity issues of this project to us adjacent owners just can’t be mitigated with this proposed development. The day this site opens for business will be the last quite day we and our fellow owners will ever have at our pool.

With the numbers of deviations, the residential adjacencies, and the likely neighborhood consequences (trespass, litter, noise, etc) the city must consider their ability to enforce their regulations and problems when the residents complain – and today there simply seems like there is a lack of resources, budget, or will to take this on – thus leaving us holding the bag on the problems we all know will be there.

Let’s be patient with development, and do it right (not fast) for the long-term health of our island community. Please vote no to allowing this development.

Randy and Pam Briesath

Pelican Watch #203

Additional Opposition letters
Submitted Post Agenda

Memo to: Fort Myers Beach LPA Committee

From: Gary Fields, Former President, Pelican Watch

Date: February 6, 2025

Re: Objection to reasoning to accommodate Food Truck Park at 2500 Estero

LPA Committee members:

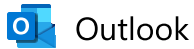
I wish to vehemently object to the rezoning necessary to accommodate the proposed food truck park at 2500 Estero Blvd. I will attempt to refrain from restating the many objections you have already received (traffic, noise, odor, in a residential area) and limit my comments to areas which you may not have not considered.

1. The project developers have repeatedly stated that the proposed development as a “family oriented” destination that will address the shortage of opportunities for children and grandchildren. These frequent statements are erroneous and deceptive. There are only 4 non-hotel properties that I am aware of that serve alcohol and have live music - the Beach Bar, La Ola, Nervous Nellies and Snug Harbor. I am a frequent customer of all of them and I can confidently state that they are rarely children at any of them. They are adult entertainment facilities more accurately described as a “Beer Garden.” The description of the proposed development serving an unmet family need is an attempt to minimize the disruptive perception of the impact.
2. The Town’s sound ordinance will not preserve the quiet environment expected in a residential and small commercial area. This is due to two factors.

A. I have used a professional sound measuring device to measure the sound level at the public area adjacent to La Ola, where consistent sound around 75db was measured. While this was only slightly above the Town’s sound ordinance, this would mean that allowed music would be within 10 feet of the Pelican Watch social and pool area, used for the quiet enjoyment of hundreds of people. While Pelican Watch owners have been aware of a potential commercial enterprise next to the pool, no one has anticipated the possibility of 70 db sound all day. Imagine having La Ola level sound within 10 feet of your home. In addition, adjacent homes and at least 12 lanais are only a short distance away and will receive a similar level of noise due to the lack of an adequate barrier for higher level sound mitigation.

B. The noise level at La Ola and this summer, the Beached Whale temporary tent enterprise, consistently exceeded the Town’s sound ordinance. This suggests that the Town and Lee County do not have the necessary personnel to enforce the sound ordinance. This unfortunate situation is understandable, due to the many burdens from Hurricane Ian. But we should recognize that adding to the enforcement burden will not give us the deserved protection and it is better to consider prevention (denial of the rezoning) than relying on unrealistic enforcement expectations.

Thank you for your consideration. Please reject the rezoning and permitting.



Outlook

Additional Opposition letters
Submitted Post Agenda

Food Truck Park - Estero Blvd - FMB

From kminor8341@gmail.com <kminor8341@gmail.com>

Date Thu 2/6/2025 9:31 AM

To jfrankel@fmbgov.com <jfrankel@fmbgov.com>

Cc Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>; 'Randal Briesath' <briesath@theseismicgroup.com>; dmoscoso@becklawyers.com <dmoscoso@becklawyers.com>; kminor8341@gmail.com <kminor8341@gmail.com>

External email

Hi There – My wife Wendy and I (Kevin Minor) are the owners of unit #105 in Pelican Watch Condo and I too am concerned about many things regarding the “Outdoor Venue – Food Park”. I used to own the house at 2530 Cottage up to 2018 and had many issues with transient homeless persons breaking into my cottage or, more often, sleeping on and under my picnic table or in my bushes. I believe that this outdoor venue will attract some of this same element. So, my concern is about safety and the policing of the venue.

In addition, I am also concerned that Cottage Ave, which terminates into our parking lot, will allow people to drive under our condo building, and through our private parking lot creating traffic that did not exist before.

Then the obvious issues with proximity to residential property, safety, trash, and unpleasant odors is of concern to me. I also assume that FMB would also like a better property tax base that comes with a permanent structure vs this food truck park. I would entertain a permanent venue.

Thank you for doing a wonderful job putting FMB back together but I’m not in favor of the open venue food truck park.

Kevin & Wendy Minor
262-853-8341
2532 Estero Blvd, Unit #105
Fort Myers Beach, FL 33931

Additional Opposition letters
Submitted Post Agenda

From: liam oloughlin <Liam@loloughlin.com>
Sent: Wednesday, February 5, 2025 12:19 PM
To: Judith Frankel <jfrankel@fmbgov.com>
Cc: liam oloughlin <Liam@loloughlin.com>; Kelly S. O'Loughlin <ksoloughlin@gmail.com>
Subject: Letter of Opposition for Development of 2500 Estero Boulevard, Fort Meyers Beach, FL

Good afternoon,

Ms. Frankel, please see the attached letter of opposition listing our objections and concerns for the food truck and parking development at 2500 Estero Boulevard, Fort Meyers Beach, FL.

Thank you,

Liam O'Loughlin

L.O'Loughlin Construction Services
30111 Bates Road
Perrysburg, Ohio 43551

419.699.0070

Liam@loloughlin.com

Note: Florida has a very broad public records law. Most communication(s) to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications and email address may be subject to public disclosure.



Town of Fort Meyers Beach
2525 Estero Boulevard
Fort Meyers Beach, FL 33931

Additional Opposition letters
Submitted Post Agenda

ATTENTION: Judith Frankel

Please accept this letter of opposition to the Development at 2500 Estero Boulevard, application number 20240137. Our objections and concerns are listed below.

We are the property owners of 2553 Cottage Avenue, Fort Myers Beach, Florida.

Please accept this letter of opposition in addition to our letter sent in January 2025, of CPD Application #20240137, where the “Applicant is requesting to amend the existing CPD RES#07-28 to provide for "Option B" - Master Concept Plan and updated Schedule of Uses to allow for the development of a food truck park with outdoor seating and a commercial parking lot. This action will replace the previously approved "Option A" MCP for the CPD.”

We also have concerns that a request to expand the previously approved CPD boundaries to include 2518 Estero and 2543 Cottage Avenue was included in a separate ordinance.

We strongly oppose the proposed rezoning from residential to commercial, the proposed mobile truck park planned, and or approving the commercial planned development.

COMPARISONS

We have looked at comparisons of food truck parks in the Fort Meyers area:

- **Bonita Beach** - *Rooftop at Riverside*, 27333 Old 41 Rd, Bonita Springs, FL 34135. Commercial area permanent 2-story structure with supporting amenities.
- **Naples** - *Celebration Park Naples*, 2880 Becca Ave, Naples, FL 34112. Commercial area permanent structure with supporting amenities.
- **Fort Meyers** - *Bay Street Yard*, 2136 Bay Street, Fort Meyers, FL, 33901. Commercial area permanent structure with supporting amenities.

Additional Opposition letters
Submitted Post Agenda

With the comparisons that we’ve reviewed, the food truck parks were supported by commercial businesses – both retail and beverage – and none were in a residential area.

Per the proposal submitted by the neighborhood company, all the codes referred to are for temporary structures. This is not typical in any commercial development.

BUILDING STRUCTURE

This is a commercial enterprise. This should be considered under Federal, State, and Local Applicable Laws, Ordinances, and Codes for Uses and Structures for Commercial proposes.

All the proposed structures refer to the code “Minor Structures.”

The proposed development requires an additional structure for Beer and Wine sales; this structure is not defined in the code for minor structures.

SCHEDULE OF USE

Temporary Uses - Pert Sec 34-3041: Temporary Use can only be 10 consecutive days. Only 3 times a year. Permits expire within 30 days.

BUFFERS

Plans calling for a 10’ Buffer from the adjacent property line for 2553 COTTAGE AVE - THIS IS NOT CORRECT.

The Fort Myers Beach ordinance reads SF-R to COM C/F 15’ BUFFER 6' High Fence. However, this ordinance may serve a purpose with structures at a ground elevation. As residential property owners, we are forced to build all new residence to meet new regulations, which has our residence elevated. As a property owner, we would like to address the code SF-R to COM F which is a required 30' buffer

with vegetation that would address the new regulations imposed on the rebuilding of new homes.

JURISDICTION AND CONTROL

Typically, in a public food and beverage environment/business, there is jurisdiction governing licensing requirements and processes, including inspections to ensure safety and cleanliness. We cannot find any laws, ordinances, codes or requirements published by City Fort Myers Beach that pertain to Mobile Food Parks and their regulations.

ITEMS OF CONCERN

Pests/Wildlife
There is no Grease Trap included for control of the Grease. This is paramount due to issues that arise from a lack of Grease Traps. The increase of rodents/pests/wildlife. In residential area is a primary concern.

Trash Enclosure

Refuse enclosures are all within 10’ of residential property.

LIGHTING

The required lighting with the proposed Buffer, the light glow will transfer to adjacent residential property with the limited Buffer proposed. Also, our calculations for the proposed Five Food Trucks will not meet the requirements of Chapter 30.1 related to visual light.

VISUAL

Additional Opposition letters
Submitted Post Agenda

As per requirement, we are building Elevated Structures and our line of sight is significantly higher in view of:

- Trash enclosure
- Public Bathrooms
- Public Showers

PUBLIC SAFETY

Who will oversee the park for all public safety/security during business hours and after hours in the park including all Public Restrooms and Auxiliary Structures.

TAX REVENUE

Does the proposed plan anticipate revenues to support City Life Safety Services required for the purpose

SUMMARY

This plan is not applicable to the residential neighborhood in which it is proposed. Typically, this type of proposal is in a commercial platform, as you can see by all mobile food truck parks referenced. The support of commercial retail spaces is typically necessary for its success. We feel that the commercial application of a food truck park in a residential neighborhood would adversely effect the residents and their safety, security, living conditions, and quality of living. This would also be considered a breach of “quiet enjoyment”, which is the right to peacefully enjoy your property without unreasonable disturbances.

Thank you for your attention to this matter.

Mr. and Mrs. Derek O’Loughlin
2553 Cottage Ave
Fort Myers Beach, Florida 339321
STRAP: 19-46-24-W3-01303.0000
Folio ID: 1022775

Additional Opposition letters
Submitted Post Agenda

From: Rick Robshaw <rickrobshaw33931@gmail.com>
Sent: Tuesday, February 4, 2025 4:35 PM
To: jfrankel@fmbgov.com
Cc: Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>; dmoscoso@becklawyers.com; briesath@theseismicgroup.com
Subject: Food Truck Project

Hi,

My name is Rick Robshaw and I have owned condo #608 at Pelican Watch - 2532 Estero Blvd since 2009. I have been a full time resident for about 5 years now and registered to vote here.

I am writing today in regards to the proposed open air food truck park next to our condo property. I live on the north east corner of the building on the top floor approx 7 stories high and closest to the project in the '8-stack'.

Some of you may have visited my condo. If you were here while the diesel engine was running out on the beach for the re-nourishment project, you will know that it was not easy having a conversation out there. That engine put out about 65 decibels of sound. Being on the top floor here there is no mitigation possible unless they build a 7 story wall as I have direct line of sight to the project and from what I can tell, the live music will be a mere 45 yards from my lanai. I cringe at the thought of having to deal with loud bad karaoke all day long. For comparison I was at Wahoo Willies on Saturday with a single performer on a guitar. From approx 25-30 yards from the stage (sitting at table at opposite end of the bar), the sound level of the music along with the sound of patrons nearby was 90 decibels. Obviously many are in violation of the noise ordinance. Not a big deal in the entertainment zone but Pelican Watch is in the middle of a residential area.

In addition, the dumpsters and bathrooms will be even closer than the music. Again no mitigation possible when I am looking straight down on them. No amount of plants or fencing will cover that for me.

The smells from the dumpster, bathrooms, grease traps and various foods being cooked could make my lanai unbearable when the wind blows my way. It will certainly devalue the property with all this going on right under my railings/nose.

The layout of the 'dead end' on Cottage ave. is also going to be an issue. Turn in the Pelican Watch driveway (there is no security gate) and you can drive under the building and out the other side to return to Estero Blvd. This issue has existed for years and caused us to put speed bumps in the garage to reduce the risk of hitting a child running from the lobby door to the beach around a blind corner.

Food Trucks - I like them. But it should not be a permanent fixture as it will exclude quaint sidewalk cafes along the boulevard. They simply cannot compete with the low cost of a food truck business. Food Trucks by design are all 'take out' generating a lot of trash which will invariably end up on and around our property as well as the beach.

Thank You,
Rick Robshaw

26147165v.1



Outlook

Opposition to Residential Rezoning Application for Food Truck Park

From Jan Krause <jskrause@casscomm.com>
Date Sat 2/8/2025 7:51 PM
To jfrankel@fmbgov.com <jfrankel@fmbgov.com>
Cc Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>

External email
First time sender

I, Jan A Krause, am a second generation original owner of Unit 204 Pelican Watch.

I am vehemently opposed to rezoning the adjacent property to use as a food truck park, essentially a “Beer Garden,”because it fails to promote the calm, relaxing, and positive atmosphere as originally intended.

Living in a residential area our families and young children should be safe and free from witnessing negative, bold, and compromising behaviors of vacationers noisy and boozing it up below our balconies, slamming into our pool fences, peeing, and parking on our property.

Pelican Watch is and always has been a family environment and Pelican Watch owners shouldn’t have to justify our family centered lifestyle.

Please let’s be forward thinking and utilize the space for parking or brick & mortar buildings that could adequately contain their clientele.

Thank you for your consideration.

Jan A Krause

Sent from my iPhone

Albuernes, Milena

From: Moscoso, David
Sent: Monday, February 3, 2025 2:19 PM
To: darweaver@charter.net; Albuernes, Milena
Subject: RE: Proposed Food truck park, 2530 Estero blvd.

Categories: Filed

Thank you, Darlene,

@Albuernes, Milena could you please add and save this to the file.

Best,
David

David J. Moscoso
Attorney at Law
Coral Gables
Ext: 11003 (305.260.1003)

From: darweaver@charter.net <darweaver@charter.net>
Sent: Monday, February 3, 2025 2:13 PM
To: Moscoso, David <DMoscoso@beckerlawyers.com>
Subject: Proposed Food truck park, 2530 Estero blvd.

 External email >

 First time sender >

As long term owners in excess of 35 years on Ft. Myers Beach, and Florida residents; the idea of a "Food truck court.."withn a mile of established resaurants is a very concentering situation. The increase in traffic and nosie in our residential location would be very intrusive and distracting for families. Especially during evening hours. There is already congestion on Cottage Street and a food truck court would certainly adversely inpact that.

It has been noted that perspective buyers in our neighborhood have stopped looking when informed of a possible food truck court at our back door.

Property values are already being affected by three recent hurricanes and slow rehabilitation of our beautiful island. Please consider these factors when deciding on allowing a food truck court a mile from Times Square on Fort Myers Beach.

Very Truly Yours,

Darlene Weaver,
Ft. Myers Beach resident

Photos by Deb Danford

FMB property (image 1 of 3)



Drone View
(image 2 of 3)



Arial Picture of 25240 Cottage before Ian (Image 3 of 3)



----- Forwarded Message -----

From: SUSAN BONFIGLI <sabonfigli@aol.com>

To: Amy Baker <amy@fmbgov.com>; Dan Allers <allersd@fmbgov.com>; Jim Atterholt <atterholtj@fmbgov.com>; karenwoodson@fmbgov.com <karenwoodson@fmbgov.com>; johnking@fmbgov.com <johnking@fmbgov.com>; Scott Safford <scottsafford@fmbgov.com>; Judith Frankel <jfrankel@fmbgov.com>

Sent: Sunday, February 16, 2025 at 01:14:15 PM EST

Subject: Food Truck Park Plan is detrimental to our residential neighborhood

Dear Council Members:

The neighbors strongly oppose any business on this property that would involuntarily involve them, particularly the planned food truck park with amplified entertainment . Our community has peacefully coexisted with other businesses in the past, largely because they have not disrupted our daily lives or impacted the quiet enjoyment of our homes and properties.

Historically, establishments such as the Royal Scoop Ice Cream Parlor, Tuckaway's Restaurant, a beachwear retail shop and the local bicycle shop have been within sight of our residential neighborhood, yet they never compromised our quality of life. On the contrary, we enjoyed frequenting these businesses as patrons.

Currently, the paid public parking area on Mango Street serves as another example of a business that was integrated into the neighborhood. The Town, recognizing the potential impact on residents, imposed operating restrictions between sunrise and sunset to minimize disturbances. (Ordinance 18-07) While there are seasonal challenges, such as increased congestion making it difficult to exit Mango Street, we have adapted by relying on the alternative route, Chapel Street. Many of us, I believe, prefer to forgo vehicle use between 9 AM and 9 PM, opting instead to navigate our neighborhood streets on foot or by bicycle. This makes it even more critical to prevent additional traffic from being introduced into our already narrow residential streets.

Mom's is another established business near us, and while we look forward to its return to a brick-and-mortar location, we recognize that its current food truck operation has caused notable disruptions. Fortunately, the Town has implemented restrictions on its hours of operation, limiting them to 4 PM (though they typically close by 2 PM) to mitigate potential neighborhood disturbances. Additionally, outdoor entertainment is prohibited at Mom's, ensuring that residents are not subjected to unnecessary noise pollution. (Ordinance 17-03) The Town carefully considered our community's well-being in making these decisions.

Since Hurricane Ian, however, Mom's overflow parking has become a recurring issue. With fewer homes standing, patrons have taken to parking along neighborhood roadways, which was far less feasible before the storm. Attached, you will find a series of photos this last week illustrating the problem. Cars are effectively parked in the right-of-way on Cottage Avenue and Chapel Street. These vehicles are lined along the roadway in front of my home and along Chapel

Street. (Note that the deterrents proposed around the Food Truck property would do nothing to alleviate the issue in front of my home, but instead could exasperate it.)

Beyond traffic concerns, we also contend with the nuisance of overwhelming odors emanating from the food truck. At times, it feels as if all the oxygen is being consumed by these pervasive smells. Once Mom's relocates to a permanent structure, we anticipate better containment of both odors and trash, much as it was before Hurricane Ian. Additionally, a brick-and-mortar establishment may allow for increased on-site parking, alleviating the current strain on our neighborhood streets.

The food truck park, however, is an entirely different kind of business—one that will inevitably impose itself upon us, whether we wish to be involved or not. The planned pay-to-park lot is primarily designed to serve beach-goers rather than patrons of the food trucks. Just as with Mom's, it is unlikely that visitors will opt to pay for parking merely to eat. Instead, these spaces will likely be taken by those heading to the beach, displacing parking for legitimate customers.

Additionally, the amplified entertainment aspect poses significant concerns. While the music may initially be directed towards Estero Boulevard, once buildings are constructed in that area, the sound will reflect off structures and reverberate back into our neighborhood. We are already experiencing this phenomenon with Diamondhead, where music carries down the beach and then bounces off the Pelican Watch condominium, creating an amplified effect. Just last week, I stepped onto my deck, puzzled by the loud music, only to realize I was hearing it from multiple directions.

It is a misconception that one- or two-person musical acts are not disruptive. We recently dined at Nervous Nellie's, where a single guitarist performed alongside pre-recorded accompaniment, creating the effect of a full band. Similarly, a steel drum musician produced a sound far more powerful than one might expect. Sound systems are designed to project, ensuring that the music reaches not only the intended audience but also anyone beyond them. It is not just the volume that is intrusive, but the persistence of noise for hours at a time—whether from vocals, instrumentals, or the lively crowd. While entertainment is enjoyable, residents deserve peace in their homes.

In the past, Sandy Bottom's music was so loud that my home literally vibrated. The performers actively encouraged the audience to "make some noise," and they did—with the impact felt directly in my living space. I now have the manager's phone number to notify him when the volume becomes excessive, but this is not a position I want to be in, nor should I have to be. The nature of amplified sound systems inherently disrupts the surrounding community. (As an aside, I sincerely hope that downward-facing speakers are incorporated in Sandy Bottom's new Tiki to contain the music within their property, rather than projecting it outward.)

Live entertainment naturally energizes a crowd. When alcohol is added to the mix, patrons become even louder, compounding the issue for immediate neighbors. This environment is not what one would consider "family-friendly"; rather, it caters to adults seeking a lively social scene and it's outdoors without containment. Such a business model is entirely inconsistent with the local establishments that have successfully coexisted with our residential neighborhood.

Another pressing concern is the introduction of additional food trucks, each contributing to odor pollution. If one food truck can create an overwhelming sensory impact, imagine the effect of five. While the increased distance from my home may provide some relief, residents in Pelican Watch and abutting on Cottage Avenue will bear the brunt of the problem.

Moreover, the food truck park raises security concerns. As our island continues to recover, we may see an increase in vagrancy. Unlike a brick-and-mortar establishment, which commands a certain level of respect and patron accountability, a food truck park with unattended seating and restrooms may become an attractive refuge for transients. These trucks are more vulnerable to theft than permanent buildings, and an unsupervised seating area could invite unwelcome activity, particularly in the quiet hours of the night when nearby residents are asleep.

Before Hurricane Ian, vagrancy was already a serious issue in our neighborhood, exacerbated by programs run by Chapel by the Sea that attracted transient individuals. With our streets dark and quiet at night, our homes became easy targets. A permanent structure would help mitigate these risks, reinforcing security while containing potential nuisances.

LPA Member Jane Plummer speculated that a restaurant might introduce open-air noise at a higher elevation. However, such issues can be mitigated with proper town regulations. Consider establishments like Charlie's Boathouse and Coste's at Diamondhead—both well-respected businesses that operate(d) harmoniously within their communities without causing disruptions.

A more suitable alternative for this space would be a multi-use brick-and-mortar establishment, perhaps featuring a pizza parlor, sandwich deli, or family-friendly ice cream shop. Other viable options could include a hair salon, spa, or a business offering bicycle-delivery pizza within a limited radius. With dedicated on-site parking specifically for patrons, these businesses would align with the needs of our neighborhood and enhance our community's character.

Regardless of what ultimately occupies this property, it is imperative that any business exiting onto Chapel Street be restricted to right turns only, preventing commercial traffic from infiltrating our residential area on Cottage Avenue. Thoughtful planning and consideration for the existing community should be a priority in any development proposal.

In summary:

Please do not permit the following on this commercial property, regardless of the business:

1. **Amplified Entertainment** – Even within allowable decibel levels, continuous noise can be mentally and emotionally exhausting. Residents should be able to enjoy their decks, patios, and lanais in peace, listening to the ocean waves and nature during the day. (Consider the analogy of Chinese water torture—while a single repetitive drip of water may seem harmless, its persistence can become unbearable.)
2. **Outdoor Alcohol Sales** – Fort Myers Beach has a reputation for party-like activities. When alcohol is involved, people tend to become less mindful, often to the detriment of the surrounding neighborhood.

3. **Commercial Pay Parking** – This will only increase traffic on our residential streets and attract visitors who may not respect the neighborhood or its residents. Parking should be reserved exclusively for the patrons of the business operating on the property.
4. **Commercial Activity Before 7 AM and After 9 PM** – Any business operating on this property should harmonize with the residential community, just as other adjacent commercial properties have successfully done.

Why a Food Truck Business is Inappropriate Next to Our Residential Neighborhood:

1. **Odors** – Heavy, lingering food odors can create an unpleasant environment, sometimes making it feel as though fresh air is lacking.
2. **Wind-Blown Trash** – Loose waste inevitably finds its way into our yards and onto the beach, diminishing the cleanliness of our neighborhood.
3. **Storm Preparedness** – Whether a storm is officially named or not, there is no assurance that the largely mobile structures and equipment on this property will be properly removed or secured, potentially causing damage to neighboring properties. Past hurricanes, such as Helene and Milton, have demonstrated the consequences of inadequate storm preparedness. Good intentions do not always translate into effective action.

A More Suitable Alternative:

A permanent structure built to modern hurricane standards would provide greater security and resilience. Additionally, dedicated free parking for the businesses within the structure would help prevent unnecessary congestion in our residential area. Any business developed on this property should respect the residential character of the neighborhood, rather than catering to a transient party atmosphere.

I truly appreciate your consideration for the health and happiness of me and my neighbors to continue having peace and enjoyment in our own homes. Respectfully, I ask that you please deny this application.

Sincerely,
Susan Bonfigli

2434 Cottage Ave
Fort Myers Beach

SUSAN BONFIGLI
sabonfigli@aol.com







David and Monica Tezak
2440 Cottage Avenue
Fort Myers Beach, FL 33931

Helen Tezak
50 Chapel Street
Fort Myers Beach, FL 33931

January 6, 2025

Fort Myers Beach Local Planning Agency (LPA)
2731 Oak Street
Fort Myers Beach, FL 33931

Re: Formal Objection to Proposed Food Truck Park and Deviations for 2500 Estero Boulevard
(Ordinance 25-XX)

Dear Members of the Local Planning Agency,

I am writing to formally object to the proposed Commercial Planned Development (CPD) amendment and associated deviations for the property at 2500, 2510, and 2518 Estero Boulevard, as outlined in Ordinance 25-XX. The proposed food truck park raises serious concerns related to traffic safety, infrastructure inadequacy, compatibility with the surrounding residential area, and violations of the Fort Myers Beach Comprehensive Plan and Land Development Code (LDC).

Key Objections:

1. Chapel Street is Inadequate for Increased Traffic

Chapel Street, the primary proposed access point for the food truck park, is fundamentally unsuitable for such a high-traffic commercial use.

- **Narrow Width:** The road is only 20 feet wide (paved) with no permitted parking, leaving little room for two vehicles to pass safely, especially delivery trucks or larger vehicles associated with the food truck park. New development requires 50 feet wide paved roads for development.
- **Dead-End Configuration:** Chapel Street ends just 175 feet off Estero Boulevard, making it difficult for vehicles to turn around safely, creating gridlock, and exacerbating safety risks for residents and visitors.
- **Violation of LDC Requirements:** The proposed access point violates LDC Section 10-285, which requires a minimum spacing of 250 feet between accessways on major streets like Estero Boulevard. The proposed Chapel Street access is only 150 feet frontage. An

access point on Chapel Street will backup traffic on Estero Blvd due to the close proximity to Estero Blvd creating additional hazards.

- **Parking Overflow Risks:** The lack of permitted parking on Chapel Street will force overflow parking into surrounding residential areas, disrupting homeowner access and creating unnecessary tension in the community.

2. Traffic Safety and Emergency Access Risks

The proposed development will significantly increase traffic on Chapel Street, creating safety hazards for both residents and visitors. Emergency vehicle access could also be severely impeded due to congestion and the narrow dead-end configuration of the street. This is a direct threat to public safety.

3. Insufficient Justification for Requested Deviations

The applicant has requested six deviations from the LDC, many of which directly impact public safety and neighborhood compatibility. Specifically:

- **Deviation #1 and #2:** Reducing the required 250-foot spacing for access points will compromise safety on Estero Boulevard and Chapel Street.
- **Deviation #4 and #5:** Allowing off-street parking to be placed in inappropriate locations and permitting crushed shell or lime rock surfaces instead of pavement increase risks of flooding, drainage issues, and vehicle damage.
- **Deviation #6:** Reducing buffer requirements from 15 feet to 10 feet undermines necessary noise and visual separation between commercial and residential areas.

The justifications provided by the applicant fail to address how these deviations will negatively impact surrounding residential properties or protect the public interest.

4. Incompatibility with the Comprehensive Plan

The Fort Myers Beach Comprehensive Plan aims to balance residential and commercial uses while protecting neighborhood integrity and ensuring adequate infrastructure. This proposal directly conflicts with these goals:

- The Boulevard zoning category was designed for low-intensity, light commercial uses that complement the surrounding residential character. A high-traffic food truck park with late operating hours and amplified outdoor music does not align with this vision.
- The development places undue strain on infrastructure, particularly Chapel Street, which was never intended to support such intensive commercial activity.

5. Detrimental Impact on Property Values and Quality of Life

The introduction of a food truck park will degrade the residential character of the neighborhood and reduce property values for adjacent homeowners. Increased noise, odors, rodent potential, traffic, and parking overflow will disrupt the quiet enjoyment of nearby properties, diminishing the quality of life for residents.

6. Summary Table of Deviations

Table summarizing the six deviations requested and their negative impacts on the area:

Deviation	LDC Requirement	Proposed	Impact
Driveway Spacing	250 feet from Estero access	100 feet	Traffic hazard, violates safety standards
Buffers	15 feet wide	10 feet	Increased noise, reduced separation
Parking Surface	Paved	Crushed shell/rock	Drainage issues, substandard infrastructure

Requested Action

I respectfully request that the Local Planning Agency recommend denial of this CPD amendment and the associated deviations. The proposed development is wholly inappropriate for the area and will create significant, long-term negative impacts on the neighborhood, public safety, and infrastructure.

Conclusion

The proposed food truck park is incompatible with the residential character of this neighborhood, relies on inadequate infrastructure, and violates critical requirements of the Comprehensive Plan and Land Development Code. I urge the LPA to prioritize the safety, well-being, and long-term interests of Fort Myers Beach residents by recommending denial of this proposal.

Thank you for your time and careful consideration of these concerns.

Sincerely,

David, Monica and Helen Tezak
PO Box 2700
Fort Myers Beach FL 33932

David and Monica Tezak
2440 Cottage Avenue
Fort Myers Beach, FL 33931

Helen Tezak
50 Chapel Street
Fort Myers Beach, FL 33931

1-10-2025

Members of the Local Planning Agency
Town of Fort Myers Beach
2731 Oak Street
Fort Myers Beach, FL 33931

Re: Objection to Proposed Commercial Planned Development (CPD) Amendment for 2500, 2510, and 2518 Estero Boulevard

Dear Members of the Local Planning Agency,

We, David and Monica Tezak (owners of 2440 Cottage Avenue) and Helen Tezak (owner of 50 Chapel Street), respectfully submit this comprehensive objection to the proposed CPD amendment for 2500, 2510, and 2518 Estero Boulevard. This proposal, centered on establishing a beer and wine garden with food trucks as a secondary feature, raises numerous legal, procedural, and community concerns that demand careful consideration and ultimately, its rejection.

1. Spot Zoning and Expansion of CPD into Residential Parcels

The inclusion of two residential parcels into the CPD zone constitutes spot zoning, isolating commercial zoning within a residential subdivision. This rezoning serves private developer interests while disregarding the original residential intent of these parcels as part of the Seagrape Subdivision. Spot zoning undermines the comprehensive plan and sets a harmful precedent for further encroachment into residential neighborhoods.

Legal Basis:

- Florida Statute §163.3177 mandates that zoning decisions align with the comprehensive plan and serve a legitimate public purpose.

- Case Law: City of Miami Beach v. Ocean & Bay Park One, Inc. (1941) invalidated spot zoning that benefited private parties at the expense of the broader public interest.

2. Incompatibility with Zoning and Comprehensive Plan

The beer and wine garden with live music, late operating hours, and high turnover traffic is a far more intensive use than the low-intensity commercial uses permitted under the Boulevard zoning category. The proposal effectively converts the site into an entertainment venue, disrupting the residential character of the area.

Legal Basis:

- Florida Statute §163.3177 requires zoning changes to align with the comprehensive plan's goals to protect residential neighborhoods.
- Case Law: Snyder v. Board of County Commissioners of Brevard County (1993) requires zoning changes to serve a legitimate public purpose and maintain compatibility with surrounding uses.

3. Lack of a Regulatory Framework for Food Truck Parks and Beer Gardens

The Town of Fort Myers Beach currently lacks formal ordinances governing food truck parks and beer garden establishments. Proceeding with this proposal as a "pilot program" without establishing clear rules is premature and irresponsible.

- **Operational Oversight:** There are no rules to address critical issues such as waste management, parking, alcohol service restrictions, noise mitigation, and hours of operation.
- **Public Input:** The absence of regulations denies the community a say in whether such uses are appropriate for Fort Myers Beach.
- **Enforceability:** Without regulations, there is no mechanism to ensure compliance or mitigate nuisances.

Legal Basis:

- Florida Statute §163.3202 mandates that local governments adopt detailed land development regulations consistent with their comprehensive plan.
- Case Law: Approval of developments without a regulatory framework undermines comprehensive planning (Hillsborough County v. Putney, 2009).

4. Procedural Defects and Due Process Violations

The postcard notice for the January 9, 2025, hearing was postmarked on January 2, 2025, providing only seven days' notice to affected property owners. This falls significantly short of the

30-day minimum notice requirement under Florida Statutes (Section 166.041) for zoning map amendments.

Proper notice is a cornerstone of due process. Without sufficient time to review the proposal, consult with neighbors, and prepare objections, affected property owners are denied a meaningful opportunity to participate in decisions that impact their properties and quality of life.

This procedural defect **invalidates** the hearing and any decisions made during it. Florida courts have consistently held that insufficient notice constitutes a violation of due process, rendering zoning decisions subject to legal challenge.

Legal Basis:

- Florida Statute §166.041: Requires a minimum of 30 days' notice for zoning map amendments.
- Case Law: Florida courts, including in *Snyder v. Board of County Commissioners* (1993), affirm that proper notice and public participation are essential to lawful zoning decisions.

5. Traffic Hazards and Inadequate Infrastructure

Access to the site relies on Chapel Street, a narrow residential road measuring only 30 feet wide (paved to 20–25 feet). The road's dead-end configuration, lack of parking, and inadequate width is unsuitable for commercial ingress and egress. It also, will lead to off street parking by the venue's patrons. This will endanger the resident's ability for ingress and egress their property as well as emergency vehicles. This is demonstrated by the current continual problems and lack of enforcement with Mom's restaurant and off street parking.

Legal Basis:

- LDC Section 10-285 mandates a minimum separation of 250 feet between access points on major streets like Estero Boulevard, which the proposal fails to meet.
- Florida Statute §163.3180 requires local governments to ensure adequate infrastructure for new developments.

6. Homelessness and Alcohol-Related Public Safety Risks

The area surrounding the proposed development has faced a prevalent homelessness problem for years, creating safety and public health challenges. Establishing a beer and wine garden in this area, which serves alcohol, will likely exacerbate these issues, including:

- **Congregation Risks:** The presence of a bar may attract individuals struggling with substance abuse, increasing the likelihood of disturbances and negative interactions in the neighborhood.
- **Safety Concerns:** Local residents may face heightened risks of trespassing, vandalism, and public intoxication as a result of the establishment.
- **Burden on Public Resources:** The town may experience increased calls for law enforcement and emergency services to address alcohol-related disturbances.

Legal Basis:

- Florida Statute §562.45(2) authorizes municipalities to regulate the location of alcohol-serving establishments to protect public safety.
- Case Law: City of Miami Springs v. J.J.T., Inc. (1985) upheld restrictions on alcohol-serving businesses to safeguard neighborhoods.

Requested Actions

1. **Deny the Application:** Recommend denial of the CPD amendment due to spot zoning, lack of regulatory framework, incompatibility with zoning, procedural defects, and safety risks.
2. **Address Homelessness and Safety Concerns:** Recognize the existing homelessness challenges and assess how introducing a bar could exacerbate public safety issues.
3. **Establish Ordinances First:** Develop clear and enforceable regulations governing food truck parks and beer garden establishments before considering such proposals.
4. **Reschedule the Hearing:** Nullify any actions taken during the January 9, 2025, hearing and provide proper notice in compliance with state and local requirements.

Conclusion

This proposal introduces significant risks, including spot zoning, safety hazards, noise pollution, homelessness-related issues, and the erosion of residential character. The absence of a regulatory framework and procedural defects in notice highlight serious legal and ethical concerns.

We urge the Local Planning Agency to reject this proposal and prioritize the integrity of our neighborhood.

Thank you for your time and consideration.

Sincerely,

David and Monica Tezak
Helen Tezak

JUL 3 2024

Received by: _____

Jason Smalley
Town of Fort Myers Beach
2731 Oak Street
Fort Myers Beach, FL 33931

Dear Mr. Smalley.

It pains me to have to write you regarding the most inappropriate use of the land located at 2500 Estero Blvd. Prior to Hurricane Ian, the area was roped off to prevent trespassing. Now with the extended lot boundaries, the owner wants food trucks, entertainment, etc., why not rezone it for a circus? The noise level of music from the tent currently located adjacent to the Bottoms Up facility can be heard throughout the neighborhood and is very disturbing. This is a residential area, not a commercial area like Times Square.

If you can recall, it was barely adequate for when it housed the Holmes House restaurant. Now with increased traffic on Estero Blvd. and the number of residences being rebuilt in this neighborhood, it hardly justifies being developed commercially. Your council is charged with land development and use. Please professionally consider the proposed use and reject the owners request. They know not what they do or want.

Vince Todd
Belgian Watch
2532 Estero Blvd. # 606
Fort Myers Beach, FL 33931

From: Vince Todd <vtodd@accessa.com>
Sent: Sunday, February 2, 2025 3:35 PM
To: Judith Frankel <jrankel@fmbgov.com>
Cc: Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>; Moscoso, David <DMoscoso@beckerlawyers.com>; Randy Briesath <briesath@theseismicgroup.com>
Subject: Proposed Food Truck Project

Our names are Sue and Vince Todd and are from Indianapolis, IN. We are the owner of Unit 606 in Pelican Watch Condominiums, 2532 Estero Blvd. Fort Myers Beach, FL. We have been an owner in Pelican Watch since 1981. Prior, we were a renter in the trailer park that occupied this exact property. At development/construction completion, we became the first owner to close on our unit. It has been our second home but also our happy place. Our children have been coming here with us since early childhood and love to return now with our grandchildren.

Our unit 606 is on the same side of the building as the proposed project. Instead of nice peaceful, beautiful views of sunsets over Sanibel Island, we will be forced to tolerate food trucks, loud music, traffic, garbage, odors, birds, rodents, and public sanitary facilities none of which belong in a family residential neighborhood.

Please do not destroy our beautiful piece of paradise.

Sincerely,
Vince and Sue Todd

From: Carolyn McKeown <mckeown44@gmail.com>
Sent: Tuesday, February 4, 2025 6:10 AM
To: jfrankel@fmbgov.com
Cc: Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>; Moscoso, David <DMoscoso@beckerlawyers.com>; Randal Briesath <briesath@theseismicgroup.com>
Subject: 2500 Estero Blvd project

As a resident of Pelican Watch Condominium, I have the following comments to offer to the LPA Committee members, each of whom has the purview to decide and make recommendations for land use on Estero Island. Clearly, you have the charge and responsibility for the welfare of residents and visitors alike in making these decisions, but you also surely must have some consideration for those who have lived here for an extended period and sustained this island before Hurricane Ian, but more importantly, returned to the island to REBUILD their properties. Pelican Watch will soon reach 10 million dollars. Our property values and continued need for comfort and a generally healthy environment should count for something.

As I review the plans for this development, there are no plans for fulfilling the Town's encouragement for all to build "brick and mortar". And the current residential area adjoining 2500 Estero Boulevard properties should not be subjected to a development that will immediately diminish our property values. There are 12 back apartments that will be greatly adversely effected (documented) due to the proximity and total exposure to this "open air" arrangement of noise, music, food odors, public bathrooms, along with excess foot and automobile traffic and the like. This project will also make the 5th parking lot between here and the Sky Bridge. Also, please consider the impact on already existing businesses. Businesses that have found a way to "come back" and hang on after the hurricane and are now trying to reach the Town's goal to build back a "brick and mortar". Mom's has been on the island for over 15 years as has a Charro Brothers as their restaurant was destroyed. Additionally, the Pancake House that has survived and revived! All of these have struggled to make it back to whatever point of recovery they have achieved at this point in time. And this will also detract from the the finished Sandy Bottoms that the Millers have dumped a ton of money into.

Granted, the island was put under a great strain following the destruction by Hurricane Ian, but I do not feel that it is wise nor does it serve the long-range goals of Ft Myers Beach or its residents to co-mingle incompatible developments for the sake of a quick startup. And while food trucks have become a popular draw in many parts of the country, they are appropriate for commercial and light commercial areas. This is a beautiful project but in the wrong location. The 3 food truck developments in the area of Ft Myers Beach that the developer keeps referring to and comparing this development to as similar are all in commercial/light commercial; none are near a residential area. This appears to be a faulty comparison.

The community-at-risk around this development is NOT against development. It is, however, vehemently objecting to that which would immediately deter value of their property, eliminate comfort in their own units with constant "open air" noise, music along with the unwanted foot traffic through the properties. And if signs were are thought to prevent unwanted motorists from reaching the dead end on Cottage Street and then turning to follow the Pelican Watch building entry as an outlet, we wouldn't be protesting that issue today. Prior to Ian, there were two signs

nearing the end of Cottage Street: one said "DEAD END"; another sign said "NO TURNAROUND". Neither worked; people do not respect signs as a rule, so signs are NOT a reliable solution. And I raise the question of "enforcement" for all of these issues? Who/how will this be monitored and guidelines enforced?

So you ask then what we as the surrounding neighborhood be happy with? That's simple. We would support a "brick and mortar structure" ----something that would add value to the Town and beach for years to come. A structure that could be large enough to accommodate possibly entertainment features for families and food alike or even other commercial entities and parking, whatever, but all housed in an indoor arrangement and facing Estero Boulevard to deflect most the sound of music from 9 am to 10 pm at night, food odors, rowdy behaviors and all other inherent issues.

And, incidentally, the previous "rezone" decision made in 2007 was a struggle and went on for several hours (I was present). But that LPA in 2007, was sensitive to the fact that this property is so very close to a long-established residential area that they hence granted a "commercial strip" for a commercial building next to Estero Blvd but designated the back part to retain "residential". They then approved that lot for 3 large (4 br 4 ba) condos. While that arrangement was compatible with the neighborhood, it somehow never came to be.

I have met and truly enjoyed my conversations with each of you. I now ask you to deliberate these thoughts carefully and realize that the "open air" concept is a deterrent to our neighborhood in many ways. Could you put yourself in our shoes for a moment? How would you feel about a food truck court moving in next to your house and consider the constant issues pointed out in this email plus your loss of property value?

I thank you for your time and service to our island.

Carolyn McKeown
Pelican Watch Condo
Unit 605
706-202-4564

Application Permit # 20240137 (2500 Estero Blvd, Food Truck Park)

From Ed French <e3sudz@outlook.com>

Date Tue 2/4/2025 10:35 AM

To jfrankel@fmbgov.com <jfrankel@fmbgov.com>

Cc Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>; Randal Briesath <briesath@theseismicgroup.com>

 1 attachment (83 KB)

food truck court opposition letter 2.25.pdf;

External email

Good Morning.

I am sending this email to you with my opposition letter regarding Application Permit # 20240137 (2500 Estero Blvd, Food Truck Park) attached.

Thank You,

Ed French III

February 3, 2025

Jason Smalley
c/o Town of Fort Myers Beach Planning and Zoning
2731 Oak Street
Fort Myers Beach, FL 33931

Regarding Project: 2500 Estero Blvd; Food Truck CPD

Dear Mr. Smalley:

I am writing to you today to express my firm objection to the proposed use of the property located at 2500 Estero Blvd. I have been on Cottage Avenue for over 50 years. As the long-standing owner of two properties that are located directly behind the project area that will be directly affected, I have many serious and valid concerns regarding the proposed uses for this project. The most crucial among those concerns are:

- Live outdoor music
- Added foot traffic through the neighborhood
- Added vehicle traffic through the neighborhood
- Commercial lighting from the applicant's property
- The vehicle access point to the applicant's property off of Chapel St.
- The change from a proposed temporary operation to a permanent operation gives me pause
- The operating hours for the paid parking are a concern
- The business hours for the bar and the music
- Who will be enforcing and regulating the 27 constraints that have been placed on this project to make it work? It should not be up to the neighbors to regulate the business and ensure that it is complying.
- Parking overflow on the side streets (Chapel Street and Cottage Ave) is a big concern

While there is value to the Town of Fort Myers Beach for this type of business, it should not be located so close to this type of neighborhood that we have. The potential value of reconstructed homes in the direct area of this project could be at least \$30 million in buildings and properties. While investigating the other food truck courts (Cape Coral, Bonita Springs, and Naples), I noticed that none of them operated in the type of residential neighborhood that we have. They are located in fully commercial or light industrial areas. Our neighborhood, just off of the Boulevard, should only be considered a light commercial area.

A permanent structure type of business similar to what was there before is what would work best for the neighborhood and the community. The other types of businesses that could work there are:

- A brick and mortar restaurant

- A brick and mortar building with a combination of ice cream, bakery, and/or coffee shop
- A brick and mortar combination butcher shop with a restaurant attached
- A brick and mortar liquor store
- A brick and mortar hardware store
- A brick and mortar T-shirt and trinket shop / Surf shop
- A brick and mortar indoor food court
- A brick and mortar reality office or office building

Prior to Hurricane Ian, the area surrounding the project address was and has been primarily a residential area. As people look to rebuild and restore what was lost, it still remains predominantly a residential area. The project as it is proposed would be suitable for a much more commercial area such as the former Times Square area or the new Margaritaville Resort area.

I have had trespassing and security issues with both of my properties for many years. People would daily trespass on my private property to gain access to the beach instead of using the public access walkway. Vagrants have had to be removed from underneath my homes as property was either stolen or damaged. Trespassers have parked illegally on my properties for years. This proposed project would only increase the safety and security risks to both my properties as it would only further encourage people to continue these bad behaviors.

Our little Cottage Ave neighborhood is a diamond in the rough. We understand as a neighborhood that there are things that we will have to put up with. However, this type of business will not help our neighborhood it will only add more pressure than it already has. For many years I have seen the Island grown from what it once was. Hurricane Ian has forever changed our island and the type of people who will not only come to be residents but visitors as well. The food truck court project would be better located in the Time Square business district as opposed to a residential neighborhood.

Thank you,

Ed French III
 2550 Cottage Ave.
 2548 Cottage Ave.
 Fort Myers Beach, FL 33931

From: Brandon Richards <bdrichards34@gmail.com>
Sent: Monday, February 3, 2025 8:25 AM
To: jfrankel@fmbgov.com
Cc: Randal Briesath <briesath@theseismicgroup.com>; Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>; dmoscoso@becklawyers.com
Subject: Vendor Food Truck Park Opposition Letter

Hi Judith. Please see the attached vendor food truck park opposition letter. Please forward this letter to all LPA members. Thank you. Brandon Richards / Pelican Watch 205.

Town of Fort Myers Beach

February 3rd, 2025

RE: 2500, 2510, and 2518 Estero Blvd. and 2543 Cottage Ave., Fort Myers Beach, FL 33931
Strap # 's 19- 46-24-W3-0120A.0100; 19-46-24-W3-01302.0000; 19-46-24-W3- 01301.0000; 19-46-24-W3-0120A.013A
CPD-Zoning - Vendor Food Truck Park

Dear Jason, Judith, FMB Staffers, and LPA Members,

For those LPA members who voted "NO" to the proposed mobile vendor food truck park, THANK YOU. To those staffers who are recommending approval of, and to the LPA members who voted "YES" to allow the proposed mobile vendor food truck park, I respectfully ask that you reconsider and recommended denial of and vote "NO" during the February 11th LPA meeting. I respectfully request this denial and "NO" vote for the following reason:

As discussed at the prior LPA meeting, a significant majority of the current land use surrounding this site is residential with a limited amount of commercial. Given the mix of surrounding land uses, the most suitable project for this site is mixed use with commercial at the front of the site along Estero Blvd. and residential along the back of the site, along Cottage Ave. As I am sure you are aware, there was an approved project of this type in October 2006, and it is on file with the Town (also located within the agenda documents for the LPA meeting). To be clear, I have nothing against a mobile vendor food truck park or parking lot, but given the significant increase in traffic, it should be located within a higher density commercial area, not a neighborhood that has significant residential presence.

As brought up by the applicant during the prior LPA meeting, they do not currently have the capacity available at this time to develop a "larger" project. A project such as a mixed-use project that would complement the neighborhood vs. be a detriment to the neighborhood, therefore, illuding to this project being a means to an end or a short-term project. This should not be a supporting reason to approve this project, as one LPA member did. By voting in this manner, one is voting to add an additional use to a parcel, a short-term use that may have long-term consequences and will follow the parcel by right. This is ever more important, when that use may have a long-term adverse impact on the surrounding neighbors. There is a possibility that this may be a viable long-term venture for the developer. In fact, I am concerned that a vendor food truck park may be a successful project, resulting in constant additional traffic within a neighborhood that has a significant residential presence. Therefore, casting a vote assuming the project has a limited future seems a bit shortsighted and minimizes the greater issue of traffic concerns and the potential value impact on the overall residential neighborhood.

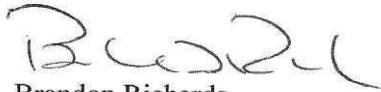
Additionally, one LPA member stated that his reason for a yes vote was because he thought a commercial mobile vendor food truck park and parking lot would benefit the surrounding residential neighbors. This opinion contradicts an objective and unbiased professional / expert appraiser's opinion hired by the surrounding neighbors. This also contradicts over fifty residential neighbors' opinions who live directly adjacent to this project. While I respect everyone's opinion, when it directly contradicts a significant majority, including market driven data supplied within an objective appraisal, I would respectfully ask for reconsideration.

I realize that the Town is anxious to get commercial activity back to a more normalized pre-Ian state, however, I would urge you against approving this mobile vendor food truck park just because it is the only option available at this time. A better mixed-use option that is more suitable long-term for the entire neighborhood will present itself. I ask you to be patient, otherwise, the residential neighbors will forever be stuck with the consequences of a significant increase in commercial activity and traffic. This is avoidable and there will be better options in the future.

Lastly, if I still haven't convinced you that a mobile vendor food truck PARK isn't the best option for this site, and you still plan to vote for this project, I would respectfully ask that you would add a condition to your approval that would require this PARK to have operational hours commensurate with the town of FMB and Lee County PARKS, **Dawn to Dusk**. This will at least "limit" the negative impact that an increase in significant commercial activity, traffic flow, and noise will have on the surrounding residential neighbors.

In conclusion, I want to thank the Town Staff and LPA for all their hard work and for the time that they put into making these tough decisions for our community.

Sincerely,

A handwritten signature in dark ink, appearing to read "Brandon Richards", written in a cursive style.

Brandon Richards

Pelican Watch 205

From: rms3374@aol.com <rms3374@aol.com>
Sent: Monday, February 3, 2025 4:25 PM
To: Judith Frankel <jfrankel@fmbgov.com>
Cc: Randal Briesath <briesath@theseismicgroup.com>; Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>; Moscoso, David <DMoscoso@beckerlawyers.com>
Subject: Food Court Project

This is Richard and Jackie Siefring of Pelican Watch, Unit #307, 2532 Estero Blvd, Ft. Myers Beach. We have owned this unit since 2007 and, prior to that, a different unit in the building since 1994.

Our condo unit balcony faces to the North West so we would be very severely impacted by the food truck court which would sit just to the right and below our balcony. The food truck court being an outdoor service area would cause a major visual and noise disturbance with music, parking problems, portajohns, trash containers, litter, and possibly trespass onto our property.

We are not opposed to the right kind of development in the right location. During a recent meeting with Empire Holding, I inquired if there is a similar project in a residential setting. I was told there is a similar project in Bonita Springs. I went there to see it and had intention of speaking to homeowners in the neighboring area. Upon my arrival, I observed this area is surrounded on all sides by only commercial properties (public library, police department, auto parts store, grocery store). This food truck project in Bonita Springs is a very different type of location than that being proposed next to our residential building and the residences all sitting waterside of Estero Boulevard from Pelican Watch to Mango Street.

The valuation of Pelican Watch, along with the other properties under construction, represent approximately \$75 million which will have a diminished value if this food truck project is approved. This is harmful to both the property owners and to the Ft. Myers Beach tax base.

Pelican Watch is a residential community, not a rental hotel. These long term owners of Pelican Watch use the pool space in quiet activities of lounging, visiting, reading, etc. and quality of pool use would be greatly diminished with the food truck park sitting approximately 10 feet from this private pool.

Pelican Watch has incurred \$9 million in reconstruction and repairs following hurricanes since September, 2022. There has been no hesitancy to maintain our quality of property and property values.

The food truck court is not a long term infrastructure commitment, nor a major investment in amenities to support a business.

We would be supportive of a brick and mortar, contained establishment, next to our property, as long as adequate dedicated parking and driveways are provided in this space.

Richard and Jackie Siefring
Pelican Watch #307

2532 Estero Blvd.
Ft. Myers Beach, FL 33931
rms3374@aol.com
937 608-1671

From: [whitehead](#)
To: jfrankel@fmbgov.com
Cc: [Berkey, Kathleen "Katie"; briesath@theseismicgroup.com](#)
Subject: Food truck court
Date: Friday, January 24, 2025 11:50:42 AM
Attachments: [shield-advisory.png](#)
[chevron-light.png](#)
[shield-advisory.png](#)
[chevron-light.png](#)

 External email >

 First time sender >

I am sending this email to emphasize my opposition to the food truck court in my backyard. I bought and lived at 2563 Cottage Ave because I loved the quaint little island it was and that it was the first schoolhouse on the island in 1937, which FMB historical association presented me with a plaque that hung on my house. How can you destroy a quaint little area of cottages which we had behind us and to the left down the block? This food truck court will destroy the quaint island atmosphere. Hurricane Ian completely destroyed my home, but we are slowly rebuilding to keep the cottage look in our area beautiful and pleasant to look at. We had to build now on stilts, and instead of looking at other cottages, we will now look down on a festival of roofs of trucks, noise and music, multiple smells all day and evening, lights blaring (which is also disturbing to nesting turtles during turtle season) which is very important. People will also be parking all over our property looking for spots and this will also make more traffic for us to get out. Fire and rescue and hydrants will also be inhibited. How will we enjoy our privacy and evenings with all this noise, lights and music blaring all evening, and waking us up early in the morning with nauseous smells of different foods, propane, noise, and trash throughout our properties. We will need constant police for traffic and problems and city workers to help keep the area clean. People will be dropping food which will be bringing unsanitary grounds that will bring rat infestation. The carbon footprints are also negative to our area.

Regards, Steve and Susan Whitehead

From: SUSAN BONFIGLI <sabonfigli@aol.com>
To: Amy Baker <amy@fmbgov.com>; Judith Frankel <jfrankel@fmbgov.com>
Sent: Thursday, January 23, 2025 at 03:21:48 PM EST
Subject: More on the Food Truck Park

Hi Amy,

Please forward this email to the LPA members and Town Council members.
Thank you.

Dear LPA Members and Town Council,

Again, I'm writing you regarding the proposed Paid Public Parking lot with accessory food trailer park and open-air beer and wine bar as well as outdoor live music located on Estero Blvd and abutting my residential neighborhood.

I've collected photos of our area including aerial shots captured on leepa.org. I've made notations on these photos showing the streets and two other existing businesses that abut our neighborhood. I've also included a couple of videos related to noises traveling easily in the open-air to our neighborhood. (The aerial shots I included were pre-Ian so you can imagine our neighborhood full of homes again as we are a Residential area and some have already started rebuilding their homes.)

I would appreciate it if you could take the time to review the photos/videos and read the details I've posted with each on this Pinterest Page: <https://pin.it/21CmQu0Vn>

Things to note:

Increased Traffic in our neighborhood

The aerial shots showcase the proximity of the parking lot to our neighborhood and can allow you to perceive how the large lot is very likely to have a major traffic impact on our neighborhood streets even though the applicants imply that they can keep the traffic out.

The purpose of a parking lot is to attract cars. Although the idea of a food truck park may lead you to believe pedestrians and bicyclists will be the main visitors, existing traffic associated with Mom's food truck is evidence of the alternative -- it's a vehicle draw. It is foremost a paid public parking lot!

As a paid public parking lot, cars will queue on our streets as:

- 1) Those just looking for beach parking have to pay before actually entering the parking area. People digging into their wallets, locating their phones, distractions in the car, etc.
- 2) The entrance/exit area can't be traversed in both directions simultaneously due to the narrow roadway - Chapel St - and the narrow pathways inside the parking lot. i.e. Cars turning left from Chapel St into the lot are likely to cut in making the exit from the lot impassable by a right-turning exiting vehicle until the entering car completely enters the lot.
- 3) Those not expecting to pay to visit the Food Truck Park, will be caught off-guard. If they don't understand that they are credited the parking fee for making a purchase (or there is some

stipulation that they must spend at least \$X dollars before getting a refund or they are refunded \$Y for every \$Z spent, etc, they will be pondering these payment rules while debating whether or not to enter the parking area. They have to justify the cost or if they will incur no cost, all the while blocking traffic flow on Chapel St.

There are many that will decide the parking cost is not justified but only after turning onto Chapel St. They have no choice but to move forward to Cottage Ave. If they go left, they will have to turn around in a private driveway. If they go right, they will pass on the narrow street past our homes and then turn right onto Mango St only to approach another pay parking lot -- all dealing the delays as mentioned above.

With the lot open 24 hours or even until late at night, our neighborhood streets will be regularly traversed by vehicles that do not belong in our neighborhood. The streets are narrow. There will be back-ups. Vehicles may choose to drive onto private property to reverse direction as there is no room to do so otherwise.

Street-side parking:

Street-side parking is illegal in Fort Myers Beach. However, this does not dissuade those from doing so. As evidenced now, Mom's customers regularly park along the roadway on Chapel St and Cottage Ave. They also park on abutting private property as there is no one there to tell them, "no". There is the existing paid parking lot immediately next to Mom's, but patrons won't park there even though it is the legal alternative. No one wants to pay when grabbing a quick bite.

It's my belief that those parking illegally feel that they will get something quickly and be on their way. No one will even notice their vehicle on the roadway. However, as the parking situation worsens, that's an indicator that the process will take even longer. Now there's a queue of people to place their orders and more orders to prepare in a small trailer kitchen, all increasing the time the cars are illegally parked.

Regardless, these customers are not willing to pay a parking lot fee to pick something up at Mom's. They will choose to park illegally making our already narrow neighborhood streets that much more narrow as we try to pass by in our vehicles.

Should there be an emergency at my home or one of my neighbor's, we will be more at risk as emergency vehicles won't be able to reach us or we may not be able to reach Estero Blvd.

Wine and Beer Service:

When the applicant at the last LPA meeting indicated a justification for 24-hour parking was to allow those inebriated to leave their vehicles overnight, my heart sank. Why are we allowing an open-air parking lot beer and wine service next door to our homes? Are the patrons going to become boisterous so we can hear them as well? The only thing permanent in this Food Truck park is the open-air bar!

Outdoor Amplified Music:

Outdoor amplified music travels. It's not containable. It will be a constant disruption to the neighbors. These are our homes where we've enjoyed peace and tranquility with occasional disruptions, as would be in any neighborhood. Allowing outdoor amplified music means that this will be forever and no reprieve for the neighbors.

Indicating that sound meters can be placed to ensure noise levels are not exceeded misses the point. There will never be peace again in our neighborhood. Constant "acceptable" decibel noise is still constant noise to the neighbors.

The amplification by a single speaker or a couple of speakers streamlines the sound in the direction pointed. Whether a single musician or two musicians, it may as well be a whole band when it's amplified. Note: On one occasion when Sandy Bottom's was open under a tent last year, I could hear the person on the microphone encourage the patrons to "make some noise!" And they did!!!! It wasn't even "amplified" for it reach my home. And should I call in a noise disturbance, if the responding agency doesn't get there at the moment of the violation, there will be no proof.

I would expect that if there is no live music, the food vendor may choose to play amplified music -- their own speaker systems. If each plays music, the conflicting sounds can also reach our homes. Some reading may remember when when Yo Taco and Rude Shrimp were across from Lani Kai and each played loud music that seemed to compete with each other. Just walking or riding my bike by played on my nerves -- never mind having it by my home for hours at a time! (I felt bad for the employees having to hear this noise during their shifts.) I also noticed this noise conflict in Times Square when Yo Taco was there, competing with La Ola.

Odors:

The means of controlling food odors in a food truck park isn't something that exists that I'm aware. As I've mentioned at other meetings/emails, we regularly smell cinnamon buns and bacon at our home. On occasion and for brief moments in a day, these are pleasant smells. But there are times when the smells are overwhelming giving the feeling that there's no oxygen in the air.

Add multiple food trucks with their food odors disbursing and colliding, we will have more opportunity for lost fresh air.

Storm/Wind/Hurricane Safety of our Homes and Property:

It appeared to surprise the applicant at the last LPA meeting that they would ultimately be responsible for ensuring the food trucks would vacate the premises during an evacuation order. And although it seems logical that the owners of these trucks and the other loose items (chairs, tables, umbrellas, sail shades, trash cans, etc), would want to protect these items as to avoid the costs of replacement with a pending hurricane, it's evident that this does NOT always happen in Fort Myers Beach. The impact and costs can also now fall on the neighbors!

It doesn't even have to be a hurricane that makes these open-air, non-permanent structures an issue on that property and for the surrounding properties. Consider the unfortunate experience the Millers had to deal with at both the The Whale and Sandy Bottom's properties when bad weather brought down their huge tent twice! When they were operating Sandy Bottom's last year, there are several times I noticed their furniture blown over after unnamed storms. Mom's port-a-potty tipped during one of these unnamed storms last year, never mind during the hurricanes. (No attempt to remove or strap down for the hurricanes.)

I've noticed the sail shades at MoJo's come down and completely disappear as a result of unnamed storms. I included a photo of the Chamber's trailer showing a flying sail shade on Jan 22 -- yesterday. Just a windy day!

We've also had "normal" storms with lots of rain turning Estero Blvd to a flowing river. Without water surface management put in place at this "food truck park", the modified parking surface and food truck platforms will likely create flowing water off the property compared to the porous sand that's there today, potentially creating new water problems on our neighborhood streets as well as Estero Blvd.

What happens when these unnamed storms happen overnight when no one is attending the food truck park? Is this now just the neighbors' problem?

Safety/Security:

An open parking lot and trailers in an area where activity is low at night and neighbors are sleeping will be an attraction for those with bad intent. We can expect to have more strangers walking our neighborhood in the hours of darkness as they have a great big parking lot to hang out in. The trailers and support equipment (chairs, tables, umbrellas, etc) may be an attractive nuisance to those who are less uninhibited due to alcohol consumption. These same people are likely to access the beach whether it be at the beach access or through one of our neighborhood properties.

Existing Commercial Properties and How They Fit In:

Per the aerial photos, you can see that there is a public paid parking lot and Mom's properties abutting our residential neighborhood. In order to fit in with the neighborhood, the Town set up ordinances to ensure we meshed.

Per Judith Frankel, the 2 existing commercial properties on Estero Blvd abutting our residential neighborhood have ordinances in place to protect our neighborhood.

Ord. 17-03 governs 2450 Estero Blvd: 17-03-2450-Estero-CPD-FINAL-Moms No outdoor entertainment was approved as part of that CPD. Hours of restaurant operation were limited to 1am to 4pm.

Ord. 18-07 governs 2440 Estero Blvd.: 18-07-Mango-St-Parking-Lot-2440-Estero The hours of operation are limited to "sun up to sun down".

I would expect that the "food truck property" which abuts our same neighborhood have ordinances in place to similarly protect us.

What should be on this property?

The issues above can be eliminated and drastically minimized by having a permanent structure on the property whose purpose to attend to the needs/wants of those parking on this property.

A permanent structure that can contain its business without imposing on the next-door neighbors is appropriate. Parking on the property should be only for those doing business on the property. Noises and smells can be contained. Traffic will be purposeful and contained. Traffic will not be encouraged into our narrow neighborhood streets as those turning on Chapel St. have a purpose -- to turn into the parking area of this permanent structure and stay at this permanent structure. Service vehicles to the property can enter and exit on Chapel St and not traverse the other neighborhood streets.

A permanent structure built to today's codes is better able to protect its contents and keep these contents from impacting neighbors in a storm, be it a named storm or not. The requirements to ensure surface water management will be part of the construction to eliminate excess water flowing onto the streets and thereby impacting neighbors.

Summary:

The Town has respected our neighborhood in the past while still allowing abutting commercial property owners to be successful. Please consider that anything allowed on this property could exist in perpetuity as it is deemed allowable. Parking lots have proved successful low-cost uses for commercial property owners on Fort Myers Beach. There is no enticement to build something permanent in the future as it will be income-producing and have lower taxes than if there was a permanent structure.

Temporary structures will forever be a problem in protecting our neighborhood properties for both name and unnamed storms. The temporary items themselves plus the rain waters will now and forever spill off the property onto neighboring streets and onto our properties.

We already have a commercial public parking lot abutting our neighborhood. Adding another that also sells wine and beer and homes temporary food trucks/trailers introduces and forever allows nuisances to our neighborhood with no one to manage, but us, the neighbors.

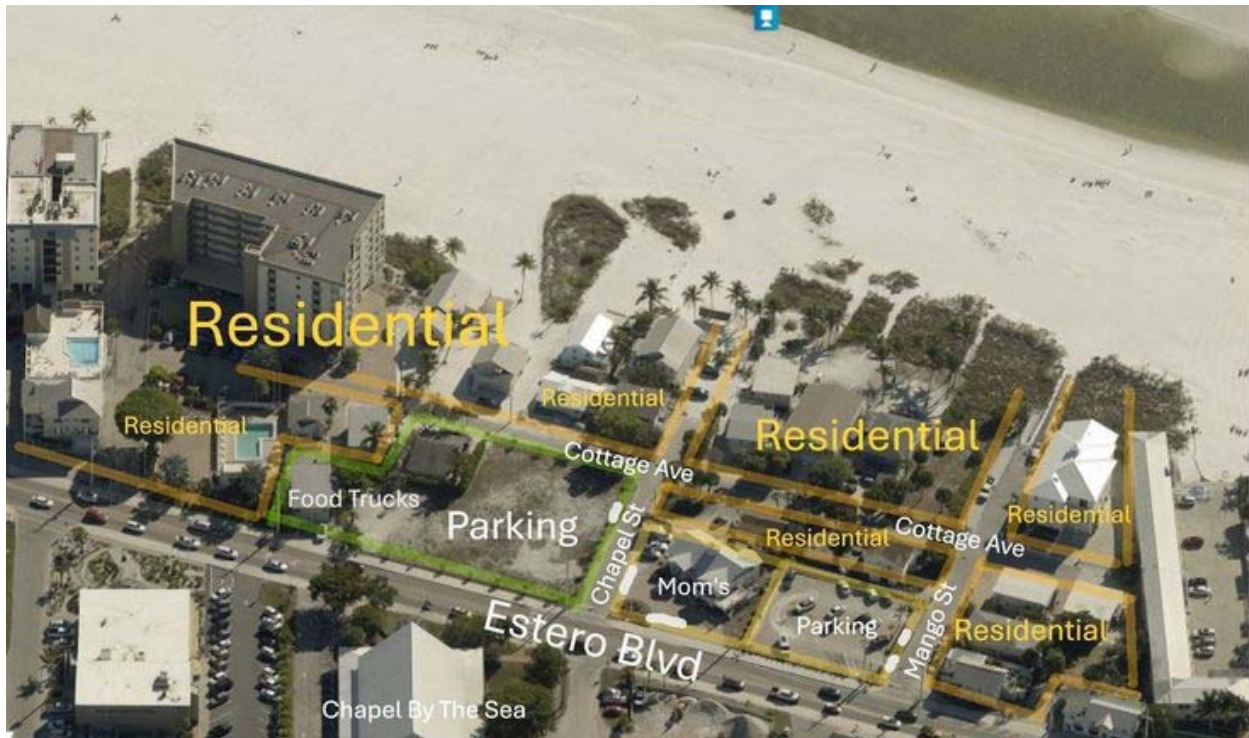
I appreciate you reading what I've written here and on the Pinterest Board linked above.

Appreciatively,
Susan Bonfigli

2434 Cottage Ave

Fort Myers Beach

SUSAN BONFIGLI
sabonfigli@aol.com



Pictures and Videos with Captions Hyperlinked (Pinterest) to Susan Bonfigli Objection E-mail
Dated 1/23/25: <https://pin.it/21CmQu0Vn>



More Appropriate for permanent structure with dedicated parking

The property is better suited for a permanent structure with parking dedicated to the use of the structure. The public that parks on the property should be encouraged to stay on the property and not traverse the residential area which completely surrounds this property.



We do not need to add massive beach parking to our residential neighborhood

Per Judith Frankel, the 2 existing commercial properties on Estero Blvd abutting our residential neighborhood have ordinances in place to protect our neighborhood.

Ord. 17-03 governs 2450 Estero Blvd: 17-03-2450-Estero-CPD-FINAL-Moms

No outdoor entertainment was approved as part of that CPD. Hours of restaurant operation were limited to 1am to 4pm.

Ord. 18-07 governs 2440 Estero Blvd.: 18-07-Mango-St-Parking-Lot-2440-Estero

The hours of operation are limited to "sun up to sun down".

It makes sense that the "Food Truck" property also align with the neighborhood. Outdoor noise, alcohol consumption and other disruptions (ex. smells, service vehicles) are not appropriate. There is no need for all this public parking, encouraging people to wander our neighborhood.



Just one foot truck – starting must at 7:30am ...all day long!

One food truck can put out music that reaches across Estero Blvd to our home beginning at 7:30am and going all day long into the night! If multiple can run music simultaneously, the noise pollution will be atrocious. This is likely when the one-person/2-person band isn't playing. Again, the speakers are open-air and the noise will travel. I had so much anxiety last year with Sandy Bottoms and then the Cuban's food truck -- it was loud and ran "forever". Especially annoying when the singer says, "let's hear you make some noise!"

Again, the video doesn't compare to what is actually heard at our home.

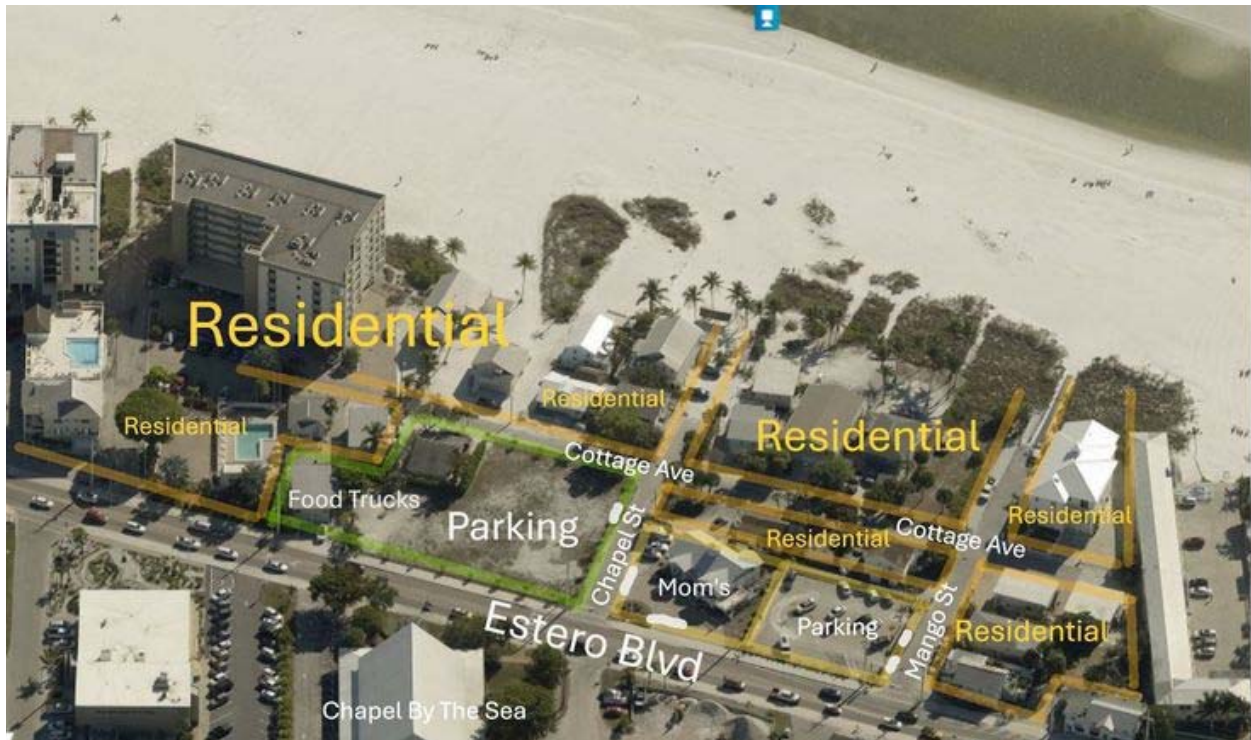


Single speaker is loud even this far away!

Sandy Bottom's set up under a tent last year. There single speaker system directed sounds in a singular direction - toward my home. I could feel vibrations in my home and hear them outside my home!

We don't want to be inundated by noises daily from early in the morning until late at night! We need peace. These are our homes! We are not in a party district and don't want our neighborhood changed into one.

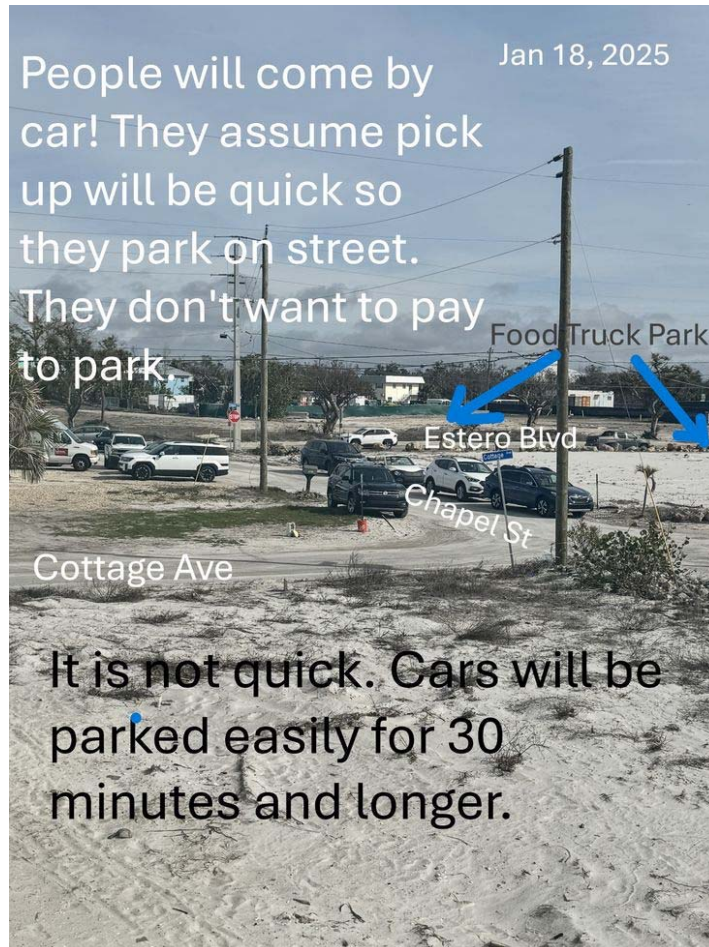
Again, a permanent structure could strategically place speaker pointed so that just those on premises hear it. This won't be possible with an outdoor system. (My cell phone recording did not do justice to what I was actually hearing when making this video. It's more disruptive in person.)



Parking Area Encourages Using Residential Street – Cottage Ave

When potential Food Truck customers drive in Chapel St, they will learn it's pay parking. They will continue onto Cottage Ave not having time to learn that there is a purchase option to reimburse parking fee. Cottage Ave solely serves the residences on this street and should not have commercial traffic which disrupts our neighborhood.

Those not willing to pay to park will park roadside on our residential streets. Cars entering Mango already queue up to enter that pay parking lot making it difficult for residents to exit/enter Cottage Ave to Estero Blvd.



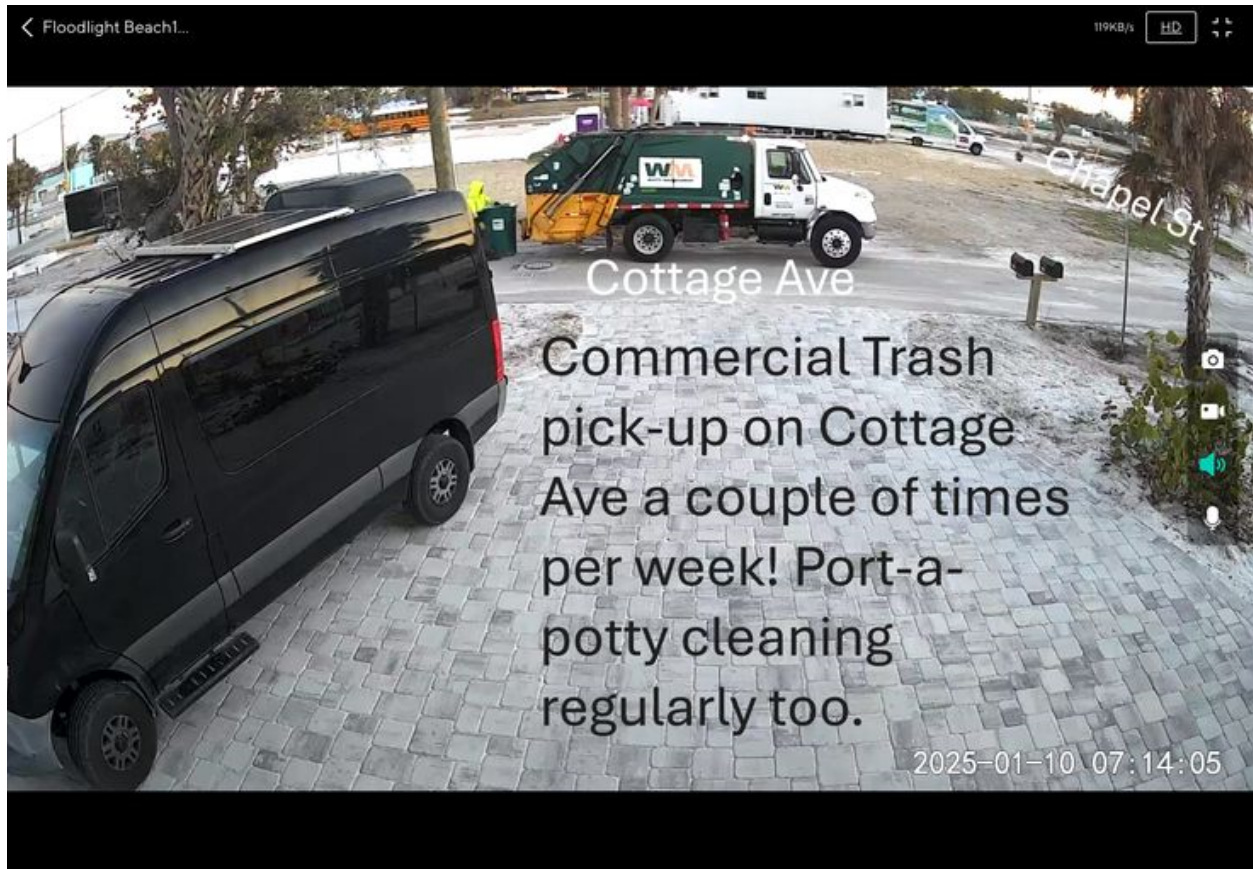
The expectation of just parking for “a minute” is a fallacy.

It's assumed that visitors to the trailer park will be pedestrians and cyclists. I'm sure they will come. But as evidenced by Mom's, cars will come. They will assume quick turn-around and choose to park in any direction along and on the roadways of our residential neighborhood. They will block our streets. This is from January 2025. We're not in season yet.



Recent Parking in all directions and on roadway, including residential streets

As evidenced by Mom's, cars will come. They will assume quick turn-around and choose to park in any direction along and on the roadways of our residential neighborhood. (Turn around is usually quite a while - even 30 minutes as there's a line to wait in first, then the wait time for the order to be prepared.) They will block our streets. This is from January 2025. We're not in season yet. There have been times I've had to squeeze out of my driveway onto Cottage Ave because of the commercial patrons parking on the roadway in front of my driveway.



Commercial Service vehicles traverse our residential street regularly creating noise & disturbances

Cottage Ave does not have any commercial businesses, yet the commercial service vehicles regularly come down our street several mornings a week creating noises that wake us. They tend to park in front of our home as they place and pick-up orders at Moms on these days too.



Things will fly away when attended. Permanent Structures avoid this problem.

We've seen MoJo's deal with their disappearing sail shades. The Millers lost their big tent twice due to big unexpected winds - once at the Whale and then last year at Sandy Bottom's. For the brief time that Sandy Bottom's was operating in 2024, I've seen the chairs and tables blown over more than once. I've seen Mom's port-a-potty tip more than once and when there wasn't a hurricane involved! These things can happen overnight when no one is supervising the business. There could be detrimental impacts to neighboring and nearby properties.

These are generally not issues when a business operates out of a permanent structure.

Having a dependency on multiple people (each food vendor, etc) doing the right thing is putting our neighborhood at risk.



Panoramic view from our residential neighborhood home – parking everywhere!

I'm hopeful that homes will be built someday on the properties across the street from our home on Cottage Ave. Unfortunately, they will inherit the view I'm looking forward to being hidden from me in the future. There's the existing parking lot on the corner of Estero and Mango. And now they want to build a huge pay parking lot that will be along Chapel St coming around Cottage Ave on the residential side and Estero Blvd, opposite. That's a lot of public parking lot for a residential area!



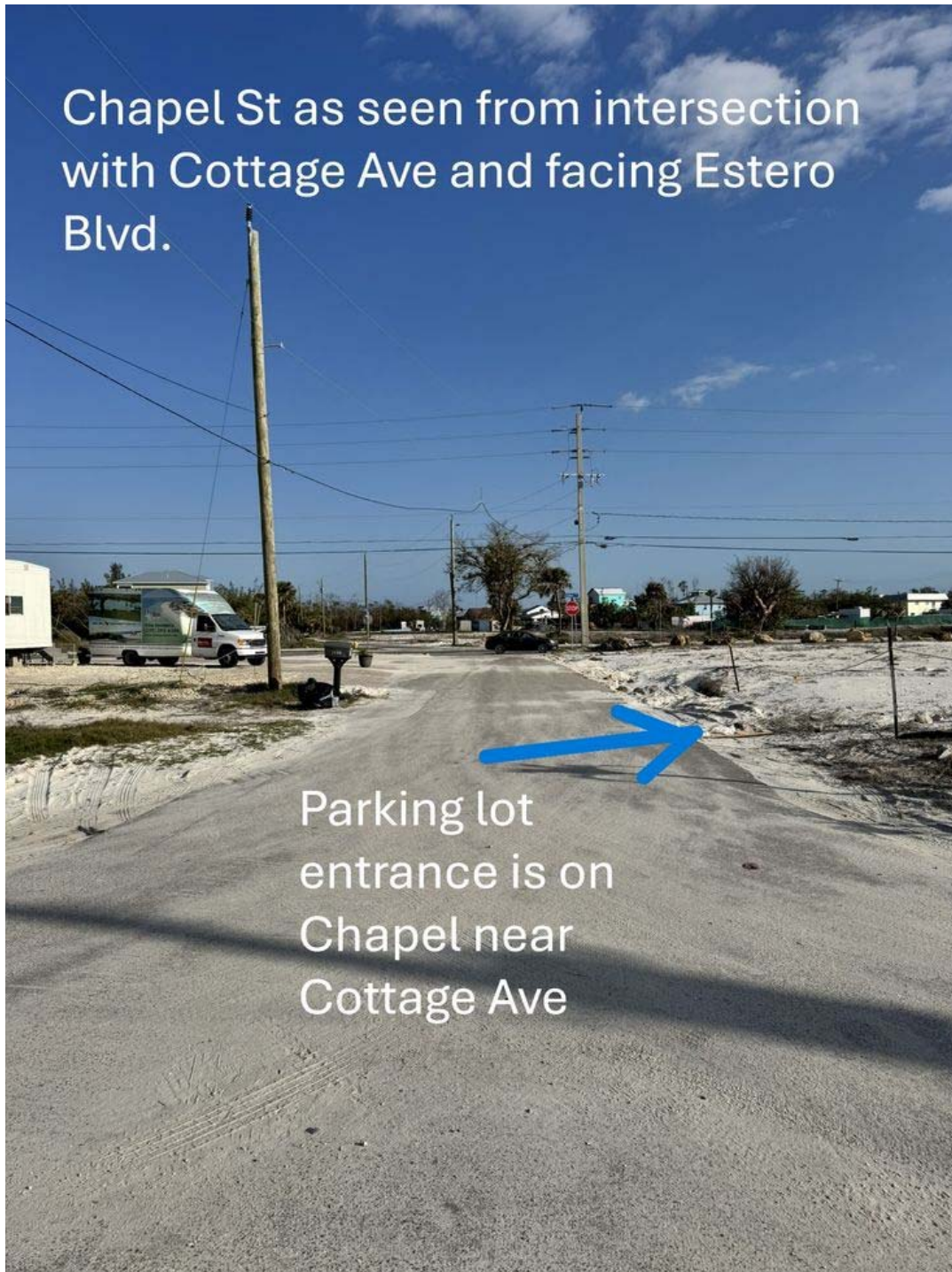
View from my home on Cottage Ave. Another huge Parking lot!

The proximity of this proposed food truck park and paid parking area will bring noises, smells, pests, and other nuisances to me and my neighbors all hours of the day and every day of the year!
Open-air alcohol sales do not belong with a parking lot and not by a residential neighborhood.



Not a lot of room for competing vehicles to turn on our neighborhood streets

Our streets are narrow. Parking lots invite cars! This property should not be selling parking which encourages cars. It should be a permanent structure that can allow visitors in cars to park without issue on their property when visiting their property.



Chapel Street is narrow. The parking entrance-exit is close to Cottage Ave

It's very likely that many intending to use the food truck parking lot will enter/exit onto Cottage Ave and circle around to Mango St. The whole purpose of a parking lot is to bring cars! We don't need or want cars traversing our neighborhood!

A permanent structure that has parking dedicated to its patrons is what should be allowed on this property.



Cottage Ave is a neighborhood street, not a public thoroughfare

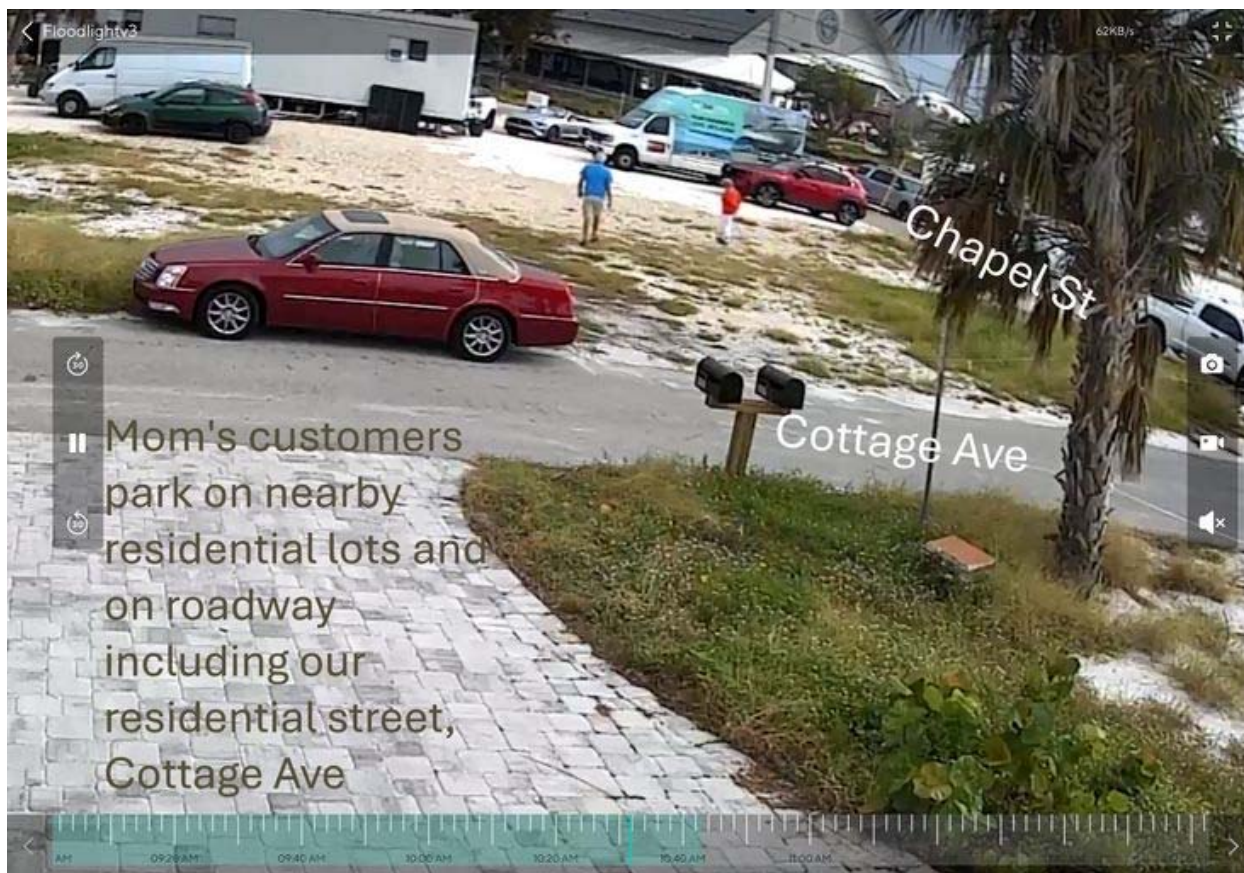
Parking lots invite cars! Those in the cars may turn into Chapel St thinking that they'll park for free and eat at the food truck park. What happens when they see it's paid and they would get reimbursed? They are already on Chapel St. They will undoubtedly continue onto Cottage Ave. If they turn toward Pelican Watch, there will be U-turns on private property. If they turn the other way, there will be delays and queues building on Mango St to Estero Blvd. We will have the same issues that Connecticut St through Shell Mound neighborhood deal with, but our problem is brought about by a public paid parking lot!

Make this a permanent structure with its dedicated parking to avoid endless loops of drivers!



Chapel Street is short and narrow. Impacts will be felt on Estero by cars waiting to park.

As with any paid parking, there's a delay associated with finding the access point, determining if the payment is worth it. If worth it, then payment has to be made and access given. Add those trying to exit at the same location onto a narrow street with those cutting the left turn in short, we will have delays! This will make Chapel St a blocked street for the neighbors hoping to reach or exist on Estero. The same already happens on Mango, but that won't last as long as that lot has fewer spaces.



Mom's customers
park on nearby
residential lots and
on roadway
including our
residential street,
Cottage Ave

October 2023 – they were parking on the streets then too

Again, not peak season and we have a food truck business serving those who arrive by car. These drivers park on the streets instead of using the pay parking lot immediately next door.



Parking on private property is common as well

Historically, people will choose to park illegally and without concern for the impact on neighbors rather than pay to park...or choose to walk or take a bicycle.

From: Cecile Carstensen <cecile@pelicanwatchrentals.com>
Sent: Saturday, February 1, 2025 5:54 PM
To: jfrankel@fmbgov.com
Cc: Moscoso, David <DMoscoso@beckerlawyers.com>; briesath@theseismicgroup.com;
Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>
Subject: Food Truck Park

To the members of the Local Planning Agency

I am sending this email to you to express my disapproval of the food truck park that is up for vote. I am not going to repeat, although I do agree, the concerns of trash, smells, noise, traffic, loss of property value, etc., as those negatives have already been addressed at the January 9, 2025 meeting and in the many previous emails you received. I am very sorry that so much was invested in this property, but please consider those of us who also invested in this beautiful, quiet part of the island that we expected to remain beautiful and quiet. From the meeting on January 9, I got the impression, I could be wrong, that none of the LPA members reside on Chapel, Cottage, or in any of the surrounding condominiums. What if you did? How would you vote? I think I already know the answer and you do, too. I also feel that by saying "family entertainment center" and "we want it to be a family place...for the little ones" is just a way to try to touch our hearts and have us think "aww, they're doing it for the kids, how nice". Other than slushies, and perhaps a few games, I didn't hear anything that would have the children begging their parents to take them to the food truck park when instead they can be at the beach where they can play in the sand, build sand castles, search for shells, jump the waves and use their imagination. All I heard was food, tools, merchandise, and music children will probably not be interested in. These, as well as the previous concerns, are my reasons as to why I hope you consider the effects this would have on the neighbors and make a conscientious decision to vote NO on this project.

Thank you for reading this.

Sincerely,

Cecile Carstensen

Owner of 1/2 of Unit 503 in Pelican Watch since February, 2012

Sent from my iPhone

From: Pat Ooykaas <pat@pelicanwatchrentals.com>
Sent: Saturday, February 1, 2025 8:21 PM
To: jfrankel@fmbgov.com
Cc: Randy Briesath <briesath@theseismicgroup.com>; Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>; Moscoso, David <DMoscoso@beckerlawyers.com>
Subject: Food Truck Court

To whom it may concern

Myself, my husband and our 3 grown children own unit numbers 107, 502, 503 and 603 in Pelican Watch located at 2532 Estero Blvd

We bought our first unit (107) in November of 2009. The second unit (603) New Year's Eve day 2009. The other two units were purchased a couple of years later.

We bought into this building because of the location. Across from Chapel by the Sea, town hall and the Tops grocery store. 107 is our second home. I'm there every 6 to 8 weeks. We love it there.

This open food truck court that is being proposed, will have an adverse affect on our building. Our 107 lanai is about 100 feet from the property line of the food court. This will affect all the owners in the 7 and 8 stacks.

The noise will be unbearable to sit on our lanais if they are allowed to be open from 7 in the morning until 10 at night.

The traffic will increase because there will be parking access for the beach. People not knowing that Cottage is a dead end into our parking garage will inadvertently drive through it causing a hazard to our owners who have under building parking spaces. We have two of them.

There will be people all over our property. We already have this problem now.

We are afraid that all the home values will decrease in the area because of this project. ie smells from garbage, port a potties, flies and rodents

We are not against a food truck court. We like going to them, trying out different foods. We just don't believe this is the correct spot for it as this is a residential area. Our privacy will be threatened. Our pool is street side which means our quiet days in the pool are over.

When my husband and I first walked into 107, we knew we were going to make an offer on the unit even though we hadn't looked at any other properties yet. It just felt like home. It is our little piece of paradise. This food court will take that away from all of us on these two blocks.

Please consider how you would feel if you owned property next this proposed project as we do .

Thank you.

Dick & Pat Ooykaas
and the Ooykaas Family
Sent from my iPhone

From: Russell Burgett <burgettr@yahoo.com>
Sent: Saturday, February 1, 2025 3:57 PM
To: jfrankel@fmbgov.com
Cc: Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>; Moscoso, David <DMoscoso@beckerlawyers.com>; Randal Briesath <briesath@theseismicgroup.com>
Subject: Food Truck Court Rezoning

Dear Judith Frankel,

I am writing this email to provide my personal feedback on the proposed zoning change. Please include the attached letter in the meeting packet for the LPA committee.

Thank you,
Russell Burgett
2532 Estero Blvd, Unit 101
Ft. Myers Beach, FL 33931

Date: February 1, 2025

To: Judith Frankel
Katy Berkey
Randy Briesath

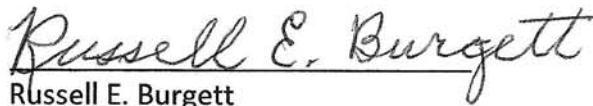
From: Russell Burgett
Owner of unit 101 for 30 years
2532 Estero Blvd. Unit 101
Ft. Myers Beach, FL 33931

How will this change in zoning benefit The Town of Fort Myers Beach? How much tax revenue does a condo like Pelican Watch bring to the city? Currently, it generates approximately a thousand dollars per unit and there are 48 units. How does this compare to the revenue generated by a change in the zoning for the property in question? If left alone as residential it has a much greater tax potential for the city as condo or private/rental homes.

In order to attract evening customers, the food court will need to provide entertainment, especially if it will be dealing with the "late night" crowd (open until 10pm). Does it have liquor licenses already or are they a future request? The evenings will not be quiet times in the Pelican Watch neighborhood and residents may be calling the police about the noise, additional expense to the city. Customers of the food court will be missing the trash containers when they overflow and "garbage" will be blowing around. Who, on this property will be cleaning that up or will it be the city? There is also the attraction of rodents to discarded food. Who pays for the pest control? Since this is a "buy and take away" operation during the daylight hours, the crowd in the evening is more "sit down" and after a few drinks may need a restroom. Who provides the porta-potties and the regular pickup schedule?

Our Pelican Watch property values will take a hit because of the proximity to the food court and the negative impression it will make on future buyers and renters. Please leave it zoned residential.

Signed,


Russell E. Burgett

From: Lee Dornfeld <ldornfeld@outlook.com>
Sent: Saturday, February 1, 2025 10:53 AM
To: jfrankel@fmbgov.com
Cc: Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>;
dmoscoso@becklawyers.com; briesath@theseismicgroup.com
Subject: No- food truck court

Hello,

Please find the attached letter opposing the food truck court.

Thank you,

Lee Dornfeld
Pelican Watch # 505
(502) 445-5289

Denise Hourigan

2532 Estero Boulevard #505
Ft. Myers, FL
dmhdmd@gmail.com

February 1, 2025

Dear Ms. Frankel,

My name is Denise Hourigan, the daughter of Lee and Donna Dornfeld. I am writing this letter on behalf of the Dornfeld family who have owned unit 505 at The Pelican Watch Condominiums for over 35 years. We strongly oppose the rezoning effort that would allow for multiple food trucks, live entertainment and alcohol sales late into the evening. The proposed plans abut our pool area and detract from the serene environment that many retirees have worked there entire lives to enjoy. Many people in our community cite The Pelican Watch as their primary residence and living next to a loud and busy gathering spot from dawn til late night devalues their property. We do remember patronizing a restaurant, The Mucky Duck in that locale. We believe either a restaurant or retail/condo space as originally zoned is a more appropriate option. Please find another site for the proposed food truck/live music venue near the pier or hotels where it is much better suited. Don't allow the residential charm the Pelican Watch has enjoyed for decades be destroyed.

Sincerely,

Denise Hourigan

From: Mavis Sutton <mavis2532@gmail.com>
Sent: Saturday, February 1, 2025 8:50 AM
To: jfrankel@fmbgov.com; dmoscoso@becklawyers.com; Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>
Cc: Randal Briesath <briesath@theseismicgroup.com>
Subject: food truck park

My name is Mavis Sutton and I own unit 305 in Pelican Watch at 2532 Estero Blvd. I have owned it for 34 years and have so enjoyed the warm family atmosphere of Pelican Watch when I bring grandchildren and now, great grandchildren to the condo. I have been following the permitting process of the mobile food truck park that is proposed to be placed right next to our property. To have this food truck park 10 feet from our pool fence is upsetting. Our privacy at our pool will be gone or, at least, disturbed. I am upset by the idea that there will be patrons of the park watching what is happening at the pool through our fence. The noise and food odors will be pervasive and not welcome by our owners or our renters.

The financial impact will be felt immediately upon the approval of this project as I believe that having this project in our backyard is a detriment to the value of each of our units and it will not be something that renters will want to contend with. Also, the number of cars and people will be increased and that adds more nuisance noise to our area. The music until 10 p.m. is not a welcome event either.

I would ask that you seriously weigh the importance to the beach of having the food truck in this area or having tax-paying owners happy with the environment of Pelican Watch. Please vote this project down.

Thank you for listening.

Mavis Sutton
260/668-2369
mavis2532@gmail.com

From: Kirk Banerian <kbanerian@comcast.net>

Sent: Sunday, February 2, 2025 8:25 AM

To: jfrankel@fmbgov.com

Cc: Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>; Moscoso, David <DMoscoso@beckerlawyers.com>; Randal Briesath <briesath@theseismicgroup.com>

Subject: letter addressed to LPA committee re. food truck park

Hi Ms. Frankel,

As an owner at Pelican Watch Condominium, please find attached a letter we wrote concerning our opposition to the food truck park plans being presented to the board. Please include this letter in the LPA committee members meeting packets for their upcoming meeting. We plan on attending the meeting in person as well on February 11th.

Thank you and have a great day.

Kirk Banerian, M.D., FACR

February 1, 2025

Dear LPA Committee Members,

We are owners of a condominium at Pelican Watch 2532 Estero Blvd. #404. We have owned our home since August 2015. We began coming to Fort Myers Beach with our young family in 2000 as I (Kirk) began to work for Radiology Regional Centers. We fell in love with the small community of Fort Myers Beach. It became home away from home with every visit. We dreamed of someday being able to afford a place on the beach to enjoy with our family. After years of searching, we found our beloved Pelican Watch. It was across the street from our favorite grocery store, Topps, our welcoming church, Chapel By The Sea. It was down the street from the town's library. We had favorite small businesses we enjoyed supporting, Mom's (Heavenly Biscuit), The Shamrock, The Cigar Hut, Tetley's. Our list could go on but we think you can understand. We were far enough from the hustle and bustle of Time Square but, just close enough to be able to walk and enjoy everything. We could have bought anywhere down the Gulf coast but we chose Fort Myers Beach for its community. People and businesses invested in their community. We supported each other. Businesses provided us with services that improved our quality of life on the beach and we supported their businesses so they could survive. Some of that has gradually changed, as with any community but, we saw some changes as positive improvements. However, Hurricane Ian not only destroyed our community but also seemed to have clouded the focus of leadership on the best parts of what draws people to the community of Fort Myers Beach. We live here for the very reasons we outlined above. We look forward to seeing this town rebuilt with businesses invested in the community and improving the quality of life for those of us that live here. That means brick and mortar establishments not transient businesses where community investment is not a top priority. As an example, if you recall, Topp's supermarket made many monetary investments to the community they served, Fort Myers Beach. Your hometown parades were filled with floats representing those invested in this community, small businesses, churches and school bands walking together. We as homeowners at Pelican Watch have invested millions of dollars to rebuild our home so we can stay in this community. Please consider the list below which outlines how we see the consideration of an open air food truck court destroying our quality of life and the large monetary investment we have made to rebuild.

Food trucks in residential neighborhoods can generate several negative impacts, primarily concerning noise, traffic, parking, litter, and potential impacts on the character of the neighborhood.

- **Rezoning of residential lots.** By rezoning the 2 residential lots, the commercial zone which was along Estero Blvd, would now be encroaching on our existing private residences. The introduction of a food truck court would alter the character of our residential neighborhood, leading to increased commercial activity in an area that is quieter and more residential. We are investing in our building and pool area and by rezoning the residential area, the port a potties, for example, will be within feet of our private property and destroying our investment and quality of life.
- **Noise and Disturbances:** Food trucks generate noise from generators, cooking equipment and music which contribute to increased noise pollution in our quiet residential area, disrupting our peace and tranquility. The late night operations, including stages for bands,

being so close to our home will cause noise disturbances that will affect our sleep, especially for those of us who still work and where sleep is vitally important to our health and well being.

- **Increased traffic and congestion:** Food trucks can attract a large number of customers, leading to increased traffic congestion in our neighborhood, particularly during peak hours. Large amounts of foot traffic and trespassing on our private property is of great concern. The increased traffic and pedestrian activity around food trucks can increase the risk of accidents or injuries in our neighborhood. In addition, many who purchase from the food trucks are going to want to access the beach which leads to trespassing on our property. Also, once on the beach, usually accessed and used by homeowners, there are no public accommodations like restrooms or public receptacles for garbage.
- **Incidents of crime.** There are crimes that occur at food truck parks. Many crimes occur after the parks are closed including vandalism and stolen generators. Unless the area is gated, locked and well-lit this will occur. How does that improve the quality of life for those of us who live here? We continue to have a homeless population that live on the beach. Food truck parks are a perfect place for them day or night. As private homeowners, we are being put in the position to have to deal with safety issues and with those that are vulnerable who need professional help. Again, our quality of life is affected.
- **Parking issues:** Because there are no parking requirements for food truck parks, customers will struggle to find parking, potentially blocking our driveways or creating parking conflicts with us as residents. Trespassing on our private property and using our private parking lot to park may require us to have to take on a great expense of having our private property monitored 24 hours a day, 7 days a week. Traffic will inevitably occur on Cottage Street which leads to our private property to include under our building. Once on Cottage there is no way to turn around leading to traffic going under our building to again lead them out onto Estero Blvd. We invested a lot of money in our driveway and brick paver parking lot. It was not engineered to be used for a large volume of cars. In addition, there is the safety concern of the continuous flow of cars under our building and on our pedestrian walkways.
- **Litter and waste:** Food trucks generate a significant amount of waste, including food scraps, food packaging, napkins, and other disposable items. This will lead to increased litter in our neighborhood, impacting its aesthetic appeal and cleanliness. In addition, poor sanitation management leads to rat infestation in the park area and can bleed into neighboring buildings which will affect our quality of life.
- **Wastewater and sanitation:** Food trucks produce wastewater from cleaning, sanitation, and washing, which pose a risk to our local water quality. Food trucks also have the potential to increase their carbon footprint by using too much energy or producing too much waste. Food trucks rely on vehicles, which can contribute to air pollution and greenhouse

gas emissions. Depending on their energy source (e.g., diesel, propane) and efficiency, they can contribute to environmental burdens.

- **Potential for grease and oil spills:** Food trucks may have accidental spills of grease or oil, which can contaminate the environment and pose a health risk to us as residents and to wildlife. This is especially of deep concern being so close to the beach. Protection of the turtles is of great importance to many; hazardous waste, bright lights, loud noises will have a negative impact. In addition, grease and oil, pose a challenge for waste management and environmental sustainability.
- **No investment in the community.** Nothing speaks to commitment to a community like a brick and mortar business. The presence of a food truck court will discourage businesses from making any permanent business investment in Fort Myers Beach. The low overhead and operating costs of food trucks means they do not have the number of employees that a brick and mortar business would have. A business committed to our community employs those who live and work here. This tends to be small independent establishments. Food trucks, unlike restaurants, do not contribute as much to local tax revenue through property taxes, impacting our local budgets and services They are transient businesses that make no commitment to the community.
- **Loss on our investment.** Although this is our home, it is still an investment which we made in good faith for our family and to the community of Fort Myers Beach. Food trucks have been proven to lower property values and also detract from future investments by potential homeowners. Could “food truck” also include an establishment that sells other products besides food as is seen in Time Square, i.e., legalized marijuana, t-shirts and sunglasses? Why would any family buy a home with that potential in their back yard? Some research suggests that food trucks can create negative externalities, the increased traffic, parking issues, and potential for increased crime, can be perceived negatively by potential homebuyers and lead to lower property values. In some cases, the presence of a large number of food trucks in a neighborhood might be perceived as a sign of decline or lack of investment, potentially deterring potential homebuyers and lowering property values.

As homeowners, invested in this community, we hope you see the future of Fort Myers Beach as we do. A shared community of homeowners and businesses invested in the community working to support each others quality of life. We hope your vision can include improving our quality of life to include too for the lives of future generations, small family owned grocery stores, churches, a vibrant community center and a safe community absent of transient establishments.

Thank you,

Kirk and Leslie Banerian
2532 Estero Blvd #404
Fort Myers Beach, FL 33931
kirkbanerian@gmail.com

From: lylerg@sio.midco.net <lylerg@sio.midco.net>
Sent: Sunday, February 2, 2025 9:50 AM
To: jfrankel@fmbgov.com
Cc: Moscoso, David <DMoscoso@beckerlawyers.com>; Randal Briesath <briesath@theseismicgroup.com>; Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>
Subject: Proposed food truck court

To:
Judith Frankel
Principal Planner Food Truck Court

From:
Lyle & Sheryl Grenz
Unit #302
Pelican Watch Condominium

To all whom it may concern,

We are contacting you with our concerns regarding the proposed Open-Air Food Truck Court along Estero Blvd and adjacent to Pelican Watch Condominiums property.

Prior to purchasing at Pelican Watch in 2018, we would walk past and admired the building and surrounding properties. The screenless lanais, wow!

When we started to consider PW, several other things became added benefits, underbuilding parking spot, location of the pool which was far away enough from the building to be in the sun all day, homes on the north side of the pool to give it a nice residential & private feeling, an enclosed area to spend time poolside visiting with other owners and having guest and grandchildren join us. We are enjoying our little piece of paradise!

Bringing an open-air food truck court next door would change this little piece of paradise and not for the better. Here are several of our concerns.

Our main access to our private parking space is Chapel St. & Cottage Ave. (which dead ends at PW property). With the added traffic of the food court coming and going on the narrow streets coming and going will become challenging. We hope any type of business would thrive, but once that happens, parking becomes premium, which then overflows onto streets and other parking lots.

Our little piece of paradise gives us direct access to the main reason people come to FMB "the Beach". Over the years we have seen incidents where people are not satisfied with public access to the beach, so they have used PW parking and property, which as you are aware is trespassing. Once a person would have the access to an available parking spot at the food court, they also may feel they have the right to use a shortcut to the beach - PW private property. Along with extra automobile traffic, come extra foot traffic. The added foot traffic would add security risk

for us, our grandchildren and guests as they navigate their way from the PW building to the pool area.

With the open-air food courts that we have visited, there have always been problems with where to put the left-over food and trash. Along with leftover food and trash, there is the smell, trash falling out of containers blowing around & rodents become an issue, no matter how hard they've tried. We certainly do not want to attract that to an area where there is a swimming pool area with people lounging.

As we mentioned earlier, the privacy of our pool has made it a place to visit with other owners and guests. The open-air food truck court proposal for music would take that away. Yes, maybe the music may not start that loud, but we all know music brings louder conversations and louder conversations brings louder music, now PW's conversations become harder. PW has 12 to 18 units that would be directly affected by the noise & music on their lanais, because they face in a direction of the food court.

Our little piece of paradise, which we purchased for our family to enjoy for many years, did come with a significant amount of dollars. We don't see how an open-air food court next door would not have a negative effect on it.

We want nothing more than for FMB to rebuild and thrive after the devastating blow Ian had on it. At a time when food trailers and trailers in general are fighting to stay, why would this be the right fit?

Respectfully,

Lyle & Sheryl Grenz
2532 Estero Blvd #302
Fort Myers Beach, FL 33931

From: John Vredenburg <jvburg7@gmail.com>
Sent: Sunday, February 2, 2025 9:07 AM
To: jfrankel@fmbgov.com; DMoscoso@berkerlawyers-com; Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>; Randal Briesath <briesath@theseismicgroup.com>
Subject: Rezoning Cottage Ave.

I apologize if you were unable to open my first email.
Thank you.
Linda Vredenburg

Re: Rezoning of 2543 Cottage Ave.

We are John and Linda Vredenburg owners of Pelican Watch condo #301 since 2002, and frequent visitors for 10 years prior to that. We have enjoyed our time and our ownership at Pelican Watch, mainly because of it being removed from all of the excitement, noise, smells, traffic and people in the business area of Times Square and beyond.

The addition of a food truck park or court within such close proximity to our building would severely lessen our enjoyment of time there, cause liability issues for us and our property, and most likely lower our property values.

We ask that you consider thoughtfully the full impact of what rezoning this area would mean to the residents, guests and renters and our quality life. Also, the number of people it would affect.

We also ask that you please vote as if you were a resident or owner of this area and give careful consideration of how many people your decision would affect and how adversely it would our lives.

Respectfully,
John and Linda Vredenburg
Pelican Watch, #301

From: JOYCE LACAVA <flandct@msn.com>
Sent: Sunday, February 2, 2025 11:31 AM
To: jfrankel@fmbgov.com
Cc: Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>; Moscoso, David <DMoscoso@beckerlawyers.com>; briesath@theseismicgroup.com
Subject: Proposed food truck court

Dear Ms. Frankel,

I am the owner of unit #201 - for over 35 years - in Pelican Watch at 2532 Estero Boulevard.

I would like to voice my opposition to the proposed food truck court.

I fear that the residential character and atmosphere of our building will be lost. The lifestyle that we have at Pelican Watch will definitely be affected and changed.

I can only imagine the amount of noise, food odors, and garbage that will be generated. Portable bathrooms are definitely another concern. If alcohol and music are going to be part of the court, that is definitely another issue.

Another concern that I have is the food courts close proximity to our pool area and fence which is a possible liability - not to mention that there goes our enjoyment of our pool if we have to listen to the noise and smell the food odors.

I feel that it is inevitable that there will be vehicles going under our building - which is where the walkway from our lobby to our beach access is. This walkway is used by seniors and parents carrying beach chairs, etc. and children running across to get to the beach.

Also, wondering and concerned if patrons of the food court will be bringing their food and drink and beach furniture and radios on to our area of the beach. What will happen to the trash that will be left behind? We all know that there will be ! Who is responsible for cleaning that up and disposing of it?

My final concern is about how this will affect the value of my property. It will undoubtedly reduce it. I know that I personally would not be interested in purchasing a unit where I would be next door to a food court and where my pool and beach enjoyment would be affected.

I hope that you will take all of these concerns into account when making your decision.

Thank you for your attention to this matter.

Joyce LaCava
Unit #201
Pelican Watch
2532 Estero Boulevard
Fort Myers Beach, Florida

From: kim stickley <stickley10@yahoo.com>
Date: February 2, 2025 at 11:44:26 AM GMT-5
To: jfrankel@fmbgov.com
Cc: Randal Briesath <briesath@theseismicgroup.com>
Subject: Food truck court
Judith

We are writing you to share our concerns with the food truck court proposal on Fort Myers beach as it would be adjacent to our condo at Pelican Watch.

My wife and I have some concerns which are listed below.

1. Traffic congestion

Traffic is all ready heavy in this area and this would make it even worse as people try to pull in and out of the parking lot

2. Parking

We have enough parking in our building for the owners and a few guests.

If they can't handle the crowd they may end up overfilling our lot.

3. Noise

This is primarily a residential area where people in their units can sit In the evening and enjoy the view. If they have loud music this takes that away from us.

4. Safety

Our building has parking below the building where we can drive through and exit at the end. I am afraid people will see this as a way to drive under our building to avoid the congestion at the entrance to the food court. Most of us have young grandchildren who will be walking to the beach and crossing where they would be driving. I'm not sure how we could prevent this from happening.

5. Values

If what we fear could happen if this goes through it would surely drive our property values down at Pelican Watch and at the other nearby building.

Please take this into consideration and vote against the food truck court.

Thanks

Kim and Pam Stickley

owners of unit 501 Pelican Watch since 2015

From: Barbara White <bwhiteks@gmail.com>
Sent: Saturday, February 1, 2025 9:39 AM
To: jfankel@fmbgov.com
Cc: Randal Briesath <briesath@theseismicgroup.com>; Moscoso, David
<DMoscoso@beckerlawyers.com>; kberkey@lawyers.com
Subject: Opposition to Proposed Food Truck Park Development Near Pelican Watch Condos

To whom it may concern,

Please find the following letter on behalf of Barbara White, owner of unit #108 Pelican Watch.

Barbara White
2532 Estero Blvd, Pelican Watch unit #108. I have owned the condo since June of 2024 but
have rented in PelicanWatch since 2001

January 30, 2025

TO:

FMB Planning Agency members

FMB Town Council

FMB staff

Subject: Opposition to Proposed Food Truck Park Development Near 2532 Estero Blvd, Pelican
Watch Condos

Dear Members of the Fort Myers Beach Town Council, Planning Agency members, and staff:
We are writing to express our opposition to the proposed food truck park development located
within 500 feet of our condominium at 2532 Estero Blvd, Fort Myers Beach. While we support
reasonable and thoughtful development that enhances our community, the open-air format of this
proposed project raises significant concerns about its potential impact on the quality of life for
nearby residents.

Our specific concerns include:

1. **Noise Pollution:** Open-air food truck parks often bring prolonged and amplified noise, including music, crowd chatter, and vehicle sounds, particularly during evening hours. This noise is disruptive to the residents of our condo, many of whom value the peace and quiet of our neighborhood.
2. **Light Pollution:** The bright lighting required for evening operations can intrude into residential units, affecting sleep and overall well-being.
3. **Odor Issues:** The constant cooking from food trucks produces strong odors that can permeate the surrounding area, making it unpleasant for residents to enjoy their own homes.
4. **Increased Traffic and Parking Problems:** A food truck park in close proximity to a residential area is likely to draw significant vehicle traffic, exacerbating congestion and creating parking challenges in our neighborhood.
5. **Trespassing and Safety:** The presence of an open-air venue nearby could lead to visitors inadvertently or intentionally trespassing onto condo property, raising concerns about safety and security for our residents.

6. **Proximity to Residences:** The proposed location's close proximity to our condo exacerbates all of the above issues, creating an unsuitable environment for a residential community.
7. **Property Values:** We are also concerned that the project with all the above mentioned issues will lower the property value of our condos and damage our substantial investment.

While we are not opposed to development that supports local businesses and enhances community vibrancy, we believe that projects should be designed with sensitivity to the surrounding neighborhood. A food truck park in such close proximity to residential properties, particularly one with an open-air format, is incompatible with maintaining a high quality of life for nearby residents.

We urge the City Council to reconsider the location and format of this proposed development. Alternative sites farther away from residential properties or a different format that mitigates noise, light, and traffic impacts could serve the community's interests without compromising the well-being of its residents.

We appreciate your attention to our concerns and are available to discuss this matter further if needed. Thank you for considering the voices of your constituents in this important decision.

Sincerely,

Barbara White
2532 Estero Blvd, Pelican Watch unit #108
bwhiteks@gmail.com
816-536-1759
Barbara White

From: Gary Wiltse <gwiltse930@gmail.com>

Sent: Monday, February 3, 2025 8:20 AM

To: Judith Frankel <jfrankel@fmbgov.com>

Cc: kberkey@beckerlawyers.com; dmoscoso@beckerlawyers.com; briesath@theseismicgroup.com; Lori Wiltse <ljwsunshine@yahoo.com>; Gary Wiltse <gwiltse930@gmail.com>

Subject: Fwd: Food Truck Court

Food Truck Court Proposed Development

Judith,

My name is Gary Wiltse. My wife and I are owners at the Pelican Watch Condominiums adjacent to the proposed open air food truck court project. We have been owners of Unit 507 since 2021. We have endured many hardships since becoming owners at Pelican Watch such as Hurricane Ian, Hurricane Helene and Hurricane Milton to name a few. Now that we have regained some sort of normalcy and began to enjoy our slice of paradise we are once again facing another issue with this proposed open air food truck court project.

This proposed project if approved will provide many issues for us as well as the Pelican Watch community as a whole. These include:

- unwanted and annoying music and noise. The food court property is visible looking out our lanai and master bedroom window. The music and loud noise would be very problematic for us and our neighbors adjacent to us.
- an over abundance of traffic and trespassing issues on Estero Boulevard and along our adjacent side streets which is already a major issue and will only be made worse. We already have outsiders parking their vehicles on our property and trespassing on our property to access the beach.
- a financial hardship most likely would come with the reduction of property values for our unit and our community as a whole. We have all endured many financial investments and burdens after the extensive damage to our property caused by the hurricanes and now that we are working towards completing all of the repairs and updates we would hate to lose our valuable investment due to this project being approved.

Please consider our issues and concerns when evaluating whether to approve or deny this project. We do not want to see this project move forward in any capacity.

Sincerely,

Gary Wiltse

Pelican Watch Unit 507

231-220-1515

From: Rick Bruner <rickbruner@gorge.net>

Sent: Monday, February 3, 2025 10:27 AM

To: jfrankel@fmbgov.com; Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>; briesath@theseismicgroup.com; dmoscoso@becklawyers.com

Subject: Food Court Proposal on the 2500 block of Estero Blvd.

To whom it may concern,

I am Rick Bruner, and I am a current owner at the Pelican Watch, adjacent to the proposed food court. I have owned my unit 206, with the Hardin family for 12 years and have been coming here for the last 25 years. I just wanted to state vehemently my opposition to this proposal based purely on the proximity of this project to our complex, pool, and my unit....all within 100 yds at the farthest point to our property... Not only has just the prospect of this project's impacted our real estate price already, but the additional noise that would accompany this "beach bar" would be totally unacceptable. We live 800 yards from the Diamondhead and Beach Bar to the north and as I sit on my lanai, I can hear the music from there..... 50 yards from my lanai and directly adjacent to our pool will totally impact me and all our neighborhood residence for the reasons we moved here to enjoy the ambience of the beach lifestyle. I realize that the Ft Myers Beach has changed over the years and Ian has only expediated that change, but I implore the powers to be to try to keep some of the old Florida charm that brought us all here to begin with..... We have a huge area to our North for the bars, noise, restaurants, and tourism, I just implore you to let our beach neighborhoods retain some of that quiet that brought me from the east coast of Florida to the west coast .

Best regards, Rick Bruner

From: Robin Amesbury <robinamesbury@gmail.com>
Sent: Monday, February 3, 2025 12:33 PM
To: jfrankel@fmbgov.com
Cc: Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>; Randy Briesath <briesath@theseismicgroup.com>; DMosocoso@beckerlawyers.com
Subject: Consideration of Approval of Food Truck Site Near 2532 Estero Blvd.

My wife and I own unit 306 at Pelican Watch Condominiums at 2532 Estero Blvd. We have been there since early 2021. We do not rent the unit out, we use it as our part time abode.

The proposed food truck project is very near to our building. Our unit is on the North end of the building, so that any noise from the proposed project, whether music or otherwise would have a direct impact on us, impinging on our right to quiet enjoyment of our home.

The area involved here is heavily residential. There have been no commercial enterprises on the Gulf side of Estero Boulevard for a good distance (perhaps a half mile) on either the north or south many years. On the landward side of the Blvd. stood the now demolished church and the now demolished Municipal building and the adjoining space that was supposed to be a future Firehouse. There are few residences on that side of the Blvd near the proposed project. By comparison, there are many. many residential units adjacent to and in proximity to the proposed food truck development on the Gulf side.

Collier county recently approved the development of food truck projects -- but only away from residential oriented sites -- the projects being limited to parks.

We have been told a 10 foot "buffer space" would be provided between our property (near the pool) and the proposed food truck project. Clearly this would result in the destruction of property values.

Please do not approve this proposed project. The site on which it is proposed is not appropriate. In general, a food truck project would be on the low end of choices for maintaining a wholesome upscale reputation for Fort Myers Beach if any such project is adjacent to residential areas. I refer to this as the Honky Tonk risk, and it brings Myrtle Beach in the 1990s to mind.

Respectfully,

Robin and Karen Amesbury

Food Truck Opposition Letter

From Randal Briesath <briesath@theseismicgroup.com>

Date Thu 2/6/2025 3:42 PM

To Judith Frankel <jfrankel@fmbgov.com>; amy@fmb.gov <amy@fmb.gov>

Cc Albuernes, Milena <MAlbuernes@beckerlawyers.com>; Moscoso, David <DMoscoso@beckerlawyers.com>;
Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>

 1 attachment (15 KB)

Opposition Letter 2.4.24.docx;

External email

Judith and Amy,

Attached is Randal and Pam Briesath opposition letter to the food truck development project.

Thank you for your service to our community,
Randy and Pam Briesath

Regarding the proposed food truck court development

Dear LPA committee and council members,

My wife and I have been owners at Pelican Watch since 2012 and purchased our unit to be close to the north end entertainment area but not end up in or adjacent to an outside entertainment venue.

We are supportive of the commercial development of this site for both the sake of the property and the city as a whole. We are supportive of an enclosed commercial development with site specific parking (no paid public parking). The sort of open air entertainment venue being proposed, especially with the developer seeking permanent approval, will forever change the function of the property and the tranquility of the adjacent residences.

We are also concerned that the order of the whole process is a bit upside down. It is our belief that the city should first study and adopt food truck park ordinances and regulations, then allow a developer to fit into those criteria. Right now, the developer is basically helping the city craft these as they go through the application process. We think this is evident due to many deviations and mitigations being sought and offered by the applicant. Actually the number and type of deviations alone tend to speak to the unsuitability of this site for applied for purpose.

Further, the applicant has not nor been required to submit a traffic impact study which seems ironic given the impact this will certainly have on Estero traffic flow.

A main issue, and one that should certainly be considered, and is now verified through expert report, is the detrimental effect on all the adjacent and Pelican Watch property values. We would think that the committee and council would consider a “do no harm” type of approach to residents and owners. This project will have a direct negative impact on us as soon as this project gets approved.

The proximity issues of this project to us adjacent owners just can’t be mitigated with this proposed development. The day this site opens for business will be the last quite day we and our fellow owners will ever have at our pool.

With the numbers of deviations, the residential adjacencies, and the likely neighborhood consequences (trespass, litter, noise, etc) the city must consider their ability to enforce their regulations and problems when the residents complain – and today there simply seems like there is a lack of resources, budget, or will to take this on – thus leaving us holding the bag on the problems we all know will be there.

Let’s be patient with development, and do it right (not fast) for the long-term health of our island community. Please vote no to allowing this development.

Randy and Pam Briesath

Pelican Watch #203

Memo to: Fort Myers Beach LPA Committee

From: Gary Fields, Former President, Pelican Watch

Date: February 6, 2025

Re: Objection to reasoning to accommodate Food Truck Park at 2500 Estero

LPA Committee members:

I wish to vehemently object to the rezoning necessary to accommodate the proposed food truck park at 2500 Estero Blvd. I will attempt to refrain from restating the many objections you have already received (traffic, noise, odor, in a residential area) and limit my comments to areas which you may not have not considered.

1. The project developers have repeatedly stated that the proposed development as a “family oriented” destination that will address the shortage of opportunities for children and grandchildren. These frequent statements are erroneous and deceptive. There are only 4 non-hotel properties that I am aware of that serve alcohol and have live music - the Beach Bar, La Ola, Nervous Nellies and Snug Harbor. I am a frequent customer of all of them and I can confidently state that they are rarely children at any of them. They are adult entertainment facilities more accurately described as a “Beer Garden.” The description of the proposed development serving an unmet family need is an attempt to minimize the disruptive perception of the impact.

2. The Town’s sound ordinance will not preserve the quiet environment expected in a residential and small commercial area. This is due to two factors.

A. I have used a professional sound measuring device to measure the sound level at the public area adjacent to La Ola, where consistent sound around 75db was measured. While this was only slightly above the Town’s sound ordinance, this would mean that allowed music would be within 10 feet of the Pelican Watch social and pool area, used for the quiet enjoyment of hundreds of people. While Pelican Watch owners have been aware of a potential commercial enterprise next to the pool, no one has anticipated the possibility of 70 db sound all day. Imagine having La Ola level sound within 10 feet of your home. In addition, adjacent homes and at least 12 lanais are only a short distance away and will receive a similar level of noise due to the lack of an adequate barrier for higher level sound mitigation.

B. The noise level at La Ola and this summer, the Beached Whale temporary tent enterprise, consistently exceeded the Town’s sound ordinance. This suggests that the Town and Lee County do not have the necessary personnel to enforce the sound ordinance. This unfortunate situation is understandable, due to the many burdens from Hurricane Ian. But we should recognize that adding to the enforcement burden will not give us the deserved protection and it is better to consider prevention (denial of the rezoning) than relying on unrealistic enforcement expectations.

Thank you for your consideration. Please reject the rezoning and permitting.

Food Truck Park - Estero Blvd - FMB

From kminor8341@gmail.com <kminor8341@gmail.com>

Date Thu 2/6/2025 9:31 AM

To jfrankel@fmbgov.com <jfrankel@fmbgov.com>

Cc Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>; 'Randal Briesath' <briesath@theseismicgroup.com>; dmoscoso@becklawyers.com <dmoscoso@becklawyers.com>; kminor8341@gmail.com <kminor8341@gmail.com>

External email

Hi There – My wife Wendy and I (Kevin Minor) are the owners of unit #105 in Pelican Watch Condo and I too am concerned about many things regarding the “Outdoor Venue – Food Park”. I used to own the house at 2530 Cottage up to 2018 and had many issues with transient homeless persons breaking into my cottage or, more often, sleeping on and under my picnic table or in my bushes. I believe that this outdoor venue will attract some of this same element. So, my concern is about safety and the policing of the venue.

In addition, I am also concerned that Cottage Ave, which terminates into our parking lot, will allow people to drive under our condo building, and through our private parking lot creating traffic that did not exist before.

Then the obvious issues with proximity to residential property, safety, trash, and unpleasant odors is of concern to me. I also assume that FMB would also like a better property tax base that comes with a permanent structure vs this food truck park. I would entertain a permanent venue.

Thank you for doing a wonderful job putting FMB back together but I’m not in favor of the open venue food truck park.

Kevin & Wendy Minor
262-853-8341
2532 Estero Blvd, Unit #105
Fort Myers Beach, FL 33931

Additional Opposition letters
Submitted Post Agenda

From: liam oloughlin <Liam@loloughlin.com>
Sent: Wednesday, February 5, 2025 12:19 PM
To: Judith Frankel <jfrankel@fmbgov.com>
Cc: liam oloughlin <Liam@loloughlin.com>; Kelly S. O'Loughlin <ksoloughlin@gmail.com>
Subject: Letter of Opposition for Development of 2500 Estero Boulevard, Fort Meyers Beach, FL

Good afternoon,

Ms. Frankel, please see the attached letter of opposition listing our objections and concerns for the food truck and parking development at 2500 Estero Boulevard, Fort Meyers Beach, FL.

Thank you,

Liam O'Loughlin

L.O'Loughlin Construction Services
30111 Bates Road
Perrysburg, Ohio 43551

419.699.0070

Liam@loloughlin.com

Note: Florida has a very broad public records law. Most communication(s) to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications and email address may be subject to public disclosure.

L. O'LOUGHLIN
CONSTRUCTION SERVICES

Town of Fort Meyers Beach
2525 Estero Boulevard
Fort Meyers Beach, FL 33931

Additional Opposition letters
Submitted Post Agenda

ATTENTION: Judith Frankel

Please accept this letter of opposition to the Development at 2500 Estero Boulevard, application number 20240137. Our objections and concerns are listed below.

We are the property owners of 2553 Cottage Avenue, Fort Myers Beach, Florida.

Please accept this letter of opposition in addition to our letter sent in January 2025, of CPD Application #20240137, where the "Applicant is requesting to amend the existing CPD RES#07-28 to provide for "Option B" - Master Concept Plan and updated Schedule of Uses to allow for the development of a food truck park with outdoor seating and a commercial parking lot. This action will replace the previously approved "Option A" MCP for the CPD."

We also have concerns that a request to expand the previously approved CPD boundaries to include 2518 Estero and 2543 Cottage Avenue was included in a separate ordinance.

We strongly oppose the proposed rezoning from residential to commercial, the proposed mobile truck park planned, and or approving the commercial planned development.

COMPARISONS

We have looked at comparisons of food truck parks in the Fort Meyers area:

- **Bonita Beach** - *Rooftop at Riverside*, 27333 Old 41 Rd, Bonita Springs, FL 34135. Commercial area permanent 2-story structure with supporting amenities.
- **Naples** - *Celebration Park Naples*, 2880 Becca Ave, Naples, FL 34112. Commercial area permanent structure with supporting amenities.
- **Fort Meyers** - *Bay Street Yard*, 2136 Bay Street, Fort Meyers, FL, 33901. Commercial area permanent structure with supporting amenities.

With the comparisons that we've reviewed, the food truck parks were supported by commercial businesses – both retail and beverage – and none were in a residential area.

Per the proposal submitted by the neighborhood company, all the codes referred to are for temporary structures. This is not typical in any commercial development.

BUILDING STRUCTURE

This is a commercial enterprise. This should be considered under Federal, State, and Local Applicable Laws, Ordinances, and Codes for Uses and Structures for Commercial proposes.

All the proposed structures refer to the code “Minor Structures.”

The proposed development requires an additional structure for Beer and Wine sales; this structure is not defined in the code for minor structures.

SCHEDULE OF USE

Temporary Uses - Pert Sec 34-3041: Temporary Use can only be 10 consecutive days. Only 3 times a year. Permits expire within 30 days.

BUFFERS

Plans calling for a 10' Buffer from the adjacent property line for 2553 COTTAGE AVE - THIS IS NOT CORRECT.

The Fort Myers Beach ordinance reads SF-R to COM C/F 15' BUFFER 6' High Fence. However, this ordinance may serve a purpose with structures at a ground elevation. As residential property owners, we are forced to build all new residence to meet new regulations, which has our residence elevated. As a property owner, we would like to address the code SF-R to COM F which is a required 30' buffer

with vegetation that would address the new regulations imposed on the rebuilding of new homes.

JURISDICTION AND CONTROL

Typically, in a public food and beverage environment/business, there is jurisdiction governing licensing requirements and processes, including inspections to ensure safety and cleanliness. We cannot find any laws, ordinances, codes or requirements published by City Fort Myers Beach that pertain to Mobile Food Parks and their regulations.

ITEMS OF CONCERN

Pests/Wildlife

There is no Grease Trap included for control of the Grease. This is paramount due to issues that arise from a lack of Grease Traps. The increase of rodents/pests/wildlife. In residential area is a primary concern.

Trash Enclosure

Refuse enclosures are all within 10' of residential property.

LIGHTING

The required lighting with the proposed Buffer, the light glow will transfer to adjacent residential property with the limited Buffer proposed. Also, our calculations for the proposed Five Food Trucks will not meet the requirements of Chapter 30.1 related to visual light.

VISUAL

As per requirement, we are building Elevated Structures and our line of sight is significantly higher in view of:

- Trash enclosure
- Public Bathrooms
- Public Showers

PUBLIC SAFETY

Who will oversee the park for all public safety/security during business hours and after hours in the park including all Public Restrooms and Auxiliary Structures.

TAX REVENUE

Does the proposed plan anticipate revenues to support City Life Safety Services required for the purpose

SUMMARY

This plan is not applicable to the residential neighborhood in which it is proposed. Typically, this type of proposal is in a commercial platform, as you can see by all mobile food truck parks referenced. The support of commercial retail spaces is typically necessary for its success. We feel that the commercial application of a food truck park in a residential neighborhood would adversely effect the residents and their safety, security, living conditions, and quality of living. This would also be considered a breach of “quiet enjoyment”, which is the right to peacefully enjoy your property without unreasonable disturbances.

Thank you for your attention to this matter.

Mr. and Mrs. Derek O’Loughlin
2553 Cottage Ave
Fort Myers Beach, Florida 339321
STRAP: 19-46-24-W3-01303.0000
Folio ID: 1022775

From: Rick Robshaw <rickrobshaw33931@gmail.com>

Sent: Tuesday, February 4, 2025 4:35 PM

To: jfrankel@fmbgov.com

Cc: Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>; dmoscoso@becklawyers.com; briesath@theseismicgroup.com

Subject: Food Truck Project

Hi,

My name is Rick Robshaw and I have owned condo #608 at Pelican Watch - 2532 Estero Blvd since 2009. I have been a full time resident for about 5 years now and registered to vote here.

I am writing today in regards to the proposed open air food truck park next to our condo property. I live on the north east corner of the building on the top floor approx 7 stories high and closest to the project in the '8-stack'.

Some of you may have visited my condo. If you were here while the diesel engine was running out on the beach for the re-nourishment project, you will know that it was not easy having a conversation out there. That engine put out about 65 decibels of sound. Being on the top floor here there is no mitigation possible unless they build a 7 story wall as I have direct line of sight to the project and from what I can tell, the live music will be a mere 45 yards from my lanai. I cringe at the thought of having to deal with loud bad karaoke all day long. For comparison I was at Wahoo Willies on Saturday with a single performer on a guitar. From approx 25-30 yards from the stage (sitting at table at opposite end of the bar), the sound level of the music along with the sound of patrons nearby was 90 decibels. Obviously many are in violation of the noise ordinance. Not a big deal in the entertainment zone but Pelican Watch is in the middle of a residential area.

In addition, the dumpsters and bathrooms will be even closer than the music. Again no mitigation possible when I am looking straight down on them. No amount of plants or fencing will cover that for me.

The smells from the dumpster, bathrooms, grease traps and various foods being cooked could make my lanai unbearable when the wind blows my way. It will certainly devalue the property with all this going on right under my railings/nose.

The layout of the 'dead end' on Cottage ave. is also going to be an issue. Turn in the Pelican Watch driveway (there is no security gate) and you can drive under the building and out the other side to return to Estero Blvd. This issue has existed for years and caused us to put speed bumps in the garage to reduce the risk of hitting a child running from the lobby door to the beach around a blind corner.

Food Trucks - I like them. But it should not be a permanent fixture as it will exclude quaint sidewalk cafes along the boulevard. They simply cannot compete with the low cost of a food truck business. Food Trucks by design are all 'take out' generating a lot of trash which will invariably end up on and around our property as well as the beach.

Thank You,
Rick Robshaw

Opposition to Residential Rezoning Application for Food Truck Park

From Jan Krause <jskrause@casscomm.com>
Date Sat 2/8/2025 7:51 PM
To jfrankel@fmbgov.com <jfrankel@fmbgov.com>
Cc Berkey, Kathleen "Katie" <KBerkey@beckerlawyers.com>

External email

First time sender

I, Jan A Krause, am a second generation original owner of Unit 204 Pelican Watch.

I am vehemently opposed to rezoning the adjacent property to use as a food truck park, essentially a "Beer Garden," because it fails to promote the calm, relaxing, and positive atmosphere as originally intended.

Living in a residential area our families and young children should be safe and free from witnessing negative, bold, and compromising behaviors of vacationers noisy and boozing it up below our balconies, slamming into our pool fences, peeing, and parking on our property.

Pelican Watch is and always has been a family environment and Pelican Watch owners shouldn't have to justify our family centered lifestyle.

Please let's be forward thinking and utilize the space for parking or brick & mortar buildings that could adequately contain their clientele.

Thank you for your consideration.

Jan A Krause

Sent from my iPhone

Albuernes, Milena

From: Moscoso, David
Sent: Monday, February 3, 2025 2:19 PM
To: darweaver@charter.net; Albuernes, Milena
Subject: RE: Proposed Food truck park, 2530 Estero blvd.

Categories: Filed

Thank you, Darlene,

@Albuernes, Milena could you please add and save this to the file.

Best,
David

David J. Moscoso
Attorney at Law
Coral Gables
Ext: 11003 (305.260.1003)

From: darweaver@charter.net <darweaver@charter.net>
Sent: Monday, February 3, 2025 2:13 PM
To: Moscoso, David <DMoscoso@beckerlawyers.com>
Subject: Proposed Food truck park, 2530 Estero blvd.

 External email >

 First time sender >

As long term owners in excess of 35 years on Ft. Myers Beach, and Florida residents; the idea of a "Food truck court.."withn a mile of established resaurants is a very concentering situation. The increase in traffic and nosie in our residential location would be very intrusive and distracting for families. Especially during evening hours. There is already congestion on Cottage Street and a food truck court would certainly adversely impact that.

It has been noted that perspective buyers in our neighborhood have stopped looking when informed of a possible food truck court at our back door.

Property values are already being affected by three recent hurricanes and slow rehabilitation of our beautiful island. Please consider these factors when deciding on allowing a food truck court a mile from Times Square on Fort Myers Beach.

Very Truly Yours,

Darlene Weaver,
Ft. Myers Beach resident

Photos by Deb Danford

FMB property (image 1 of 3)



Drone View
(image 2 of 3)



Arial Picture of 25240 Cottage before Ian (Image 3 of 3)



----- Forwarded Message -----

From: SUSAN BONFIGLI <sabonfigli@aol.com>

To: Amy Baker <amy@fmbgov.com>; Dan Allers <allersd@fmbgov.com>; Jim Atterholt <atterholtj@fmbgov.com>; karenwoodson@fmbgov.com <karenwoodson@fmbgov.com>; johnking@fmbgov.com <johnking@fmbgov.com>; Scott Safford <scottsafford@fmbgov.com>; Judith Frankel <jfrankel@fmbgov.com>

Sent: Sunday, February 16, 2025 at 01:14:15 PM EST

Subject: Food Truck Park Plan is detrimental to our residential neighborhood

Dear Council Members:

The neighbors strongly oppose any business on this property that would involuntarily involve them, particularly the planned food truck park with amplified entertainment . Our community has peacefully coexisted with other businesses in the past, largely because they have not disrupted our daily lives or impacted the quiet enjoyment of our homes and properties.

Historically, establishments such as the Royal Scoop Ice Cream Parlor, Tuckaway's Restaurant, a beachwear retail shop and the local bicycle shop have been within sight of our residential neighborhood, yet they never compromised our quality of life. On the contrary, we enjoyed frequenting these businesses as patrons.

Currently, the paid public parking area on Mango Street serves as another example of a business that was integrated into the neighborhood. The Town, recognizing the potential impact on residents, imposed operating restrictions between sunrise and sunset to minimize disturbances. (Ordinance 18-07) While there are seasonal challenges, such as increased congestion making it difficult to exit Mango Street, we have adapted by relying on the alternative route, Chapel Street. Many of us, I believe, prefer to forgo vehicle use between 9 AM and 9 PM, opting instead to navigate our neighborhood streets on foot or by bicycle. This makes it even more critical to prevent additional traffic from being introduced into our already narrow residential streets.

Mom's is another established business near us, and while we look forward to its return to a brick-and-mortar location, we recognize that its current food truck operation has caused notable disruptions. Fortunately, the Town has implemented restrictions on its hours of operation, limiting them to 4 PM (though they typically close by 2 PM) to mitigate potential neighborhood disturbances. Additionally, outdoor entertainment is prohibited at Mom's, ensuring that residents are not subjected to unnecessary noise pollution. (Ordinance 17-03) The Town carefully considered our community's well-being in making these decisions.

Since Hurricane Ian, however, Mom's overflow parking has become a recurring issue. With fewer homes standing, patrons have taken to parking along neighborhood roadways, which was far less feasible before the storm. Attached, you will find a series of photos this last week illustrating the problem. Cars are effectively parked in the right-of-way on Cottage Avenue and Chapel Street. These vehicles are lined along the roadway in front of my home and along Chapel

Street. (Note that the deterrents proposed around the Food Truck property would do nothing to alleviate the issue in front of my home, but instead could exasperate it.)

Beyond traffic concerns, we also contend with the nuisance of overwhelming odors emanating from the food truck. At times, it feels as if all the oxygen is being consumed by these pervasive smells. Once Mom's relocates to a permanent structure, we anticipate better containment of both odors and trash, much as it was before Hurricane Ian. Additionally, a brick-and-mortar establishment may allow for increased on-site parking, alleviating the current strain on our neighborhood streets.

The food truck park, however, is an entirely different kind of business—one that will inevitably impose itself upon us, whether we wish to be involved or not. The planned pay-to-park lot is primarily designed to serve beach-goers rather than patrons of the food trucks. Just as with Mom's, it is unlikely that visitors will opt to pay for parking merely to eat. Instead, these spaces will likely be taken by those heading to the beach, displacing parking for legitimate customers.

Additionally, the amplified entertainment aspect poses significant concerns. While the music may initially be directed towards Estero Boulevard, once buildings are constructed in that area, the sound will reflect off structures and reverberate back into our neighborhood. We are already experiencing this phenomenon with Diamondhead, where music carries down the beach and then bounces off the Pelican Watch condominium, creating an amplified effect. Just last week, I stepped onto my deck, puzzled by the loud music, only to realize I was hearing it from multiple directions.

It is a misconception that one- or two-person musical acts are not disruptive. We recently dined at Nervous Nellie's, where a single guitarist performed alongside pre-recorded accompaniment, creating the effect of a full band. Similarly, a steel drum musician produced a sound far more powerful than one might expect. Sound systems are designed to project, ensuring that the music reaches not only the intended audience but also anyone beyond them. It is not just the volume that is intrusive, but the persistence of noise for hours at a time—whether from vocals, instrumentals, or the lively crowd. While entertainment is enjoyable, residents deserve peace in their homes.

In the past, Sandy Bottom's music was so loud that my home literally vibrated. The performers actively encouraged the audience to "make some noise," and they did—with the impact felt directly in my living space. I now have the manager's phone number to notify him when the volume becomes excessive, but this is not a position I want to be in, nor should I have to be. The nature of amplified sound systems inherently disrupts the surrounding community. (As an aside, I sincerely hope that downward-facing speakers are incorporated in Sandy Bottom's new Tiki to contain the music within their property, rather than projecting it outward.)

Live entertainment naturally energizes a crowd. When alcohol is added to the mix, patrons become even louder, compounding the issue for immediate neighbors. This environment is not what one would consider "family-friendly"; rather, it caters to adults seeking a lively social scene and it's outdoors without containment. Such a business model is entirely inconsistent with the local establishments that have successfully coexisted with our residential neighborhood.

Another pressing concern is the introduction of additional food trucks, each contributing to odor pollution. If one food truck can create an overwhelming sensory impact, imagine the effect of five. While the increased distance from my home may provide some relief, residents in Pelican Watch and abutting on Cottage Avenue will bear the brunt of the problem.

Moreover, the food truck park raises security concerns. As our island continues to recover, we may see an increase in vagrancy. Unlike a brick-and-mortar establishment, which commands a certain level of respect and patron accountability, a food truck park with unattended seating and restrooms may become an attractive refuge for transients. These trucks are more vulnerable to theft than permanent buildings, and an unsupervised seating area could invite unwelcome activity, particularly in the quiet hours of the night when nearby residents are asleep.

Before Hurricane Ian, vagrancy was already a serious issue in our neighborhood, exacerbated by programs run by Chapel by the Sea that attracted transient individuals. With our streets dark and quiet at night, our homes became easy targets. A permanent structure would help mitigate these risks, reinforcing security while containing potential nuisances.

LPA Member Jane Plummer speculated that a restaurant might introduce open-air noise at a higher elevation. However, such issues can be mitigated with proper town regulations. Consider establishments like Charlie's Boathouse and Coste's at Diamondhead—both well-respected businesses that operate(d) harmoniously within their communities without causing disruptions.

A more suitable alternative for this space would be a multi-use brick-and-mortar establishment, perhaps featuring a pizza parlor, sandwich deli, or family-friendly ice cream shop. Other viable options could include a hair salon, spa, or a business offering bicycle-delivery pizza within a limited radius. With dedicated on-site parking specifically for patrons, these businesses would align with the needs of our neighborhood and enhance our community's character.

Regardless of what ultimately occupies this property, it is imperative that any business exiting onto Chapel Street be restricted to right turns only, preventing commercial traffic from infiltrating our residential area on Cottage Avenue. Thoughtful planning and consideration for the existing community should be a priority in any development proposal.

In summary:

Please do not permit the following on this commercial property, regardless of the business:

1. **Amplified Entertainment** – Even within allowable decibel levels, continuous noise can be mentally and emotionally exhausting. Residents should be able to enjoy their decks, patios, and lanais in peace, listening to the ocean waves and nature during the day. (Consider the analogy of Chinese water torture—while a single repetitive drip of water may seem harmless, its persistence can become unbearable.)
2. **Outdoor Alcohol Sales** – Fort Myers Beach has a reputation for party-like activities. When alcohol is involved, people tend to become less mindful, often to the detriment of the surrounding neighborhood.

3. **Commercial Pay Parking** – This will only increase traffic on our residential streets and attract visitors who may not respect the neighborhood or its residents. Parking should be reserved exclusively for the patrons of the business operating on the property.
4. **Commercial Activity Before 7 AM and After 9 PM** – Any business operating on this property should harmonize with the residential community, just as other adjacent commercial properties have successfully done.

Why a Food Truck Business is Inappropriate Next to Our Residential Neighborhood:

1. **Odors** – Heavy, lingering food odors can create an unpleasant environment, sometimes making it feel as though fresh air is lacking.
2. **Wind-Blown Trash** – Loose waste inevitably finds its way into our yards and onto the beach, diminishing the cleanliness of our neighborhood.
3. **Storm Preparedness** – Whether a storm is officially named or not, there is no assurance that the largely mobile structures and equipment on this property will be properly removed or secured, potentially causing damage to neighboring properties. Past hurricanes, such as Helene and Milton, have demonstrated the consequences of inadequate storm preparedness. Good intentions do not always translate into effective action.

A More Suitable Alternative:

A permanent structure built to modern hurricane standards would provide greater security and resilience. Additionally, dedicated free parking for the businesses within the structure would help prevent unnecessary congestion in our residential area. Any business developed on this property should respect the residential character of the neighborhood, rather than catering to a transient party atmosphere.

I truly appreciate your consideration for the health and happiness of me and my neighbors to continue having peace and enjoyment in our own homes. Respectfully, I ask that you please deny this application.

Sincerely,
Susan Bonfigli

2434 Cottage Ave
Fort Myers Beach

SUSAN BONFIGLI
sabonfigli@aol.com







ENCLOSURE 6

Media File Links

Pelican Watch – 03.03.2025 Hearing Records

[Just one food truck-starting music 730.mp4](#)

AND

[Single Speaker is loud even this far away.mp4](#)

Randy Briesath Outdoor Music

[Food Truck Music \(180 feet away\).mov](#)

ENCLOSURE 7

**Minimum Requested Mitigations/Conditions following
the First Reading before Town Council on March 3, 2025**

PROPOSED CONDITIONS PRESENTED – Town Council 1st Reading 3/3/25:

Applicant additions in blue

Town Council changes in yellow

Suggested additions to the proposed conditions which are the minimum necessary to address public concerns are shown in tracked changes.

1. The development of "Option A", as approved and conditioned in resolution 07-28, will no longer be valid.
2. At the time of development order, the Applicant must provide the following buffers:
 - a. Along Chapel Street (the west property line), a 10-foot-wide buffer with a minimum of 4 trees per 100 linear feet (6 trees) and a 3-foot-high hedge planted in a double staggered row.
 - b. Along the east property line that extends from Estero Boulevard a minimum 7.5-foot-wide buffer with a minimum of 10 trees per 100 linear feet and a 3-foot-high hedge planted in a double staggered row. Trees should be 5-feet or greater at time of planting.
 - c. Along the south and east property lines adjacent to 2553 and 2563 Cottage Avenue, a minimum 10-foot-wide buffer with 6-foot-high opaque fence, where applicable, with a minimum of 8 trees per 100 linear feet and a 3-foot-high hedge planted in a double staggered row planted on the outside of the fence.
 - d. Along Cottage Street Avenue (the south property line), a minimum 10-foot-wide buffer with a 4-foot-high decorative fence, a minimum of 8 trees per 100 linear feet and a 3-foot-high hedge planted in a double staggered row.
3. A maximum of 5 mobile vendor/transient merchant pads, in addition to a permanent service structure (maximum of 2,500 sf), is permitted. Any additional mobile vendor pads not shown on the MCP shall require prior Town approval by way of a CPD amendment.
4. All mobile vendors will be associated with either food or merchandise. There shall be no cannabis or smoke/vape related merchandise vendors allowed.
5. Consumption on the premises will be limited to beer and wine only.
6. Hours of operation for the mobile vendor/transient merchants and outdoor seating area will be 7am to **9pm** seven days a week. These hours do not include waste removal, deliveries or service to the facility, which may occur outside the hours of operation.
7. The parking lot will be available for use the same hours as the mobile vending park, 7am to **9pm** seven days a week. Camping or sleeping in vehicles is prohibited.
8. All amplified sound will be controlled by the property owner/management staff and will not be permitted from any mobile vendor. Ambient music is permitted and will be no greater than 60 dB as measured in accordance with the Town's Noise Ordinance. All music on 2 days per week, between 2-8 pm, and only for 3 hours per day. Amplified live music and/or amplified live entertainment and is only permitted within the main park support structure provided the structure is fully roofed with three enclosing walls from noon-2 until 8 pm. Amplified live music and/or amplified live entertainment will be restricted to only solo and duo performers. No bands (3 or more performers) or drums/percussion unless approved through the Town's special event permitting process. If the Town through the code compliance/enforcement process determines sound to be in

violation coming from the site, the owner/operator may lose the ability to have amplified live music and/or live amplified entertainment ~~(per the agreed upon OCP)~~. See Condition #29.

a. ~~Live amplified~~All music allowed only 2 days per week between the hours of 2pm and 8pm for 3-hour periods.

9. All sound generated on-site will be in compliance with the Fort Myers Beach Noise Ordinance, Article II, Chapter 14.
10. A publicly accessible "comfort station" consisting of restrooms, outdoor shower/foot rinse, hand washing and water fountain will either be integrated within the proposed main park support structure or as a stand-alone structure on-site. Access to the "comfort station" will only be during the same hours of operation (7am-9pm) for the mobile vending park. Water service to the exterior showers and foot washing stations must be shut off and all restroom access locked to the public outside of the hours of operation.
11. Per Deviation #5, the Applicant may utilize a stabilized gravel/lime rock/crushed shell parking surface. If that option is chosen, the Applicant is required to use a grid/semi-pervious paver system to increase permeability and to aid in retaining materials on site in the parking lot area.
12. Mobile food vendors, outdoor seating, restrooms and any storage space must be located on an approved stabilized non-pervious or semi-pervious surface.
13. A temporary use permit must be obtained for any special event where additional vendors of any type and/or increased visitor numbers are expected, including but not limited to: festival; political rally; holiday celebration; or carnival. Special event permits are limited to 6 days per calendar year, a maximum of four (4) calendar days per year, one (1) per quarter, and maximum of one (1) day per event. Further special events shall be confined to food truck area only and shall not intrude on the parking lot area. LiveAll music for all special events shall be limited to 3 hours a-per day, between the hours of 2:00 and 8:00 p.m. 6 days per calendar year.
14. Mobile food vendors must provide evidence that all required permits, inspections, licensure, or other approvals as needed by either county, state, or federal agencies prior to operating within the town.
15. Liquid waste or grease must be disposed of at an approved location and may not be placed in tree pits, storm drains, or sanitary sewers, or onto sidewalks, streets, or other public or private space.
16. All mobile vendors shall be required to connect to onsite utilities. Generator use is only allowed when electrical service is disrupted or temporarily non-available due to designated disaster related events ~~The, The~~ exercising of portable generators associated with mobile vendors for regular maintenance is prohibited on-site.
17. All mobile vendors and park facilities must comply with FEMA regulations. No temporary storage containers are permitted or other non-compliant structures. All mobile vendors will be required to evacuate the property and the site secured when evacuation orders are issued by Lee County Emergency Management or the Town of Fort Myers Beach. The removal of vendor vehicles and securing the site is the responsibility of the property owner. Vendors may not return until authorized by the Town and Lee County Sheriff's Office.
18. Restroom facilities must be provided based on maximum occupancy of the total seating area in conformance with the Florida Building Code.
19. All alcohol sales must be in conformance with state regulations.

20. A local development order is required prior to any development of the site, in accordance with this planned development approval and consistent with the approved MCP.
21. All state and local permits, including but not limited to right of way and stormwater permits must be applied for and received prior to site development.
22. All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131. ~~The applicant shall provide the funding necessary for the City to provide signage indicating specific pathways for public beach access, illegal parking signs for all rights of way abutting residential lots, dead end signs at the intersection of Cottage Avenue and Mango Street as well as Cottage Ave and Chapel Street. The applicant shall provide the funding for the City to issue "No Parking" and "Tow Away Zone" signs which shall extend along both sides of the rights of way along Cottage Avenue, Chapel Street and Mango Street.~~
23. Access to and from the property for mobile vendors only via the existing Estero Boulevard access point will not be allowed during typical peak season traffic times, which are 8 am – 11 am and 4 pm – 7 pm.
24. At the time of local development order approval, directional and restrictive vehicle access signage (e.g., NO THRU TRAFFIC) will be provided at the primary access, along Chapel Street and Cottage Avenue. The egress onto Chapel Street will be designed for right-out only (e.g., an island concept) and the Applicant shall install at its own expense a "Right Turn Only" direction sign at the parking lot egress point to direct invitees back to Estero Boulevard. By separate operational agreement between the Town and the Applicant to be executed at time of development order approval, agreeable as to form and sign location to the Town Manager or his designee and public works staff, ~~The Applicant shall provide the funding necessary for the City to provide~~ install: (a) signage indicating specific pathways for public beach access, illegal parking signs for all rights of way abutting residential lots and parcels, dead end/dead-end signs at the intersection of Cottage Avenue and Mango Street as well as and Cottage Avenue and Chapel Street; and (b) The applicant shall provide the funding for the City to issue install "No Parking" and "Tow Away Zone" signs which shall extend along both sides of the rights of way along Cottage Avenue, Chapel Street, and Mango Street.
25. At the time of local development order approval, on-street/right-of-way buffer landscape plantings, no parking signage and infrastructure (e.g. decorative post and rope/chain) will be provided to help eliminate illegally parked vehicles within the Chapel Street and Cottage Avenue rights-of-way abutting the subject property. The ~~on~~ on-street/right-of-way buffer landscape area will vary in width based on the roadway configuration and consist of shrubs and trees complementary to the adjacent on-site landscaping; be maintained less than 36 inches high for shrubs; and will not violate vehicle visibility requirements.
26. Outdoor lighting: In no case may the illumination exceed 0.2 footcandles measured at the property line. The amount of illumination projected onto a residentially zoned property or use from another property may not exceed 0.0 footcandles measured at 10 feet from the property line onto the adjacent residential property. (NOTE: Current regulations allow 0.5 footcandles measured at the property line and 0.2 footcandles 10 feet from property onto residential property.)
27. Proper site management, including site cleanliness and proper waste removal is the responsibility of the property owner/manager and any violations will be issued to the site ownership for remediation and not to individual vendors.
28. A ~~trip-generation study~~ Traffic Impact Statement ("TIS") must be provided at the time of the development order ~~approval~~ application for Town staff to evaluate that the proposed development does not further impact the surrounding transportation network than what was approved under the

Commented [A1]: Moved from Condition No. 28 and suggest it be required not just to be considered

2008 Traffic Impact Statement TIS. Additionally, the applicant should consider a "Right Turn Only" direction sign at the parking lot egress point to direct customers back to Estero Boulevard.

29. The Applicant must prepare an Operational Compliance Plan (OCP) to be approved by the Town Manager or designee at the time of development order approval. This plan shall include the requirement to provide a quarterly compliance report submitted by the Property Owner/Management for review by Town Staff and, as needed, to meet with Town Staff to ensure compliance with the CPD conditions and applicable code for the first 2 years of operation.

30:29. The Applicant must provide a Parking Operation Plan to accommodate short-term parking needs of food vendors. This planThese plans shall include a requirement to provide a quarterly compliance report submitted for review by Town Manager or designee to ensure compliance with the CPD conditions and applicable codes for the first two (2) years in operation.

Commented [A2]: How does the City plan to enforce illegal parking and trespass?

—The Applicant to provide funding to allow Pelican Watch to build the dinstallation of a security gate entrance, dead-end sign, and no trespassing sign at the east end of Cottage Avenue where it dead ends at the Pelican Watch Condominium Property in coordination with Pelican Watch Condominium Association, Inc.

31. A traffic impact study should be required prior to approval of the project.

30.

32:31. By separate operational agreement between the Town and the Applicant to be executed at time of development order approval, agreeable as to form and sign location to the Town Manager or his designee and public works staff and in coordination with pertinent Lee County staff, the Applicant shall provide funding to the Town which shall be use specifically to develop a cross walkcrosswalk and/or traffic light for pedestrian and bicyclist safety on the corner of Estero Boulevard and Chapel Street.

PROPOSED CONDITIONS PRESENTED – Town Council 1st Reading 3/3/25:

Applicant additions in blue

Town Council changes in yellow

Suggested additions to the proposed conditions which are the minimum necessary to address public concerns are shown in tracked changes.

1. The development of "Option A", as approved and conditioned in resolution 07-28, will no longer be valid.
2. At the time of development order, the Applicant must provide the following buffers:
 - a. Along Chapel Street (the west property line), a 10-foot-wide buffer with a minimum of 4 trees per 100 linear feet (6 trees) and a 3-foot-high hedge planted in a double staggered row.
 - b. Along the east property line that extends from Estero Boulevard a minimum 7.5-foot-wide buffer with a minimum of 10 trees per 100 linear feet and a 3-foot-high hedge planted in a double staggered row. Trees should be 5-feet or greater at time of planting.
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19. All alcohol sales must be in conformance with state regulations.
20. A local development order is required prior to any development of the site, in accordance with this planned development approval and consistent with the approved MCP.

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28. A Traffic Impact Statement ("TIS") must be provided at the time of the development order application for Town staff to evaluate that the proposed development does not further impact the surrounding transportation network than what was approved under the 2008 TIS.
29. Applicant must provide a Parking Operation Plan to accommodate short-term parking needs of food vendors.
30. The Applicant to provide funding to allow the installation of a security gate entrance, dead-end sign, and no trespassing sign at the east end of Cottage Avenue where it dead ends at the Pelican Watch Condominium Property in coordination with Pelican Watch Condominium Association, Inc.
31. By separate operational agreement between the Town and the Applicant to be executed at time of development order approval, agreeable as to form and sign location to the Town Manager or his

designee and public works staff and in coordination with pertinent Lee County staff, the Applicant shall provide funding to the Town to develop a crosswalk and/or traffic light for pedestrian and bicyclist safety on the corner of Estero Boulevard and Chapel Street.

Kathleen "Katie" O. Berkey
Shareholder and Certified Land Planner
Board Certified Attorney, City, County, and
Local Government Law
Phone: 239.628.4919 Fax: 239.433.5933
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12140 Carissa Commerce Court
Suite 200
Fort Myers, FL 33966

Northern Trust Building
4001 Tamiami Trail North, Suite 270
Naples, Florida 34103

March 24, 2025

VIA E-MAIL ONLY: allersd@fmbgov.com

Mayor Dan Allers
Town of Fort Myers Beach

RE: Pelican Watch Condominium Association, Inc./Request for Aggrieved/Adversely Affected Party Status in CPD Amendment Case Nos. DCI Rezoning 20240137.1 and 2024137.2 (Project Name: Food Truck Park) at 2500/2510/2518 Estero Boulevard and 2543 Cottage Avenue, Fort Myers Beach, Florida

Dear Mayor Allers:

Please be advised that our Firm represents the following with respect to the above-referenced applications:

1. Pelican Watch Condominium Association, Inc. ("Pelican Watch"), which operates and controls the Condominium Property, comprised of forty-eight (48) residential condominium units and common element property, located at 2530 and 2532 Estero Blvd., Fort Myers Beach, Florida;
2. Thomas S. and Debra S. Danford, Managers and Members of Coastal Cottages LLC, owning residential property located at 2520 and 2522 Cottage Ave., Fort Myers Beach, Florida (the "Danfords"); and
3. Edwin T. French, III, 2548 and 2550 Cottage Ave., Fort Myers Beach, Florida ("Mr. French").

We request recognition of Pelican Watch, the Danfords, and Mr. French as Aggrieved/Adversely Affected Parties in all public hearings at which the above-referenced cases will be heard. On their behalf, we respectfully request that this correspondence and all enclosures be included in the agenda packets for the Town Council hearing on April 7, 2025, and any subsequent public hearings at which these cases will be heard.

Aggrieved/Adversely Affected Party Status. Florida Statutes Section 163.3215 (2024) articulates the manner in which the State of Florida protects adversely affected parties in land use hearings, such as this case.¹ Paragraph (2) provides this definition:

As used in this section, the term “aggrieved or adversely affected party” means any person or local government that will suffer an adverse effect to an interest protected or furthered by the local government comprehensive plan, including interests related to health and safety, police and fire protection service systems, densities or intensities of development, transportation facilities, health care facilities, equipment or services, and environmental or natural resources. The alleged adverse interest may be shared in common with other members of the community at large but must exceed in degree the general interest in community good shared by all persons. The term includes the owner, developer, or applicant for a development order. (Emphasis added.)

Pelican Watch is an Aggrieved/Adversely Affected Party because the Condominium Property immediately abuts 2518 Estero Blvd. and is ±39-feet from 2543 Cottage Ave. that are both subject to the proposed Commercial Planned Development (“CPD”) amendments. The Danfords and Mr. French are likewise each an Aggrieved/Adversely Affected Party because their respective properties are ±31-feet from the properties subject to the proposed CPD amendments. The proposed CPD amendments, if approved, would impose construction and post-construction noise, fugitive dust, vibrations, property devaluation, and traffic impacts at a level far in excess of that which are endured at the present time. Said differently, Pelican Watch and its unit owners, the Danfords, and Mr. French will be detrimentally affected and suffer special damages, to a greater degree than the public at large, as a result of the change in character to the neighborhood and their immediate proximity to the proposed development if the CPD amendments are approved.

As Aggrieved/Adversely Affected Parties, Pelican Watch, the Danfords, and Mr. French have due process rights under the First and Fourteenth Amendments to participate fully in any and all future public hearings. Three (3) minutes per citizen is completely inadequate for presenting thoughtful and compelling testimony in a public hearing on even the most trivial application for a land use change. In *Hernandez-Canton v. Miami City Com'n*, 971 So. 2d 829, 832 (Fla. 3d DCA 2007), the Court ruled that anything less than eight (8) minutes in a legislative case was insufficient.

Clients’ Request of Affected Party Status. To achieve their goal of full and positive participation, Pelican Watch, the Danfords, and Mr. French request to be granted Aggrieved/Adversely Affected Party Status and granted sixty (60) minutes of time for an agent for the Board of Directors of Pelican Watch, the Danfords, Mr. French, me as their attorney, Mr. Max Forgey, AICP, as their expert planner, Mohsen Salehi, AICP, ITE(F), as their expert traffic professional, and Matthew S. Simmons as their property value impacts expert, to present competent, substantial evidence detailing their reasons for denial of the above-referenced cases,

¹ See also Section 34-2 of the Town’s Code of Ordinances defining an “aggrieved person or party” as “...anyone who has a legally recognizable interest which is or which may be adversely affected by an action of or an action requested of the town council or any other person or board that has been delegated such authority by town council.”

said evidence being presented following the presentation by the applicant's representatives, and that we be allowed an amount of time for rebuttal equal in length to that of the applicant's representatives. Detailed resumes for Mr. Forgey, Mr. Salehi, and Mr. Simmons are **enclosed** with this letter.

Competent Substantial Evidence. My clients and I are committed to participating in a positive, fact-based hearing to provide competent, substantial evidence upon which findings of fact for denial can be based.

Thank you.

Very truly yours,



Kathleen O. Berkey
For the Firm

KOB/ma/oms

Enclosures (as stated)

cc: Clients

Max Forgey, AICP, Forgey Planning (via e-mail only w/encl: max@forgeyplanning.com)

Mohsen Salehi, AICP, ITE(F), Salehi Consulting Services (via e-mail only w/encl.: mohsen@corbeldesign.com)

Matthew S. Simmons, Maxwell, Hendry, Simmons (via e-mail only w/encl: matts@mhsappraisal.com)

Amy Baker, Town of Fort Myers Beach Clerk (via e-mail only w/encl: amy@fmbgov.com)

Nancy Ann M. Stuparich, Esquire, Vose Law Firm LLP, Town Attorney (via e-mail only w/encl: nstuparich@voselaw.com)

Noel Davies, Applicant's Attorney (via e-mail only w/encl.: noel.davies@daviesduke.com)

Karen Woodson, Town of Fort Myers Beach Council Member (via e-mail only w/encl.: karenwoodson@fmb.gov)

Scott Safford, Town of Fort Myers Beach Council Member (via e-mail only w/encl.: scottsafford@fmb.gov)

John R. King, Town of Fort Myers Beach Council Member (via e-mail only w/encl.: johnking@fmb.gov)

Vice Mayor Jim Atterholt, Town of Fort Myers Beach Council (via e-mail only w/encl.: AtterholtJ@fmbgov.com)

Mayor Dan Allers, Town of Fort Myers Beach (via e-mail only w/encl.: allersd@fmbgov.com)

MOHSEN SALEHI, AICP, ITE(F)
Corbel Design Consulting Svcs
Ft Myers, FL (239/994-1320)
Mohsen@corbeldesign.com

ACADEMIC BACKGROUND

Masters Degree of City & Regional Planning, Urban Design/Infrastructure Major, Clemson University, Clemson, SC, 1984

Bachelors Degree of Architectural Engineering, Design/Construction Major, Southern Polytechnic State University (formerly a division of Georgia Institute of Technology), Marietta, Georgia, 1980

SPECIALIZED PROFESSIONAL COMPETENCE

Mr. Salehi's career spans over 30 years of public- and private-sector experience with an extensive track record in transportation/infrastructure planning and urban design, low impact development and redevelopment projects, complete streets/context sensitive design solutions, traffic calming/roadway safety audits, traffic and parking studies, development review services, and expert testimony for public agencies and community organizations.

Salehi Consulting Services, 1997-present

Provide full-service infrastructure/transportation planning services to public- and private-sector clients throughout southeast and southwest Florida, including continuous focus on Complete Street concepts.

- **Consultancy for Corbel Design, Architecture & Planning, 1997-present**
Providing services for architectural projects Traffic Impact Studies (TIS), parking issues, and other traffic related matters.
- **Florida Main Street Program, 1997-present**
Member of resource teams dispatched to Clewiston, Clearwater Beach, and Dania Beach communities with traffic circulation and design services, PM Bob Field, 410-323-4465. Presented at FMS annual conferences in Ft. Pierce (1999)& Fort Walton Beach (2002), Stuart (2014), & St Petersburg (2015).
- **Florida Redevelopment Association (FRA), 1997-present**
Provide technical services for parking and flood insurance issues. PM Carol Westmoreland, @850-701-3608.
- **Roadway Safety Audit, Bonita Springs, 2012-13**
Conducted roadway safety audit for completing 1.1 mile section of Old SR 41 from Bonita Beach Road to Collier County line. PM Domingo Noriega, P.E. @813-503-7743.
- **Bayshore Corridor Redevelopment Overlay, Collier County, 1999-00**
Developed an overlay to create incentives for urban design and traffic calming for tax base enhance-ments. PM Jim LaRue @ 239-334-3366.
- **Development review & transportation concurrency services, Comp Plan & LDC for LaRue Planning & Management Services' public sector clients including Village of Estero, Boynton Beach, North Bay Village, El Portal, Moore Haven, & City of Okeechobee. PM Jim LaRue @ 239-334-3366.**
- **Consultancy for CALTRAN Engineering Group for Miami Downtown Development Authority Complete Streets**

Project, SE/SW 1st; Charlotte County: Countywide Parking Study (2019), Deep Creek Community Sidewalk Master Plan (2020), PM Juan Calderon @786-456-7700.

Traffic Consultant, City of Bonita Springs (Public Works), 2000-11, Provided transportation planning services, reporting to City Manager Gary Price @239-980-9400.

- **Bonita Springs Bikeways/Walkways Facilities Plan Update, 2008-09**
Prioritized facilities funding based on Complete Street Decision Matrix.
- **Project Management Services**
 - Traffic Circulation Study, 2008-09
 - I-75/BBR interchange improvements (Addition of left turns and sidewalks relocation behind overpass supports), 2007-08
 - East Terry I-75 overpass widening , 2005
- **Development review & urban design services, 2008-09**
- **Expert testimony, 2000-11**
Testified before Bonita Springs City Council, Planning & Zoning Board, & Local Planning Agencies.

Project Manager, Lee County Community Redevelopment Agency (CRA), 1995-97

Managed several concurrent projects reporting to County Manager Roger Desjarlais @239-533-2221.

- **Old 41 Corridor**
Responsible for \$3.1 million TIF funded for planning and design from Imperial River Bridge to Oak Creek Bridge in Bonita Springs (0.3 miles)
- **Palm Beach Blvd/I-75 interchange**
Conducted \$500,000 Storefront Grant program & redevelopment concept plan for Dos Rios.
- **CRA liaison for local redevelopment planning committees.**

Section Manager, Lee County Dept. of Transportation and Engineering (DOT&E), 1990-95

Responsible for DOT&E's Alternate Modes Section.

- **Annual budget of \$1 million and \$2.8 million in federal funding under Intermodal Surface Transportation Efficiency Act (ISTEA) including:**
 - Six Mile Cypress Bikepath (8.3 miles)
 - Stringfellow Bikepath (12.1 miles)
 - Estero Blvd Sidewalk (4.2 miles)
 - Ten Mile Canal Linear Park (3 miles)

- Funds used for planning, design, and construction of safe, routes to schools (including design-build of Lehigh Acres Pedestrian Bridge over ECWMD canal as an alternative to bussing due to hazardous walking conditions), transit (installation of bike racks on LeeTran busses), public parks (free access for bicyclists and pedestrian to Lakes Park) & commercial facilities for walking, cycling & promotion of demand management solutions in Lee County
- Acted as liaison before Bicycle/Pedestrian Advisory Committee (BPAC), Chairman Ed Benjamin @239-410-5186.

Consultant, Neighborhood Planner/Architectural Consultant, 1989-90

- Responsible for redevelopment & revitalization of 2.1-mile Dekalb Ave. corridor & Reynolds-town neighborhoods
- Conducted building energy audits, Designed ADA compliant solutions for private schools

Urban Planner, City of Atlanta Bureau of Planning (BOP), 1987-89

Reported to Reemberto Rodriguez @240-777-5307.

- Responsible for Urban Design/Land Use Section of BOP.
- Coordinated land use amendments to the City's redevelopment plan and transit oriented developments (TOD)/parking limitation districts in the vicinity of transit stations (MARTA).

Urban Designer, Central Area Study II (CAS II), City of Atlanta, 1985-87

Reported to Reemberto Rodriguez @240-777-5307.

- Responsible for traffic & parking data collection, analyses for a public private joint planning effort for re-development of downtown Atlanta.
- Supervised 10 interns.
- Provided urban design services.
- Participated in three design charettes.

PROFESSIONAL AFFILIATIONS

- American Institute of Certified Planners (AICP) Member
- Institute of Transportation Engineers (ITE) Fellow
- American Society of Civil Engineers (ASCE) Transportation & Development Institute Member
- Southwest Florida Branch of American Public Works Association (APWA) Member

PROFESSIONAL AWARDS & CERTIFICATIONS

- Florida Planning Association/Promised Lands Section Scholarship Award for FPC 2020
- Florida Planning & Zoning Association's 2002 Certificate of Merit for Greater Pine Island Community Plan Update
- 1999 Outstanding Public Report for Town of Fort Myers Beach Comprehensive Plan
-
- Florida Department of Transportation (FDOT) Pre-qualified for System Planning (13.4), Corridor Planning (13.5), & Land Planning/Engineering (13.6) 2013-15.

PRESENTATIONS & PUBLICATIONS

- Florida Main Street Program, *Implications of New Transportation Trends for Main Street Businesses*, August 2015, St. Petersburg, Florida
- Florida Main Street Program, *Visioning Okeechobee*, September 2014, Stuart, Florida
- Florida Redevelopment Association Professional Development Program, *Parking Problem? No Problem!* June 2003, Orlando, Florida
- Florida Main Street Program, *Economic Vitality & the Arts/Arts Enterprise Zones*, March 2002, Fort Walton Beach, Florida
- Florida Main Street Program, *Parking Problems and Solutions*, October 1999, Fort Pierce, Florida
- American Planning Association Conference, Peachtree Street: The Linear City, May 1989, Atlanta, Georgia
- Clemson University Graduate School 1984 Master's thesis entitled: *An Alternative Energy Approach in Optimizing Growth within Built Environments*

SAMPLE EXPERT WITNESS TESTIMONY SERVICES

- Town of Ft Myers Beach, in opposition to Application 20230152, Moss Marina/The Arches on behalf of LLC Magnum. Provided traffic impact analyses, April 2024
- City of Ft Pierce Commission, in Opposition to Case#19-4390002 Cumberland Farms Major Amendment to PD, Provided traffic impact analyses testimony, August 2019
- The Circuit Court of Lee County, in Support of Case# 18-CA-003805, Chris Patton V. Town of Ft Myers Beach/TPI-FMB Rezoning Case, Provided land use and traffic impact analyses report, 2018-19
- The Circuit Court of Lee County, in Support of Case# 18-CA-001938, Lani Kai Island Resort Vs. Town of Ft Myers Beach, Provided parking calculations, 2019
- Florida Division of Administrative Hearings, in support of DOAH Case No.: 18-003613, ARGO V. Village of Estero Provided deposition testimony in support of the Village Comp Plan Transportation Element, February 13, 2019
- Lee County Hearing Examiner, in Opposition to Port Sanibel CPD Amendment, provided traffic impact analysis report and testimony, July 18, 2017
- St. Johns County Board of County Commissioners, in opposition to Case# 2016-03, COMPAMD Watermarke /Beachcomber, provided traffic Impact analysis and testimony, September 20, 2016

SAMPLE PROJECTS

Bonita Springs: MPO's Congestion Monitoring Report
http://www.mpo-swfl.org/content/CMR_081009.pdf

Pine Island Community Plan Update
<http://spikowski.com/Pine%20Island%20Report-September30.pdf>

Fort Myers Beach Access & Circulation
<http://www.spikowski.com/SummaryReport%20w-o%20App%20C-D.pdf>

Miami Downtown Development Authority SE/SW 1st St

Complete Streets Project/ Aerial Drones footage for:

- SW First St at SW First Ct - curb extension with cones
<https://vimeo.com/165801251>
- SE First St at SE Third Av - ped island with cones
<https://vimeo.com/165801250>

DARYL MAX FORGEY AICP
LAND USE CONSULTANT & EXPERT WITNESS
236 SE 45th Street
Cape Coral FL 33904
max@forgeyplanning.com
239.560.5864

Max Forgey is an experienced land use planner with more than three decades of professional experience and success in administration of local government comprehensive planning strategies, land development and regulatory controls, governmental relations, and public policy communications. Clients include governmental organizations and private property owners. He is the sole proprietor of FORGEY PLANNING LLC, a planning consultancy which provides expert witness services in land use cases and is allied with LAND SMART LLC, a Florida-based consortium of land use professionals which provides a broad range of professional assistance to public and private sector clients.

His professional knowledge encompasses creating and developing community and small-area plans, urban design and architectural standards, land development entitlements, project management, and expert witness testimony. Max has worked on more than 35 cases across 25 Florida counties and municipalities, frequently teaming with some of Florida's most respected land use and administrative lawyers, appearing before local planning agencies, city and county elected bodies, hearing examiners, administrative law judges, and circuit court proceedings.

Max also actively participates in and leads speaking engagements at professional development conferences and symposia through the Promised Lands section of the American Planning Association Florida chapter, with the American Institute of Certified Planners, the Florida Planning and Zoning Association, and other organizations. He is currently collaborating with other planning professionals to craft a continuing education program, provisionally called Urban Planning Institute, to familiarize elected and appointed officials and local government staff with planning law and practice.

Qualifications

- LAND SMART LLC, Managing Member of a Cape Coral, Florida-based consortium
- FORGEY PLANNING LLC. Owner of an urban planning and land-use consulting practice.
- Master of Public Affairs (MPA) in Urban and Regional Planning, Indiana University.
- Member American Institute of Certified Planners (AICP).
- Member Florida Planning and Zoning Association (FPZA).
- Qualified as an expert witness in Lee County Hearing Examiner proceedings.
- Former Planning and Community Development Director in Charlotte County.
- Former Planning Commissioner (LPA), City of Cape Coral, Florida.
- Contract planner for the Town of Kenneth City.

Accomplishments

- Lead author of Kenneth City Evaluation and Appraisal Report (EAR) which was transmitted to the Florida Department of Commerce on October 21, 2024.
- Established FORGEY PLANNING, an urban planning and land use consulting practice.
- Developed a template for auditing the effectiveness of existing local governments comprehensive plans and zoning code for internal consistency of plan policy framework.
- Authored “The Platted Lands Challenge” report for the six-county area of Southwest Florida offering policy guidance for platted, scattered-lot properties.
- Development of implementation strategies which employ automation to create linked mixed media tools for restructuring and updating local government planning and zoning regulations.

Certification

AICP (American Institute of Certified Planners) Certification #051,330 Florida Chapter, APA Member in good standing since 1993. A national professional certification maintained by the American Planning Association. AICPs must first meet educational standards and then pass an examination covering all aspects of professional planning practice, and are expected to maintain their membership through a self-directed program of study that is monitored by the national organization, which includes regular training in law and ethics.

Professional Experience

Forgey Planning

Cape Coral, FL

Owner. 2008-present. A solo planning practice concentrating comprehensive planning work for Lee and Sarasota Counties, the City of North Port, the Captiva Community Panel, and the Town of Kenneth City, among others. Developed a template for auditing the effectiveness of existing local governments comprehensive plans which has been applied in Sarasota County and the City of North Port. An expert witness since 2013, working on more than 30 cases in 25 Florida counties and municipalities, appearing before planning commissions, city councils, county commissions, hearing examiners, administrative law judges, and circuit court. Qualified as an expert witness in Lee County Hearing Examiner proceedings and recognized as a lobbyist in Collier County.

Zoning Technologies

Cape Coral, FL

President. 2011-2017. A start-up subsection ‘S’ corporation that specialized in restructuring and updating local government comprehensive plans and developing implementation strategies which employ automation to create linked tools (e.g. application forms, automated worksheets, case reports, and adopting resolutions). The Zoning Technologies expert system prototype products were marketed statewide and were demonstrated at the American Planning Association (APA) national conference in Atlanta in 2014.

Osceola County, Florida

Kissimmee, FL

Planning Coordinator. 2005-2008. Authored key elements of the Osceola County Comprehensive Plan and most of the County's 2008 Evaluation and Appraisal Report.

Clay County, Florida

Green Cove Springs, FL

Senior Planner. 2003-2005. Authored the county's Interlocal Service Delivery Agreement Report (ISDAR) mandated by the Florida legislature, identifying all service overlaps between and among all local governments within Clay County.

Lake County, Florida

Tavares, FL

Planning Director. 2001-2003. Staff liaison to the Environmental Lands Management Advisory Committee, a citizen organization created by the Board of County Commissioners to study the creation of an environmental land program. Recommended policies were ratified in November 2002, when Lake County voters approved a one-third mil assessment for the acquisition of environmental lands.

Southwest Florida Regional Planning Council

Fort Myers, FL

Planner. 1997-1998. Reviewed local government plan amendments throughout the six-county area and authored "The Platted Lands Challenge" report.

Charlotte County, Florida

Port Charlotte, FL

Community Development Director 1995-1997; Planning Director 1990-1995. Early in his tenure, Gulf Development Corporation (GDC), the County's largest land subdivider, declared bankruptcy, shifting responsibility for completion of roads, bridges, drainage works, and utilities, to the public sector and forcing a host of development decisions upon the local government and public agencies. He had three memorable achievements during these seven years:

- Managed the research, preparation, and adoption of the County's Evaluation and Appraisal Report (EAR) and Comprehensive Plan. Aggressively negotiated with the Florida Department of Community Affairs (DCA) to remove the Plan's not-in-compliance finding.
- Led the staff team that rewrote the Charlotte County Comprehensive Plan and was the point person in the successful four-year effort to negotiate a stipulated settlement agreement between the Board of County Commissioners and the Florida Department of Community Affairs to find Charlotte County's Comprehensive Plan in compliance with Florida's Growth Management Act.
- Advocated against the rezoning of 42 parks (illustrated as such on GDC sales maps and the County's Future Land Use Maps) to residential uses. The Company's agents eventually relented on their policy position and donated 41 parcels to the people of Charlotte County.

City of Cape Coral

Cape Coral, FL

Deputy Planning Director. 1985-1990. Authored and supervised preparation of key elements of the 1988 Comprehensive Plan (the City's first plan under the 1985 Growth Management Act) and the City's 1989 Land Development Code.

Education

Indiana University

Bloomington, IN

Master of Public Affairs (MPA) from the O'Neill School of Public and Environmental Affairs, 1982. Concentration in Urban and Regional Planning.

Bachelor of Arts (BA). 1976. Undergraduate degree in English Literature and History.

Important Cases, Continuing Education, Writing & Teaching

- Subcontracted with Bruce Hoch of New Jersey-based CPG Corplan on the *Economic Development Plan for the City of Cape Coral*. The final report was presented to City Council on January 22, 2025.
- Co-presented a panel "*Sometimes a Word is Worth a Thousand Pictures: Communication Skills for Planners*" with Tony Palermo, AICP, and Doug Kelly, AICP, at FPZA annual conference in Charlotte Harbor, June 5, 2024. His segment "The Rhetoric of Planning" focused on the words that form a persuasive narrative.
- Program chair for APA Florida/ FPZA "*The Perfect Storm Eight Months Out: A Symposium for Professional Planners, Design Professionals, Plan Commissioners & Regular People*" at Charlotte County Event & Conference Center Punta Gorda May 12, 2023.
- Presenting a panel "*Incorporation, Annexation, and Disincorporation*" with Jim Studiale, AICP, and Luke Lirot, Esq. at APA Florida state conference on Orlando September 7, 2022.
- Co-presented a panel "*Legislative and Quasi-judicial: What Every Planner Needs to Know*" with Attorney Andrew Dickman, AICP, at annual conference of Florida Planning and Zoning Association on Captiva Island June 3, 2022.
- Program Chair for "*The Swamp Peddlers*", an APA Florida/ Florida Planning & Zoning Association symposium conducted on August 6, 2021 in Punta Gorda. Keynote speaker Jason Vuic and other presenters explored the legacy of land sales scams in Southwest Florida on the twentieth anniversary of the General Development Corporation bankruptcy.
- Designed and co-presented "*Land Use 101*", a seminar for planning commissioners, elected officials, and new planners, hosted by the City of Cape Coral on June 16 and July 14, 2021 with

co-presenters Vince Cautero, AICP, the City's Community Development Director, and Attorney Ralf Brookes.

- Expert witness for client West Villagers for Responsible Government (WV4RG), a citizen organization which challenged the annexation of the 8730-acre non-contiguous West Villages subdivisions into the City of North Port. The City Commission rejected the Villagers' challenge by a unanimous vote, but following appeal presented by attorney Luke Lirot, the Twelfth District overturned the City's order denying petition for contraction in *West Villagers for Responsible Government v. City of North Port*.
- Moderated a panel for law credit at the September 9, 2020 Zoom-facilitated American Planning Association's Florida state conference. Co-presenters were attorneys Karen Consalo, Thomas Hawkins, and Andrew Dickman. "*The Rules are Very Different Here: How to Reform Florida's Land Use Decision-making Process*" surveyed the inconsistencies among local governments' handling of land use decision-making and proposed a new Environmental Land Management Study (ELMS) to improve those processes.
- Attended and participated in American Planning Association Florida chapter's 18th annual *Public Policy Workshop* at Florida State University, Tallahassee February 2020.
- Drafted update of Town of *Fort Myers Beach Sign Ordinance* to reflect SCOTUS *Reed v. Gilbert* opinion for Weiler Engineering Fall 2019-Winter 2020.
- Program chair for "*Planners in Peril: Law, Legislation, and Ethics for Design Professionals*," an APA Florida Promised Lands section symposium December 6, 2019 at Bonita Springs City Hall.
- Program chair for "*How High is the Water, Ma?: Rising Sea Level on the Florida Gulf Coast and what we can do about it*," sponsored by Friends of Boca Grande Community Center, March 22, 2019 at the Boca Grande Community Center Auditorium.
- Member, *Faith Presbyterian Affordable Housing Board*, a not-for-profit corporation which aspires to offer quality housing for low- and moderate-income persons in Cape Coral. Appointed 2018; appointment ended December 2020.
- Received 2018 American Planning Association Florida Chapter, Promised Lands section's first-ever *Wayne Daltry Award for Planning Programs* for developing professional education symposia.
- Prepared *policy audit of Town of Fort Myers Beach Comprehensive Plan* for Weiler Engineering, Summer 2018.
- Program chair for American Planning Association symposium "*Warped Tour '18: Land Use Law for Planners*" March 23, 2018 in Punta Gorda.

- Attended and participated in the hurricane-shortened APA Florida chapter annual conference in Daytona Beach September 4-6, 2017. Led panel with Greg Beliveau, AICP and Jane West Esq. entitled *"How to Build a Better Client."*
- Program chair for Captiva Community Panel/ Florida APA symposium *"Now in My Back Yard: Rising Sea Level on Florida's Gulf Coast and what can be done about it"* January 13, 2017 at South Seas Resort on Captiva Island.
- Co-authored article with Karen Consalo, Esq. *"Best Practices for Local Government Land Use Decision-making"* in Summer 2016 edition of *Florida Planning*.
- Speaker at American Planning Association Florida Chapter Annual Conference in Tampa, September 9, 2016. *"A Pre-tirement Guide for Perplexed Planners: Making the Transition to Solo Practitioner."*
- Attended and participated in CLE International's annual *Land Use Law symposium* in Tampa, August 18-19, 2016, and August 6-7, 2015.
- Speaker at University of Central Florida 2016 Public Administration Research Conference April 8, 2016. Topic: *"What's the Big Idea: New Software that Aids Land Use Decisions."*
- Attended and participated in *APA Florida chapter annual conference* in Hollywood, Florida September 10-13, 2015.
- Coordinator and presenter for daylong FAPA-sponsored symposium *"Everything You Ever Wanted to Know about Florida Land Use"* in Cape Coral May 16, 2014.

Jurisdictions - Expert Witness Work

Bonita Springs	Miramar
Bradenton	Monroe Co (2, incl ALJ)
Cape Coral (5)	North Port
Charlotte County (2)	Orange County
Collier County (4)	Ormond Beach
DeSoto County	Pasco County (2)
Fort Myers Beach (4)	Palm Beach County (ALJ)
Hardee County	Polk County (C court)
Hendry County (C Court)	Punta Gorda (2)
Hernando County	St. Johns County (4)
Highlands County	Sarasota County
Hillsborough County (4)	Sumter County

Hillsboro Beach
Lantana
Lee County (8)

Suwannee County
Venice



SEC. VIII: ADDENDA.

QUALIFICATIONS: MATTHEW S. SIMMONS

Educational Background and Training

Bachelor of Science in Business Management (2008) Florida Gulf Coast University, Fort Myers, Florida.
Appraisal Board Course I - ABI, Steve Williamson's Real Estate Education Specialists (2003) Orlando, Florida.
Real Estate Transactions, Florida Gulf Coast University (2003) Fort Myers, Florida.
Various Appraisal Institute Courses
Appraisal Board Course II - ABII, Academy of Real Estate (2005) Fort Myers, Florida.
63 - hour Sales Associate Pre-License Course, Career Web School (2008)

Experience

Gulf Coast Appraisal and Consulting Services, Inc., Cape Coral, Florida – Associate (2003)
Gulf Coast Appraisal and Associates, Inc., Cape Coral, Florida - Associate (2003-2005)
Maxwell & Hendry Valuation Services, Inc., Fort Myers, Florida - Residential Division Manager (2005-2013)
Maxwell, Hendry & Simmons, LLC, Fort Myers, Florida - Partner (2013-Present)

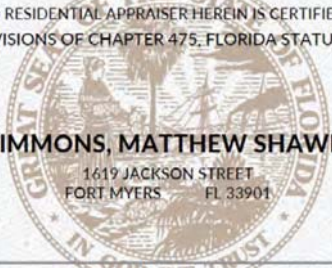
Professional Affiliations

State-Certified Residential Real Estate Appraiser, RD5762
State-Licensed Real Estate Broker, BK3214690
Qualified as an expert witness in the Florida District Court: 7th Judicial Circuit, 20th Judicial Circuit
Qualified as an expert witness in U.S. District Court: Middle District of Florida
Qualified as an expert witness in St. Croix County, Wisconsin
Realtor Association of Greater Fort Myers and the Beach, Inc. – Member (2009–Present)
National Association of Realtors - Member (2009–Present)
Real Estate Investment Society REIS - President (2015)
Sanibel-Captiva Chamber of Commerce - Member (2006–Present)
Southwest Florida Museum of History Foundation - Board Member (2014–2016)
HUD FHA Approved Appraiser
Associate Member of the Appraisal Institute (2011–Present)
Florida Real Estate Appraisal Board - FREAB - Gubernatorial Appointed Board Member (2012–2016)
Florida Real Estate Appraisal Board - FREAB - Chairman (2014)
IMAG History & Science Center – Board of Directors (2016–Present)
L.E.A.D. Foundation of SWFL - President (2017–Present)

Re-certification

As of the date of this report, I, Matthew S. Simmons, have completed the requirements under the continuing education program for the State of Florida.



	Ron DeSantis, Governor	Melanie S. Griffin, Secretary	
STATE OF FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION			
FLORIDA REAL ESTATE APPRAISAL BD			
THE CERTIFIED RESIDENTIAL APPRAISER HEREIN IS CERTIFIED UNDER THE PROVISIONS OF CHAPTER 475, FLORIDA STATUTES			
 SIMMONS, MATTHEW SHAWN 1619 JACKSON STREET FORT MYERS FL 33901			
LICENSE NUMBER: RD5762 EXPIRATION DATE: NOVEMBER 30, 2026 Always verify licenses online at MyFloridaLicense.com			
	ISSUED: 12/04/2024		
	Do not alter this document in any form.		
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MATTHEW S. SIMMONS		
SAMPLE OF TRIAL RELATED WORK (UPDATED THROUGH EARLY 2021)		
DATE	CLIENT	REFERENCE
4/2006	Dykema Gossett PLLG	US Bankruptcy Court N.D. Illinois, Eastern Dawson v. James S. Economou and Carol Economou; Case No. 05-B-13171
		appraisal, related trial preparedness
5/8/2006	Lee County Attorney's Office	Order-of-Taking in regard to Matlacha Park
6/2006	Berger Schatz	Boado v. Boado; appraisal, related trial preparedness
8/9/2006	Lee County Board of County Commissioners	Order-of-Taking hearings and related updates, file review for Parcels 1005, 1015, 316A, and 333, Imperial Street, Lee County, Florida
2/2008	First Bank	First Bank v. Ofelia Marcelo; appraisal, testimony, related trial preparedness
4/2008	Rubinstein & Holz	Krill v. Krill; appraisal, testimony, related preparedness
8/2008	Melissa Skeen	Silverglide v. Silverglide; appraisal, related trial preparedness
10/2008	Henderson Franklin	Leli v. Marsala; appraisal, deposition, related trial preparedness
10/2008	Powell Law Offices, P.A.	Dennis Mark Clark vs. Steven Gribble and Gasparilla Properties, Inc.; appraisal, related trial preparedness
2/2009	Bank First	Bank First vs. Guy Pagsoligan; appraisal, testimony, related trial preparedness



2/2009	Gibbons, Neuman, Bello, Segall, Allen, Halloran & Wright	Valley Bank v. Chris Hernandez; appraisal, testimony, related trial preparedness
2/2009	Troutman & Sanders, LLP	Taylor, Bean & Whitaker Mortgage Corporation vs. Lennar Corporation; appraisal, related trial preparedness
5/2009	Henderson Franklin	Warfield v. Stewart; appraisal, related trial preparedness
6/2009	John Nowell	John Nowell vs. Chad Turner; appraisal, related trial preparedness
9/2009	Stewart & Keyes	General Mortgage Associates Inc. vs Chapman and Associates, Inc., Dave Beckman, Julio Alvares, and Associates in Appraisal, Inc, and Patricia W. Sempstrott; appraisal, related trial preparedness, depositions, mediation
3/2010	Hale Law Group	Victor Rardin and Marianne Rardin v. Michael Sklorenko and Paula Sklorenko; appraisal, related trial preparedness, testimony
4/2010	Henderson Franklin	Quantum Funding Corp. v. Lisa A. Musial; appraisal, related trial preparedness
5/2010	Shendell & Pollock	IndyMac Bank FSB v. Viking Appraisal; appraisal, related trial preparedness
11/2010	Hale Law Group	Goldenberg v. Smith; appraisal, related trial preparedness
11/2010	Shelly Finman	Kennard v. Kennard; appraisal, related trial preparedness
1/2011	Carey, O'Malley, Whitaker, & Mueller	Fifth Third v. Landmark Homes; appraisal, related trial preparedness



2/2011	First American Bank	First American Bank v. Purdy; appraisal, related trial preparedness
5/2011	Pavese Law Firm	Petrella v. Lee County; appraisal, related trial preparedness
4/2012	Lapin & Leichtling, LLP	U.S. Bank v. First American Bank; appraisal, related trial preparedness
2/2012	Angella Hill, P.A.	SCEWCD v. Kozak; appraisal, related trial preparedness, testimony
4/2012	DeBoest Stockman	Iberia Bank v. O'Brien; appraisal, related trial preparedness
4/2012	DeBoest Stockman	Iberia Bank v. Birmingham; appraisal, related trial preparedness
4/2012	S. Alan Johnson Law, LLC	NCUA v. Kenneth Chang; appraisal, related trial preparedness, testimony
4/2012	Bayer Jerger & Underwood	Brinley v. Brinley; appraisal, related trial preparedness
5/2012	Andrew S. Epstein, P.A.	Gibbons v. Sizemore; appraisal, related trial preparedness
5/2012	Roetzel & Andress	Reliance Bank v. Medinis; appraisal, related trial preparedness, testimony
5/2012	Law Office of Matthew D. Uhle	Brosh v. City of Bonita Springs & Centex Homes; appraisal, deposition, related trial preparedness
7/2012	Bush, Ross, P.A.	Fiore v. Hilliker; valuation related consulting work



7/2012	Rogers Tower	Iberia Bank v. Fleischhauer; appraisal, related trial preparedness, testimony
7/2012	Carlton, Fields, P.A.	Dinello v. DiLoreto; appraisal, related trial preparedness
8/2012	Rogers, Tower	Century Bank, FSB v. Cathy Phillips; appraisal, related trial preparedness, testimony
11/2012	Rogers, Tower	Century Bank, FSB v. Anita Wingerter, Tobias Kurz, & R.A. Grant Corporation
11/2012	Mullin, Hoard & Brown	FDIC v. LSI Appraisal, FNIS, Inc., LPS, Inc., LPS, LLC, and LPS Property Tax Solutions, Inc.; appraisal, related trial preparedness
12/2012	Knott, Ebelini & Hart	Christoff v. Lewis; appraisal, related trial preparedness, testimony
12/2012	Fowler White Boggs	BMO Harris Bank v. Glenn McMaster; appraisal, related trial preparedness
1/2013	Chartwell Law Offices	Dorsey v. Century 21; valuation related consulting work
1/2013	FDIC Mortgage Recovery Law Group	FDIC v. Bank United; appraisal, related trial preparedness
2/2013	Henderson Franklin	Suncoast Schools Federal Credit Union v. Timothy and Kerri O'Leary; valuation related consulting work, testimony
2/2013	McGahee & Perez	Centerstate Bank v. Andrade; appraisal, related trial preparedness
5/2013	Henderson Franklin	Suncoast Schools Federal Credit Union v. Roger E. & Karla R. Carrasco; appraisal, related trial preparedness



7/2013	Mullin, Hoard & Brown	FDIC v. LSI Appraisal, LLC and FDIC v. Corelogic Vaulation Services, LLC; appraisals, related trial preparation
7/2013	Julie Rawl	Lance M. McKinney v. Gregory R. Rawl; appraisal, testimony
12/2013	Lefkoff, Rubin, Gleason & Russo, P.C.	US District Court Middle District of Florida; Lautenbach bankruptcy v. Sun Trust Bank; appraisal, related trial preparedness, testimony
1/2014	Lefkoff, Rubin, Gleason & Russo, P.C.	US District Court Middle District of Florida; Sewell bankruptcy v. Sun Trust Bank; appraisal, related trial preparedness
1/2014	Holtz Mashie Decosta, P.A.	Charles Schwab Bank, N.A. v. Conroy & Singer; appraisal, related trial preparedness, arbitration, deposition, testimony
1/2014	Lefkoff, Rubin, Gleason & Russo, P.C.	US District Court Middle District of Florida; Swingholm bankruptcy v. Sun Trust Bank; appraisal, related trial preparedness, testimony
2/2014	Rich Springle	Spriggle v. Spriggle; appraisal, related trial preparedness
2/2014	Lefkoff, Rubin, Gleason & Russo, P.C.	US District Court Middle District of Florida; Bernstein bankruptcy v. Sun Trust; appraisal, related trial preparedness
3/2014	Mortgage Recovery Law Group	FDIC v. Lennar Corporation; appraisal, reviews, related trial preparedness
4/2014	Debra Rowe, Esq.	Sklorenko v. Sklorenko; appraisal, related trial preparedness



5/2014	Henderson Franklin	Suncoast Schools Federal Credit Union v. Charles Arabre; appraisal, related trial preparedness, testimony
5/2014	Pavese Law Firm	US District Court Middle District of Florida; Harrison and Koski bankruptcy v. Cypress Keep HOA; appraisal, related trial preparedness, testimony
6/2014	Quarles & Brady, LLP	City of Cape Coral v. Lentrip; appraisal, related trial preparedness
9/2014	Lee County Property Appraiser	Spivey v Wilkinson; appraisal, related trial preparedness
10/2014	Law Office of Matthew Uhle	Michael McGuigan v. Lee County; appraisal, related trial preparedness
11/2014	Henderson Franklin	Neff lien stipulation motion v. Suncoast Schools Federal Credit Union; appraisal, related trial preparedness, testimony
4/2015	Henderson Franklin	McLean lien stipulation motion v. Heritage Pointe Master Association; appraisal, related trial preparedness, testimony
4/2015	Roetzel & Andress	Cloninger v. Cloninger; appraisal, related trial preparedness, testimony
5/2015	Roetzel & Andress	Thompson v. Thompsons; appraisal, related trial preparedness
5/2015	Stafford Law	DiFiore v. DiFiore; appraisal, related trial preparedness



5/2015	Kass Shuler, P.A.	US District Court Middle District of Florida; Murawski bankruptcy v. Sun Trust Bank; appraisal, related trial preparedness
5/2015	Martin Law Firm	Arigno v. Arigno; appraisal, related trial preparedness
6/2015	Henewey Ross Law Firm	Kohlhare v. Kohlhare; appraisal, related trial preparedness
6/2015	Cohen Milstein	Hauser v. Rice Insulation; appraisal, related trial preparedness
7/2015	Henderson Franklin	Thomas v. Thomas; appraisal, related trial preparedness
7/2015	Angela Sullivan	Sullivan v. Sullivan; appraisal, related trial preparedness
7/2015	Jeanne Chambers	Chambers v. Chambers; appraisal, related trial preparedness
7/2015	Rubinstein & Holtz	Myhre v. Myhre; appraisal, related trial preparedness
7/2015	Tom Moran	Moran v. Moran; appraisal; related trial preparedness
7/2015	Pavese Law Firm	US District Court Middle District of Florida; Marie Paul bankruptcy v. Jubilation Community Associates; appraisal, related trial preparedness
7/2015	Thompson Family Law	Rist v. Rist; appraisal, related trial preparedness
8/2015	Rogers Tower	Norsota Associates, L.P. v. Agado; appraisal, related trial preparedness
8/2015	20th Judicial Circuit	Jugan v. Jugan; appraisal, related trial preparedness



9/2015	Rogers Tower	US District Court Middle District of Florida; Coffey bankruptcy v. Nationstar Mortgage; appraisal, related trial preparedness
10/2015	Roetzel & Andress	DiCicco v. DiCicco; appraisal, related trial preparedness
12/2015	Pavese Law Firm	Moss v. Moss; appraisal, related trial preparedness
1/2016	Jeffrey Berlowitz, Esq.	US District Court Middle District of Florida; Edward P. Reilly bankruptcy v. Island Walk HOA; appraisal, related trial preparedness
1/2016	Bergermann Law Firm	Tawadras v. Patton; appraisal, related trial preparedness
1/2016	Paul Liles, Esq.	Sweet v. Sweet; appraisal, related trial preparedness
2/2016	Sheldon E. Finman, P.A. and Vergermann Law Firm	Longendyke v. Longendyke; appraisal, related trial preparedness
2/2016	Esmond Lewis Law Firm	US District Court Middle District of Florida; Green Bankruptcy; appraisal, related trial preparedness
3/2016	Rubinstein, Holz & King, P.A.	Eleinko v. Eleinko; appraisal, related trial preparedness
3/2016	Cassell & Cassell, PLLC	Warnars v. Warnars; appraisal, related trial preparedness
3/2016	Sheldon E. Finman, P.A.	Bond v. Bond; appraisal, related trial preparedness
3/2016	Dellutri Law Group	US District Court Middle District of Florida; Beverly Morgan bankruptcy; appraisal, related trial preparedness
4/2016	Howard Atkin, Esq.	Cadieu v. Cadieu; appraisal, related trial preparedness
4/2016	Grimes Goebel Grimes Hawkins	Hutler v. Hutler; appraisal, related trial preparedness



5/2016	DeBoest, Stockman, Decker, Broughton & Hagan, P.A.	Hamilton v. Klaus; appraisal, related trial preparedness
7/2016	Pavese Law Firm	Dusseau v. Dusseau; appraisal, related trial preparedness
8/2016	William Hobbs	Hobbs v. Hobbs; appraisal, related trial preparedness
9/2016	Roetzel & Andress	Coral Lakes Homeowner's Association v. Trepkowski; appraisal, related trial preparedness, testimony
9/2016	Roetzel & Andress	Coral Lakes Homeowner's Association v. Ortega/Maldonado; appraisal, related trial preparedness, testimony
1/2017	Roetzel & Andress	Coral Lakes Homeowner's Association v. Barnes; appraisal, related trial preparedness, testimony
4/2017	Bergermann Law Firm	Rison v. Rison; appraisal, related trial preparedness
5/2017		McPheron v. McPheron; appraisal, related trial preparedness
6/2017		Peterson v. Peterson; appraisal, related trial preparedness, testimony
12/2017	Blount Law, P.L	1355 Marlin Drive, LLC v. Harry P.A. Adams-Mercer, and Wendy Mercer v. Michael S. Marino, Harry Michael Zea, and Imagine Home Concepts, LLC; appraisal, related trial preparedness, testimony
2/2018	Calvo & Calvo	Renaud v. Renaud; appraisal, related trial preparedness
3/2018	Calvo & Calvo	Garcia v. Garcia; appraisal, related trial preparedness



3/2018	Bergermann Law Firm	Rison v. Rison; appraisal, related trial preparedness, testimony
4/2018	Bergermann Law Firm	VanVossel v. Bramble; appraisal, related trial preparedness, testimony
5/2018	Calvo & Calvo	Cedeno v. Rosales; appraisal, related trial preparedness
5/2018	Bergermann Law Firm	Navarro v. Navarro; appraisal, related trial preparedness
5/2018	Calvo & Calvo	Fries v. Bolliger; appraisal, related trial preparedness, testimony
5/2018	Bergermann Law Firm	Martin v. Martin; appraisal
6/2018	Hertz Schram, PC	Karnani v. Karnani; appraisal, related trial preparedness
6/2018	Calvo & Calvo	Heggemeier v. Heggemeier; appraisal
6/2018	Delutri Law Group	US District Court Middle District of Florida; Earnest Pittman bankruptcy; appraisal, related trial preparedness, testimony
9/2018	Porter, Wright, Morris & Arthur, P.A.	Goodrum v. Rhodes; appraisal, related trial preparedness
11/2018	Rubinstein, Holz, & King, P.A.	Piggott v. Piggott; appraisal, related trial preparedness, testimony
12/2018	Henderson, Franklin, Starnes & Holt, P.A.	Weiner, Alexandra v. Murty, Timothy; appraisal, related trial preparedness
1/2019	Wicker, Smith, O'Hara McCoy & Ford, P.A.	Bauer v. Heinlein; appraisals, related trial preparedness



1/2019	Roetzel & Andress	NCUA v. Alfonso; appraisal, related trial preparedness
1/2019	Roetzel & Andress	NCUA v. Alfonso; appraisal, related trial preparedness
1/2019	Roetzel & Andress	NCUA v. Beddow; appraisal, related trial preparedness
1/2019	Roetzel & Andress	NCUA v. Haggard; appraisal, related trial preparedness
1/2019	Roetzel & Andress	NCUA v. Hallett; appraisal, related trial preparedness
1/2019	Roetzel & Andress	NCUA v. Hallett; appraisal, related trial preparedness
1/2019	Roetzel & Andress	NCUA v. Krizsan; appraisal, related trial preparedness
1/2019	Roetzel & Andress	NCUA v. O'Ferrall; appraisal, related trial preparedness; testimony
1/2019	Roetzel & Andress	NCUA v. Rosser; appraisal, related trial preparedness
1/2019	Roetzel & Andress	NCUA v. Shane; appraisal, related trial preparedness; testimony
1/2019	Roetzel & Andress	NCUA v. Torres; appraisal, related trial preparedness; testimony
1/2019	Roetzel & Andress	NCUA v. Wehner; appraisal, related trial preparedness
1/2019	Roetzel & Andress	NCUA v. Wehner; appraisal, related trial preparedness
1/2019	Roetzel & Andress	NCUA v. Wiley; appraisal, related trial preparedness, testimony
1/2019	Roetzel & Andress	NCUA v. Wiley; appraisal, related trial preparedness



1/2019	Roetzel & Andress	NCUA v. Youse; appraisal, related trial preparedness
1/2019	Quintairos, Prieto, Wood & Boyer, P.A.	Klayman and 3s Company Florida, LLC v. De Meo, Gordon, Hamilton-Franklin Realty, LLC, Sass, Target Surveying, LLC, Osborne, and Peters; related trial preparedness
1/2019	Martin Law Firm, P.L.	Jacobs v Jacobs; appraisal
3/2019	Cordell Cordell	MacDonald v. MacDonald; appraisal
6/2019	Martin Law Firm	Cook v. Cook; appraisal
6/2019	WCI Communities, LLC	WCI Communities, Inc. v. City of Bonita Springs, Florida; appraisal, related trial preparedness
7/2019	Henderson Franklin Starnes & Holt, P.A.	Suncoast Credit Union v. Griffiths; appraisal, trial related preparedness
7/2019	Sheldon E. Finman, P.A.	Jackson v. Jackson; appraisal
7/2019	Pavese Law Firm	Michael v. Daniel; appraisal
7/2019	Robert E. Tardiff, Jr. P.A.	US District Court Middle District of Florida; Brenda Hall bankruptcy; appraisal
8/2019	Kevin F. Jursinski & Associates, P.A.	Davis v. Berdick; appraisal, trial related preparedness, testimony
8/2019	Holland & Knight, LLP	Miller, Becker, Blanks, etc., v. City of Fort Myers; valuation consulting
8/2019	Sibylle Allendorff and Pennington Law	Allendorff v. Johnson; appraisal, related trial preparedness



1/2020	Jursinski & Murphy Law Firm	Blakely v. Livorsi; appraisal, related trial preparedness
1/2020	Roetzel & Andress, P.A.	Boyd v. Wilk; appraisals, related trial preparedness
4/2020	Sheldon E. Finman, P.A.	Michaels v. Michaels; appraisal, related trial preparedness
4/2020	Gray Robinson	Weatherbee v. Nemeth A/C; appraisal, related trial preparedness
5/2020	Best & Flanagan / Willeke & Daniels	Peet v. Peet; appraisal, related trial preparedness
5/2020	The Law Office Karla Y Campos-Anderson	Melendez v. Melendez; appraisal, related trial preparedness
5/2020	Hagen Law Firm & Absolute Law	Turner v. McClory; appraisal, related trial preparedness
6/2020	Bergermann Law Firm	Coykendall v. Eischeid; appraisal, related trial preparedness
7/2020	The Law Office Karla Y Campos-Anderson	Gallegos v Zelaya; appraisal, related trial preparedness
8/2020	Allen Dell	Robertson v Robertson; appraisal, related trial preparedness
8/2020	Moore Bowman & Reese	Angler's Paradise of Bonita Springs Inc. v City of Bonita Springs; appraisal, related trial preparedness
8/2020	Edward Arasimowicz	Arasimowicz v Arasimowicz; appraisal, related trial preparedness
8/2020	James Campbell	Campbell v Kane; appraisal, related trial preparedness



9/2020	Wilbur Smith	Schwartzel-Rienzo v Rienzo ; appraisal, consultaion, related trial preparedness
9/2020	Jursinski & Murphy Law Firm	Bertschinger Investments LLC v Scratch & Dent Saffron; consultation, related trial preparedness
9/2020	Jursinski & Murphy Law Firm	The Srtach and Dent Shop, inc. v Leco Court Holdings ,LLC ; appraisal report, consultation, related trial preparedness
9/2020	Sheldon E. Finman, P.A.	Brian Just v Megan Just; appraisal, related trial preparedness
9/2020	John D. Mills, P.A.	Burke v. Burke; 2016 appraisal report , related trial preparedness
9/2020	John D. Mills, P.A.	Burke v. Burke; 2020 appraisal reports , related trial preparedness
10/2020	Kevin Schapley & Terri Schapley	Kevin Schapley, Terri Schapley; consultation
10/2020	The Law Office Karla Y Campos-Anderson	Maricela Espinal v Melendez; appraisal , related trial preparedness
10/2020	Leah Meshelle Snyder, P.A.	Mrs. Macpherson v Joseph MacPherson – 2200 NE 14th Ave; appraisal, related trial preparedness
10/2020	Leah Meshelle Snyder P.A.	Theresa Schober v Thomas Cheshire - 1902 Florrie Ct; appraisal report, related trial preparedness
10/2020	Simmons Law Firm	James W. Harris v Constance L. Harris; several appraisal reports, related trial preparedness



10/2020	Rachel Edmonds	Rachel Edmonds v Ryan Edmonds; appraisal, related trial preparedness
11/2020	Kubicki Draper, P.A.	Kevin L. Erwin and Andrea Erwin v Coastal Contracting of Florida, LLC and James K. McStravic Plumbing, Inc.; appraisal, consultation, related trial preparedness
11/2020	Sergio Castro	Castro v Castro; appraisal, related trial preparedness
11/2020	Roger M. Brown Trust	Kevin and Nicole Almeida v Roger M. Brown Trust; appraisal, related trial preparedness
11/2020	Carol Donoghue and Brian Donoghue	Carol Donoghue v Brian Donoghue; several appraisals, consultation, related trial preparedness
2005-2021	Numerous	Multiple representations before the Lee County and Collier County Valuation Adjustment Board over the past ten years. Multiple times providing testimony as a valuation expert on land use, zoning, feasibility, and economic impact related issues before a variety of planning/zoning boards and county commissions.

1. **Request:**

Meeting Date: April 7, 2025

Second reading and adoption public hearing of an ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING ARTICLE III "BEACH BICYCLE AND VEHICLE SAFETY" OF CHAPTER 28 "TRAFFIC AND VEHICLES" OF THE CODE OF ORDINANCES OF FORT MYERS BEACH, FLORIDA, TO ALLOW THE OPERATION OF ELECTRIC BICYCLES ON SIDEWALKS; ESTABLISHING SAFETY REGULATIONS; ESTABLISHING A MAXIMUM SPEED AND PASSING PROCEDURES; REQUIRING OPERATION WITH THE FLOW OF TRAFFIC; ESTABLISHING RESPONSIBLE PARTIES AND PENALTIES; ESTABLISHING ADDITIONAL REGULATIONS FOR THE SAFE OPERATION OF BICYCLES ON SIDEWALKS; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

5. **Background:**

The Town Council discussed changes to existing regulations related to bicycle operation and safety at recent public meetings and directed the Town Attorney to prepare an ordinance for adoption. The Public Safety Committee made comments to the Town Council at their meeting on March 3, 2025 regarding bicycle safety and operation on sidewalks in the Town. Discussion followed and several questions were raised and are addressed in an attachment to this Agenda item. Also included as an attachment is a legal memorandum regarding several issues.

Attachments:

1. Second Reading Draft - 25-03 Bicycle Ordinance, with highlighted changes
2. Regulation of Electric Bicycles - Memo - Town of Fort Myers Beach (2)
3. First Reading Draft - 25-03, Bicycle Ordinance
4. Formal E-bike Recommendations from the Safety Committee
5. M&P 5-8-24 - bicycle discussion
6. M&P 11-7-24 - bicycle discussion
7. PSC 2-20-25 draft minutes
8. Fort Myers News-Press_20250328_A05_1
9. Collier County proposed Amendment_to_Pedestrian_Safety_Ordinance_Revd 03.18.25
10. Final 3-28-25 Bicycle Ordinance Questions (1)

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk

Created/Initiated - 3/21/2025

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

Approved - 3/27/2025
Approved - 3/27/2025
Final Approval - 3/27/2025

ORDINANCE NO. 25-03

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING ARTICLE III “BEACH BICYCLE AND VEHICLE SAFETY” OF CHAPTER 28 “TRAFFIC AND VEHICLES” OF THE CODE OF ORDINANCES OF FORT MYERS BEACH, FLORIDA, TO ALLOW THE OPERATION OF ELECTRIC BICYCLES ON SIDEWALKS; ESTABLISHING SAFETY REGULATIONS; ESTABLISHING A MAXIMUM SPEED AND PASSING PROCEDURES; REQUIRING OPERATION WITH THE FLOW OF TRAFFIC; ESTABLISHING RESPONSIBLE PARTIES AND PENALTIES; ESTABLISHING ADDITIONAL REGULATIONS FOR THE SAFE OPERATION OF BICYCLES ON SIDEWALKS; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

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

WHEREAS, Section 316.008, Florida Statutes, authorizes municipalities to enact an ordinance to “to permit, control, or regulate the operation of electric bicycles on sidewalks or sidewalk areas when such use is permissible under federal law”; and

WHEREAS, Section 316.20655, Florida Statutes, regulates electric bicycles but does not limit a local government’s authority under Section 316.008, Florida Statutes, to enact ordinances governing the operation of electric bicycles on streets, highways, sidewalks, and sidewalk areas under the local government’s jurisdiction; and

WHEREAS, Section 316.008(h), Florida Statutes, authorizes municipalities to regulate the operation of bicycles with respect to streets and highways under their jurisdiction and within the reasonable exercise of police power; and

WHEREAS, Article III “Beach Bicycle and Vehicle Safety” of Chapter 28 “Traffic and Vehicles” of the Code of Ordinances of Fort Myers Beach, Florida, regulates the operation of bicycles and other vehicles on sidewalks and public rights-of-way; and

WHEREAS, Section 28-84 of the Code of Ordinances of Fort Myers Beach, Florida, prohibits the operation of bicycles “having any type of helper motor and having two or more wheels” on public sidewalks; and

WHEREAS, the Town Council recognizes the increasing use of electric bikes as a mode of transportation within the Town; and

WHEREAS, some bicyclists and electric bike operators have expressed safety concerns with riding on busy roadways, prompting some to use sidewalks instead; and

WHEREAS, some electric bike operators have been observed riding on sidewalks at excessive speeds and against the flow of pedestrian traffic, creating hazards; and

WHEREAS, the sidewalks adjacent to Estero Boulevard between Old San Carlos Boulevard and Crescent Street are particularly congested with pedestrian traffic; and

WHEREAS, the Town Council desires to amend Article III “Beach Bicycle and Vehicle Safety” of Chapter 28 “Traffic and Vehicles” of the Code of Ordinances of Fort Myers Beach, Florida, to allow the operation of electric bikes on sidewalks under regulated conditions, to prohibit the operation of bicycles and electric bicycles on sidewalks in certain congested high-traffic areas, and to protect the safety of cyclists, electric bike operators, and pedestrians; and

WHEREAS, on the 3rd day of March, 2025, the Town Council held a first reading of the Ordinance and gave full and complete consideration to the request of the proposed ordinance to amend the Town’s Code of Ordinances, the recommendation of staff, the documents in the record, comments from the Public Safety Committee and the testimony of interested persons; and

WHEREAS, a Business Impact Estimate was prepared and posted on the City’s website on the 27th day of March, 2025, as required by Section 166.041(4), Florida Statutes; and

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

WHEREAS, on the 7th day of March, 2025, the Town Council held a second reading of the Ordinance; and

WHEREAS, the Town Council determined that adoption of the Ordinance as provided herein is in the best interest of the health, safety and welfare of the public.

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

Section 1. That the above recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the town council.

Section 2. That Article III “Beach Bicycle and Vehicle Safety” of Chapter 28 “Traffic and Vehicles” of the Code of Ordinances of Fort Myers Beach, Florida, is hereby amended to read as follows:

ARTICLE III. – BEACH BICYCLE AND VEHICLE SAFETY

Sec. 28-81. Equipment Requirements.

All bicycles, as defined in F.S. § 316.003(4), and all electric bicycles, as defined in F.S. § 316.003(22), operated within the public rights-of-way or sidewalks must meet the following requirements:

- (1) No bicycle shall be used to carry more persons than the number for which it is designed and equipped.
- (2) A bicycle carrying any passenger who is a child under four years of age, or who weighs 40 pounds or less, must be provided with a seat or carrier that is designed to carry a child of that age or size and that secures and protects the child from the moving parts of the bicycle.
- (3) A bicycle rider or passenger who is under 16 years of age must be provided with and must wear a bicycle helmet that is properly fitted and is fastened securely upon the rider's or passenger's head by a strap and that meets the federal safety standard for bicycle helmet, final rule 16 C.F.R. part 1203. As used in this section the term "passenger" includes a child who is riding in a trailer or semitrailer attached to a bicycle.
- (4) Every bicycle shall be equipped with a functioning lamp on the front exhibiting a white light visible from a distance of at least 500 feet to the front and a functioning lamp on the rear exhibiting a red light visible from a distance of 500 feet to the rear. Said front and rear lamps shall be illuminated at all times the bicycle is being ridden, used or operated by any person.
- (5) Every bicycle shall be equipped with a brake or brakes which will enable its rider to stop the bicycle within 25 feet from a speed of ten miles per hour on dry, level, clean pavement.
- (6) Every bicycle shall be equipped with a horn or audible device when operated within a public right-of-way in good working order and capable of emitting sound audible under normal conditions from a distance of not less than 50 feet. No horn or other warning device shall emit an unreasonably loud or harsh sound or a whistle.

Sec. 28-82. Headsets.

No person shall operate a bicycle or electric bicycle while wearing a headset, headphone, or other listening device other than a hearing aid or instrument for the improvement of defective human hearing.

Sec. 28-83. Public sidewalks and paths, generally. ~~Vehicles prohibited.~~

- (a) Vehicles prohibited. No person shall drive any vehicle, including one-wheeled vehicles, hoverboards, or any type of electronic skateboards, other than by human power upon any public sidewalk or path except for authorized government personnel, emergency vehicles, and special mobile equipment for repair or maintenance of the sidewalk areas. This section does not apply to motorized wheelchairs having three or more wheels. Motorized micro-mobility devices, including but not limited to, electric scooters, electric skateboards, one-wheeled devices, and hoverboards are prohibited.
- (b) Bicycles upon public sidewalks and paths.

- (1) Except as otherwise provided in this article, any person may ride a bicycle upon a sidewalk instead of public streets where available, provided that such use does not endanger the safety of pedestrians.
- (2) Notwithstanding the foregoing, it shall be unlawful for any person to ride a bicycle or electric bicycle upon any sidewalk adjacent to Estero Boulevard between Old San Carlos Boulevard and Avenue C.
- (3) It shall be unlawful for any person to disobey any sign erected on or adjacent to a public sidewalk or path prohibiting bicycle riding.
- (4) It shall be unlawful for any person to disobey any sign erected on a public sidewalk or path requiring bicycles to travel with the flow of traffic.
- (5) When signage adjacent to and/or markings upon a sidewalk designate an area for bicycle travel, bicyclists riding on the sidewalk shall only ride within the area designated for bicycle travel and shall yield the remaining sidewalk space to pedestrians.
- (6) Bicycles shall not be used on a sidewalk in a manner that endangers the safety of pedestrians.
- (7) Whenever any person is riding a bicycle upon a sidewalk, such person shall yield the right-of-way to any pedestrian and shall give audible signal before overtaking and passing such pedestrian.
- (8) Bicyclists must exercise due care to avoid collisions with pedestrians, including reducing speed and giving an audible warning when necessary, especially when approaching children, pets, or individuals who appear confused or incapacitated.

Sec. 28-84. Assisted bicycles and electric bicycles. ~~prohibited.~~

- (a) “Electric bicycle” means any bicycle or tricycle equipped with fully operable pedals, a seat or saddle for use of the rider, and an electric motor of less than 750 watts, which meets the requirements of one of the three classifications of electric bicycle under F.S. § 316.003(22).
- (b) No bicycle having any type of helper motor and having two or more wheels shall be driven upon any public sidewalk, path, or beach. This section does not apply to motorized wheelchairs having three or more wheels. Motorized micro-mobility devices, including but not limited to electric scooters, electric skateboards, one-wheeled devices, and hoverboards are prohibited.
- (c) Notwithstanding the prohibitions in subsection (b), electric bicycles may be operated on sidewalks under the following conditions:
 - (1) Electric bicycles shall not be operated on a sidewalk in a manner that endangers the safety of pedestrians; and
 - (2) A person operating an electric bicycle shall comply with all regulations under Florida law and this Code applicable to bicycles and bicycle operators; and
 - (3) Electric bicycles shall be restricted to a maximum speed of 15 miles per hour when operating on a public sidewalk; and
 - (4) Operators of electric bicycles shall yield the right-of-way to any pedestrian and shall give audible signal before overtaking and passing the pedestrian; and

- (5) When passing a pedestrian, the operator of an electric bicycle shall reduce the speed of the electric bicycle to idle speed, meaning the lowest speed at which the electric bicycle can operate and maintain steering control. Generally, this will be between one and three miles per hour; and
- (6) Operators of electric bicycles must exercise due care to avoid collisions with pedestrians or human-powered vehicles, including reducing speed and giving an audible warning when necessary, especially when approaching children, pets, or individuals who appear confused or incapacitated; and
- (7) If sidewalks are present on both sides of a roadway, a person operating an electric bicycle on a sidewalk shall only use the sidewalk on the right side of the roadway and shall travel in the same direction as the adjacent vehicular traffic.

Sec. 28-85. Responsible parties.

All owners, riders, and operators of bicycles and electric bicycles, bicycle owners or riders/operators of the bicycle, including entities that rent or loan bicycles or electric bicycles to others for use on the public rights-of-way, are responsible for compliance with these regulations. Rental contract language shall not redirect or assign responsibility for compliance of section 28-81 or 28-84 of this article.

Sec. 28-86. Operation with flow of traffic.

Bicycles and electric bicycles shall travel in the same direction as traffic while being operated in a public right-of-way, and must be operated on the right as other vehicles which results in traveling with and not against the flow of traffic unless directed otherwise by town officials

Sec. 28-87. ~~Penalty~~Penalties.

- (1) An enforcement officer who discovers the operation of a bicycle or an electric bicycle on a sidewalk in a manner that violates this article may issue a citation, as used by the town, to the operator of the bicycle or electric bicycle. Any person operating a bicycle or an electric bicycle on a sidewalk in violation of Section 28-83(b)(2), (3), (4), (5), (6), or (8), or Section 28-84(c)(1), (5), (6) or (7) will be subject to a \$100.00 fine issued in accordance with the citation procedures for parking violations set forth in Sections 28-25 through 28-27.
- (2) ~~Violations of any provision~~ All first-time violations of this Article, except as provided in (1) above, of this article or failure to comply with any of the requirements herein for first-time offender(s) shall result in the issuance of a written warning by enforcement officers. Except as otherwise provided by state law, all AH subsequent violations of any provision or requirement of this article incurred by any person or company having previously received a written warning shall result in a fine not to exceed \$50.00, in addition to any penalty that may be imposed under state law.

Secs. 28-88—28-110. Reserved.

Section 3. That the town council intends that the provisions of this ordinance be made a part of the Fort Myers Beach, Florida, Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish

codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the town manager without further process.

Section 4. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

Section 5. If any section, subsection, sentence, clause, word, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 6. This Ordinance shall become effective upon adoption by the town council.

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

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

ADOPTED this ____ day of _____, 2025 by the town council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this ____ day of _____, 2025.

M E M O R A N D U M

TO: Mayor, Vice Mayor and Town Council Members, Town of Fort Myers Beach
FROM: Gretchen R.H. “Becky” Vose, Esq., Town Attorney
DATE: April 7, 2025
SUBJECT: Statutory and Local Government Regulation of Electric Bicycles

Background

This memorandum details the current statutory restrictions on the operation of electric bicycles and the types of restrictions that local governments may adopt to regulate electric bicycles under Florida law.

Statutory Provisions Authorizing Local Government Regulation of E-Bikes

Section 316.20655, Florida Statutes, provides for certain rights and duties with respect to the operation of electric bicycles, or “e-bikes”, and states, in pertinent part:

“(1) Except as otherwise provided in this section, an electric bicycle or an operator of an electric bicycle shall be afforded all the rights and privileges, and be subject to all of the duties, of a bicycle or the operator of a bicycle, including s. 316.2065. An electric bicycle is a vehicle to the same extent as a bicycle. However, this section may not be construed to prevent a local government, through the exercise of its powers under s. 316.008, from adopting an ordinance governing the operation of electric bicycles on streets, highways, sidewalks, and sidewalk areas under the local government’s jurisdiction; to prevent a municipality, county, or agency of the state having jurisdiction over a bicycle path, multiuse path, or trail network from restricting or prohibiting the operation of an electric bicycle on a bicycle path, multiuse path, or trail network; or to prevent a municipality, county, or agency of the state having jurisdiction over a beach as defined in s. 161.54(3) or a dune as defined in s. 161.54(4) from restricting or prohibiting the operation of an electric bicycle on such beach or dune.

...

“(7) An operator may ride an electric bicycle where bicycles are allowed, including, but not limited to, streets, highways, roadways, shoulders, bicycle lanes, and bicycle or multiuse paths.”

Pursuant to the above provisions, e-bikes are afforded the same rights and privileges as bicycles and may be operated anywhere that bicycles are allowed; however, a local government may:

- (i) regulate the operation of e-bikes on streets, highways, sidewalks, and

COUNSEL TO EXTRAORDINARY LEADERS AND GOVERNMENTS SINCE 1973

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- (ii) sidewalk areas under the local government's jurisdiction; restrict or prohibit the operation of e-bikes on a bicycle path, multiuse path, or trail network; and
- (iii) restrict or prohibit the operation of e-bikes on a beach or dune.

Additionally, pursuant to Section 316.008, Florida Statutes, local governments may permit, control, or regulate the operation of e-bikes on sidewalks. Section 316.008, Florida Statutes, provides, in pertinent part:

“(7)(a) A county or municipality may enact an ordinance to permit, control, or regulate the operation of vehicles, golf carts, mopeds, motorized scooters, electric bicycles, and electric personal assistive mobility devices on sidewalks or sidewalk areas when such use is permissible under federal law. The ordinance must restrict such vehicles or devices to a maximum speed of 15 miles per hour in such areas.”

Statutory Restrictions on the Operation of E-Bikes

Because operators of e-bikes are subject to the duties of operators of bicycles under Florida law, operators of e-bikes must abide by the laws governing the operation of bicycles. Section 316.2065, Florida Statutes, sets forth a list of restrictions on the operations of bicycles, which include:

“(2) A person operating a bicycle may not ride other than upon or astride a permanent and regular seat attached thereto unless the bicycle was designed by the manufacturer to be ridden without a seat.

“(3)(a) A bicycle may not be used to carry more persons at one time than the number for which it is designed or equipped, except that an adult rider may carry a child securely attached to his or her person in a backpack or sling.

“(b) Except as provided in paragraph (a), a bicycle rider must carry any passenger who is a child under 4 years of age, or who weighs 40 pounds or less, in a seat or carrier that is designed to carry a child of that age or size and that secures and protects the child from the moving parts of the bicycle.

(c) A bicycle rider may not allow a passenger to remain in a child seat or carrier on a bicycle when the rider is not in immediate control of the bicycle.

(d) A bicycle rider or passenger who is under 16 years of age must wear a bicycle helmet that is properly fitted and is fastened securely upon the passenger's head by a strap and that meets the federal safety standard for bicycle helmets, final rule, 16 C.F.R. part 1203. As used in this subsection, the term “passenger” includes a child who is riding in a

trailer or semitrailer attached to a bicycle.

(e) Law enforcement officers and school crossing guards may issue a bicycle safety brochure and a verbal warning to a bicycle rider or passenger who violates this subsection. A bicycle rider or passenger who violates this subsection may be issued a citation by a law enforcement officer and assessed a fine for a pedestrian violation, as provided in s. 318.18. The court shall dismiss the charge against a bicycle rider or passenger for a first violation of paragraph (d) upon proof of purchase of a bicycle helmet that complies with this subsection.

...

“(8) No parent of any minor child and no guardian of any minor ward may authorize or knowingly permit any such minor child or ward to violate any of the provisions of this section.

...

“(10) A person propelling a bicycle upon and along a sidewalk, or across a roadway upon and along a crosswalk, shall yield the right-of-way to any pedestrian and shall give an audible signal before overtaking and passing such pedestrian.

...

“(19) Except as otherwise provided in this section, a person who violates this section commits a noncriminal traffic infraction, punishable as a pedestrian violation as provided in chapter 318¹. A law enforcement officer may issue traffic citations for a violation of subsection (3) or subsection (15) only if the violation occurs on a bicycle path or road, as defined in s. 334.03. However, a law enforcement officer may not issue citations to persons on private property, except any part thereof which is open to the use of the public for purposes of vehicular traffic.”

(Ellipses indicates omitted text). Because the above restrictions were adopted by statute, independent of any local governmental regulation, such restrictions may be enforced by law enforcement officer, regardless of whether the local government enacts an ordinance to adopt the restrictions at the local level.

Analysis

Section 316.2065, Florida Statutes, currently requires operators of bicycles and e-bikes to yield the right-of-way to pedestrians and to give an audible signal before overtaking and passing such pedestrians when propelling a bicycle or e-bike along a sidewalk or across a roadway and along a crosswalk. Pursuant to Sections 316.008 and 316.20655, Florida Statutes, the Town may adopt an ordinance to further regulate the operation of e-bikes

¹ Section 318.18(1)(a), Florida Statutes, provides that the penalty for a pedestrian violation is a fine in the amount of \$15.

on sidewalks and sidewalk areas. Such an ordinance could require operators of bicycles and e-bikes to yield the right-of-way to pedestrians by pulling off of the sidewalk and bringing the bicycle or e-bike to a complete stop until an oncoming pedestrian passes. Under Section 316.008(7)(a), Florida Statutes, if the Town adopts an ordinance restricting the operation of e-bikes, said ordinance would need to include a provision restricting e-bikes to a maximum speed of 15 miles per hour in any areas where the ordinance is effective.

Additionally, if the Town restricts the operation of e-bikes by ordinance, the Town could provide that all violations of the e-bike regulations are to be punished by a fine in an amount to be set by resolution in accordance with a citation process or as set forth in the Ordinance. Appeals would be under the jurisdiction of the Town's Special Magistrate similar to parking tickets.

ORDINANCE 25-03

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING ARTICLE III “BEACH BICYCLE AND VEHICLE SAFETY” OF CHAPTER 28 “TRAFFIC AND VEHICLES” OF THE CODE OF ORDINANCES OF FORT MYERS BEACH, FLORIDA, TO ALLOW THE OPERATION OF ELECTRIC BICYCLES ON SIDEWALKS; ESTABLISHING SAFETY REGULATIONS; ESTABLISHING A MAXIMUM SPEED AND PASSING PROCEDURES; REQUIRING OPERATION WITH THE FLOW OF TRAFFIC; ESTABLISHING RESPONSIBLE PARTIES AND PENALTIES; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

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

WHEREAS, Section 316.008, Florida Statutes, authorizes municipalities to enact an ordinance to “to permit, control, or regulate the operation of electric bicycles on sidewalks or sidewalk areas when such use is permissible under federal law”; and

WHEREAS, Section 316.20655, Florida Statutes, regulates electric bicycles but does not limit a local government’s authority under Section 316.008, Florida Statutes, to enact ordinances governing the operation of electric bicycles on streets, highways, sidewalks, and sidewalk areas under the local government’s jurisdiction; and

WHEREAS, Article III “Beach Bicycle and Vehicle Safety” of Chapter 28 “Traffic and Vehicles” of the Code of Ordinances of Fort Myers Beach, Florida, regulates the operation of bicycles and other vehicles on sidewalks and public rights-of-way; and

WHEREAS, Section 28-84 of the Code of Ordinances of Fort Myers Beach, Florida, prohibits the operation of bicycles “having any type of helper motor and having two or more wheels” on public sidewalks; and

WHEREAS, the Town Council recognizes the increasing use of electric bikes as a mode of transportation within the Town; and

WHEREAS, electric bike operators have expressed safety concerns with riding on busy roadways, prompting some to use sidewalks instead; and

WHEREAS, some electric bike operators have been observed riding on sidewalks at excessive speeds and against the flow of pedestrian traffic, creating hazards; and

WHEREAS, the Town Council desires to amend Article III “Beach Bicycle and Vehicle Safety” of Chapter 28 “Traffic and Vehicles” of the Code of Ordinances of Fort Myers Beach, Florida, to allow the operation of electric bikes on sidewalks under regulated conditions and protect the safety of both electric bike operators and pedestrians; and

WHEREAS, on the ____ day of _____, 2025, the Town Council held a first reading of the Ordinance and gave full and complete consideration to the request of the proposed ordinance to amend the Town’s Code of Ordinances, the recommendation of staff, the documents in the record, and the testimony of all interested persons; and

WHEREAS, a Business Impact Estimate was prepared and posted on the City’s website on the ____ day of _____, 2025, as required by Section 166.041(4), Florida Statutes; and

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

WHEREAS, on the ____ day of _____, 2025, the Town Council held a second reading of the Ordinance; and

WHEREAS, the Town Council determined that adoption of the Ordinance as provided herein is in the best interest of the health, safety and welfare of the public.

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

Section 1. That the above recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the town council.

Section 2. That Article III “Beach Bicycle and Vehicle Safety” of Chapter 28 “Traffic and Vehicles” of the Code of Ordinances of Fort Myers Beach, Florida, is hereby amended to read as follows:

ARTICLE III. – BEACH BICYCLE AND VEHICLE SAFETY

Sec. 28-81. Requirements.

All bicycles, as defined in F.S. § 316.003(4), and all electric bicycles, as defined in F.S. § 316.003(22), operated within the public rights-of-way or sidewalks must meet the following requirements:

- (1) No bicycle shall be used to carry more persons than the number for which it its designed and equipped.
- (2) A bicycle carrying any passenger who is a child under four years of age, or who weighs 40 pounds or less, must be provided with a seat or carrier that is designed to carry a child of that age or size and that secures and protects the child from the moving parts of the bicycle.

- (3) A bicycle rider or passenger who is under 16 years of age must be provided with and must wear a bicycle helmet that is properly fitted and is fastened securely upon the rider's or passenger's head by a strap and that meets the federal safety standard for bicycle helmet, final rule 16 C.F.R. part 1203. As used in this section the term "passenger" includes a child who is riding in a trailer or semitrailer attached to a bicycle.
- (4) Every bicycle shall be equipped with a functioning lamp on the front exhibiting a white light visible from a distance of at least 500 feet to the front and a functioning lamp on the rear exhibiting a red light visible from a distance of 500 feet to the rear. Said front and rear lamps shall be illuminated at all times the bicycle is being ridden, used or operated by any person.
- (5) Every bicycle shall be equipped with a brake or brakes which will enable its rider to stop the bicycle within 25 feet from a speed of ten miles per hour on dry, level, clean pavement.
- (6) Every bicycle shall be equipped with a horn or audible device when operated within a public right-of-way in good working order and capable of emitting sound audible under normal conditions from a distance of not less than 50 feet. No horn or other warning device shall emit an unreasonably loud or harsh sound or a whistle.

Sec. 28-82. Headsets.

No person shall operate a bicycle or electric bicycle while wearing a headset, headphone, or other listening device other than a hearing aid or instrument for the improvement of defective human hearing.

Sec. 28-83. Vehicles prohibited.

No person shall drive any vehicle, including one-wheeled vehicles hoverboards, or any type of electronic skateboards, other than by human power upon any public sidewalk or path except for authorized government personnel, emergency vehicles, and special mobile equipment for repair or maintenance of the sidewalk areas. This section does not apply to motorized wheelchairs having three or more wheels. Motorized micro-mobility devices, including but not limited to, electric scooters, electric skateboards, one-wheeled devices, and hoverboards are prohibited.

Sec. 28-84. Assisted bicycles and Electric Bicycles prohibited.

- (a) "Electric bicycle" means any bicycle or tricycle equipped with fully operable pedals, a seat or saddle for use of the rider, and an electric motor of less than 750 watts, which meets the requirements of one of the three classifications of electric bicycle under F.S. § 316.003(22).
- (b) No bicycle having any type of helper motor and having two or more wheels shall be driven upon any public sidewalk, path, or beach. This section does not apply to motorized wheelchairs having three or more wheels. Motorized micro-mobility devices, including but not limited to electric scooters, electric skateboards, one-wheeled devices, and hoverboards are prohibited.
- (c) Notwithstanding the prohibitions in subsection (b), electric bicycles may be operated on sidewalks under the following conditions:

- (1) Electric bicycles shall not be operated on a sidewalk if doing so would endanger the safety of pedestrians; and
- (2) A person operating an electric bicycle shall comply with all regulations under Florida law and this Code applicable to bicycles and bicycle operators; and
- (3) Electric bicycles shall be restricted to a maximum speed of 15 miles per hour when operating on a public sidewalk; and
- (4) Operators of electric bicycles shall yield the right-of-way to any pedestrian and shall give audible signal before overtaking and passing the pedestrian; and
- (5) When passing a pedestrian, the operator of an electric bicycle shall reduce the speed of the electric bicycle to idle speed, meaning the lowest speed at which the electric bicycle can operate and maintain steering control. Generally, this will be between one and three miles per hour; and
- (6) Operators of electric bicycles must exercise due care to avoid collisions with pedestrians or human-powered vehicles, including reducing speed and giving an audible warning when necessary, especially when approaching children, pets, or individuals who appear confused or incapacitated; and
- (7) If sidewalks are present on both sides of a roadway, a person operating an electric bicycle on a sidewalk shall only use the sidewalk on the right side of the roadway and shall travel in the same direction as the adjacent vehicular traffic.

Sec. 28-85. Responsible parties.

All owners, riders, and operators of bicycles and electric bicycles, ~~bicycle owners or riders/operators of the bicycle,~~ including entities that rent or loan bicycles or electric bicycles to others for use on the public rights-of-way, are responsible for compliance with these regulations. Rental contract language shall not redirect or assign responsibility for compliance of section 28-81 or 28-84 of this article.

Sec. 28-86. Operation with flow of traffic.

Bicycles and electric bicycles shall travel in the same direction as traffic while being operated in a public right-of-way, and must be operated on the right as other vehicles which results in traveling with and not against the flow of traffic unless directed otherwise by town officials

Sec. 28-87. ~~Penalty~~Penalties.

- (1) A code enforcement officer who discovers the operation of a bicycle or an electric bicycle on a sidewalk in a manner that violates this article may issue a citation, as used by the town, to the operator of the bicycle. Any person operating a bicycle on a sidewalk in violation of the requirements of this article will be subject to a fine in an amount to be set by resolution in accordance with the citation procedures for parking violations set forth in Sections 28-25 through 28-27.
- (2) ~~Violations of any provision~~ All first-time offenders of this Article, except as provided in (1) above, of this article or failure to comply with any of the requirements herein for first-time offender(s) shall result in the issuance of a written warning by enforcement officers. All subsequent violations of any provision or requirement of this article incurred by any

person or company having previously received a written warning shall result in a fine not to exceed \$50.00, in addition to any penalty that may be imposed under state law.

Secs. 28-88—28-110. Reserved.

Section 3. The Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach, Florida, Code of Ordinances, and that sections may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

Section 4. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted ordinance or Florida law, the most restrictive shall apply.

Section 5. If any section, subsection, sentence, clause, word, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 6. This Ordinance shall become effective upon adoption by the Town Council.

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

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

ADOPTED this ____ day of _____, 2025 by the town council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this ____ day of _____, 2025.

Formal Recommendation from the Safety Committee

The Safety Committee formally recommends the following actions to enhance pedestrian and cyclist safety:

1. Rescind the Current eBike Ordinance

- **Allow eBikes on Sidewalks:** Amend the ordinance to permit eBikes on sidewalks under the condition that they operate **at a speed less than 10 MPH** (no electric assistance).
-

2. Designated Sidewalk Path from Gulf View to Avenue C

- **Sidewalk Division:** Clearly mark the sidewalk to separate pedestrian and bike lanes.
 - **Allocation of Space:** 55% for pedestrians and 45% for bike traffic.
 - **See Illustration A**
 - **Directional Flow:**
 - **Bike Lane Markings:** Indicate that bike traffic must flow **with the direction of vehicle traffic**.
 - **Pedestrian Symbols:** Mark the pedestrian side of the sidewalk for clear visual guidance.
-

3. Clear and Consistent Signage

- **Directional Signage:** Install signs along the route from Gulf View to Avenue C to inform cyclists that they must travel in the **same direction as vehicle traffic**.
 - **No Bike Riding Zone:** Clearly mark the sidewalk between **Avenue C and Times Square** as a **No Bike Riding Area**.
-

4. Bike Rack Installation

- **New Bike Racks:** Add bike racks at strategic locations, including:
 - Near the **Library**
 - In the **Times Square** area
 - Bayside Park
 - Nervous Nellie's
 - Bowditch
 - Lynn Hall Park

5. Education and Outreach

- **Marketing and Educational Materials:** Distribute informative materials to all local **bike rental agencies** to educate renters on the new regulations and promote safety.
 - We would like to stress the importance of this. The rental shops can set the speed limits on their own ebikes to a max of, say, 15 mph without customer adjustment.

Illustrations A



D. Bicycle / Pedestrian Plan

Per Council's request, a discussion regarding the Town's bicycle ordinance and a discussion regarding an island bike/walk path.

Mayor Allers noted the 2017 MPO (Metropolitan Planning Organization) study was in the packet and included some good information. He indicated that he received emails regarding people who needed e-bikes for various reasons and they rode on the sidewalks because they did not feel safe in the bike lane or on the road. Now, they fear getting ticketed for riding on the sidewalk because of the ordinance. He thought they should not create a policy based on bad actors because most people would do the right thing. He questioned why one could not ride a bike on the beach and was open to changing the policy. Council Member Safford stated that people had to go with the traffic flow, and when they did not feel safe riding bikes, they would drive or go somewhere else. Mayor Allers added that some walkers felt unsafe on the sidewalks.

Council Member King questioned whether they could gather data for a year and revisit the policy. According to the LCSO (Lee County Sheriff's Office), setting speed limits was not feasible. Vice Mayor Atterholt questioned whether they could require bikers to get off their bikes when they pass walkers on the sidewalk. Town Attorney Stuparich stated that some of the requirements in the town's ordinance were in Florida statutes and could not be changed. Mayor Allers supported Vice Mayor Atterholt's suggestion.

Council Member Safford noted that he had not heard anyone complain about incidents with e-bikes on the beach. Town Attorney Stuparich will research whether they can mandate a forced stop on sidewalks. Vice Mayor Atterholt felt they needed to be very careful on the beach because of the relaxed vibe. Mayor Allers stated that education was essential and the enforcement had to have some teeth to help the LCSO.

Vice Mayor Atterholt thought they needed a strategy for next season to be more engaged in monitoring and enforcing the ordinance. Mayor Allers questioned whether they wanted to task the Public Safety Committee (PSC) to research programs. Town Attorney Stuparich noted that volunteers could provide education and advice, not enforcement. Town Manager Hyatt stated that he wanted to revive the CERT (Citizen Emergency Response Team) training through the state.

Vice Mayor Atterholt questioned whether bike rental businesses could be required to include additional information in their waivers. Town Attorney Stuparich will research the topic. Mayor Allers described markings on the sidewalks that directed bikers and pedestrians and mentioned discussing implementation with the county. Council Member Woodson pointed out that some people had challenges stopping their bikes before passing people on the sidewalk. Vice Mayor Atterholt described two different ways to stop.

Council Member Woodson described creating additional paths on the bay side to avoid Estero Blvd. Mayor Allers referred to the map on page 41 and stated that now was the time to create a new path. Director Kropacek indicated that a discussion was held earlier with a group through the R2P2 program and they were working on a plan to present to the town in June.

Mayor Allers referred to page 167 and felt they could quickly implement secured bike storage. He referred to page 63 and TDC (Tourist Development Council) funding to create advertising videos for education. He indicated that other grants were also available. He felt that financial incentives to encourage employers to provide bike parking for employees was a good idea.

E. CRA

Per Council's request, a discussion regarding CRA.

Mayor Allers felt that having three CRAs (Community Redevelopment Agency) made sense. He explained that it took blighted areas that allowed the town to increase the taxes, so when a CRA is set up, whatever increase in that tax base is, comes back to the town to work in areas within the CRA. It would allow them to take the funding from the tax increase and put it in three sections of the island to enable them to help improve the island for specific items within that section.

Town Attorney Stuparich explained that the CRA was designated as a dependent special district and was a local governmental entity. There were requirements to satisfy and the first was to determine whether the area was viewed as a blighted or slum area. The statutory definition of blighted contained several conditions and she felt that the current state of the beach and lack of affordable housing would qualify. She noted the county would have to concur and the town would have to have a discussion with them before moving forward. If they agree, a resolution or interlocal with the county would have to be drafted. The next stop would be to conduct a study from a planning and data perspective to confirm that information and conditions supported the definition of a blighted area. Town Attorney Stuparich noted that the study would cost money, so they should talk to the county first. A CRA board would have to be created with town council members and two additional members could be added. The board would develop a plan and the county would have to approve it. Then, a trust fund would be created to hold the money to be spent annually or build it up for a larger project.

Town Attorney Stuparich indicated that Lee County had a CRA in 1990 for Estero and San Carlos Islands but rescinded it in 2006 due to lack of money. She suggested that the previous CRA be reviewed and built on. She explained that a TIF (Tax Income and Financing) district was part of the CRA. When the boundary lines of the CRA are established, a baseline of the ad valorem revenue from that particular area is determined. As properties are redeveloped, it begins to increase, and that increment is what goes into the trust fund to be spent specifically in that area. She stated there was a lot of flexibility that they could do in the CRA. Council Member Safford noted that Lee Ford and Teresa Brown could provide valuable information about Fort Myers' CRAs. Consensus was reached to begin talks with Lee County and Mayor Allers will initiate contact. Town Attorney Stuparich will continue to research and work on documents.



Fort Myers Beach Management & Planning Session

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

Minutes

Thursday, November 7, 2024

9:00 AM

ORDER OF BUSINESS

FINAL

I. CALL TO ORDER

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

II. PLEDGE OF ALLEGIANCE

III. ITEMS FOR DISCUSSION

A. Presentation: Bonita Estero Rail Trail

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

B. Public Benefits

Summary of LPA discussion of public benefits

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

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

C. Development Agreements with Deviations - Notice Requirements

Discussion regarding

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

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

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

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

Town Attorney Stuparich will research the Bill.

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

D. Electric Bikes

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

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

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

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

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

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

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

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

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

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

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

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

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

E. Certification of Vote of Appointed Advisory Board Members

Discussion regarding

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

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

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

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

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

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

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

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

IV. AGENDA MANAGEMENT

A. November 2024

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

V. ADJOURNMENT

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

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



Amy Baker, Town Clerk

**MINUTES
FORT MYERS BEACH
PUBLIC SAFETY COMMITTEE**

Town Hall Council Chambers
2731 Oak Street
Fort Myers Beach, FL 33931
Thursday, February 20, 2025

I. CALL TO ORDER

The meeting was called to order by Chair Thomas.

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

Members present: Todd Capela, Keran Farrell, James Knickle and Dawn Thomas.

Excused: Ron Benak and Jim Bougoulas.

Staff Liaison: Thomas Yozzo

IV. PUBLIC COMMENT – no comment.

V. APPROVAL OF MINUTES – January 23, 2025

James Knickle had an excused absence.

MOTION: PSC Member Farrell moved to approve the amended minutes, seconded by PSC Member Capela.

VOTE: The motion passed unanimously.

VI. STAFF REPORT AND UPDATES

Lt. Chitwood stated that there was nothing to report, but he was happy to answer questions. Traffic control was discussed. There were no e-bike incidents.

VII. FINALIZE OFFICIAL RECOMMENDATION FOR E-BIKE SIDEWALK AND BEACH TRAVEL FOR TOWN COUNCIL

Chair Thomas suggested that a line be drawn on the sidewalks from Times Square to the Red Coconut separating bikes and pedestrians with graphics and bikes have to flow with traffic. There should be a 10 mph limit for bikes. She supported Lt. Wirth's idea of adding a railing from Times Square to I Street with rumble strips so cars know it was a bike lane. She acknowledged it would take time and money, but that was her first preference. She thought people should walk their bikes in congested areas like Lani Kai and Margaritaville or ride in the street.

PSC Member Capela agreed with Lt. Wirth's idea but noted it would be expensive. He supported marking the sidewalks and making more room for pedestrians. He felt that three feet would be enough for bikes.

The first recommendation to the town council was to allow all bikes on the sidewalks and mark the sidewalks from Times Square to Red Coconut with markings showing that bikes need to go with traffic. There should be three feet for the bike lane, with the rest for pedestrians, signage indicating that bikes go with the flow of traffic and that no bikes ride on the sidewalks from Margaritaville to Times Square. Bike riders must walk their bikes or use the street.

Discussion was held regarding whether bikes or pedestrians should be closest to the road. A consensus was reached that pedestrians should be closest to the street. Liaison Yozzo suggested creating a map for clarity when presenting to the town council. PSC Member Capela suggested adding banks of bike racks by the Lani Kai so people can park their bikes and walk to Times Square. PSC Member Knickle wondered whether the Lani Kai would put bike racks in their parking lot.

MOTION: PSC Member Knickle moved that Chair Thomas present this information to the town council as a recommendation from the PSC, seconded by PSC Member Farrell.

VOTE: The motion carried unanimously.

VIII. MEMBER ITEMS AND REPORTS

PSC Member Capela thought the tram was useless and held up traffic because it only went 11 mph. He asked what they needed to do to discontinue the service. Chair Thomas asked about having a trolley on the beach during season. She described it as a big buggy pulling a couple of tram carts and people could get on and off. Liaison Yozzo suggested that Chair Thomas talk to Environmental Projects Manager Chadd Chustz regarding environmental impacts and public safety. Discussion was held regarding traffic congestion. No items from other members.

IX. PUBLIC COMMENT – no public comment.

X. SET NEXT MEETING AGENDA – TBD

XI. ADJOURNMENT

MOTION: PSC Member Farrell moved to adjourn, seconded by PSC Member Knickle.

VOTE: The motion carried unanimously.

Adopted _____ with/without changes. Motion by _____
(Date)

Vote _____ Signature _____

- End of document

New regulations for e-bikes proposed in Collier County to improve safety

Laura Layden

Naples Daily News

USA TODAY NETWORK – FLORIDA

Collier County is looking at new regulations to address the growing popularity and dangers of electric bikes.

On Tuesday, county commissioners directed staff to advertise and bring back amendments to the pedestrian safety ordinance, adopted by the board in 2022.

An executive summary for the action item emphasized that e-bikes traveling on public sidewalks and bike lanes in the county have "increased and created more opportunities for crashes and injuries with other pedestrians, vehicles, and bicycles (manually or electrically operated)."

The recent death of 14-year-old Clayton Miller has brought e-bike safety to the forefront in Southwest Florida. The North Naples teen was killed March 15 after an SUV struck his bike in the Willoughby Acres community, when he rode through a stop sign.

What kind of changes are proposed?

Here are some of the changes Collier County is considering to improve its bike safety rules:

- Operation of a Class 3 electric bike (the fastest kind) would be prohibited on public roads, bicycle paths, and other shared roadways and pathways, by anyone under the age of 16.
- Bicycle riding would be allowed on public sidewalks, but use of electric bicycles, driven by anyone over the age of 16, would be restricted to the bicycle lane where available.
- Adults on electric bicycles could drive on sidewalks when accompanied by children under the age of 16.
- Anyone operating an electric bicycle on either the sidewalk or in a bicycle lane would have to stop – and remain stopped for school busses – while their stop arm is out.
- Passing the school bus on the side where children enter and exit when the

stop signal is out would be a violation.

- A bicycle traveling in the opposite direction of traffic would have to come to a complete stop before entering an intersection and would have to yield to a vehicle that's already in the intersection.

- On shared pathways next to roads, including ones in parks and recreational areas, all bicycles and electric bicycles would have to yield to pedestrians.

One older e-bike owner, who lives in Lee County, raised personal safety concerns about having to ride on a bike path, rather than using the sidewalk, when he crossed the county line. He said there should be more consideration about that requirement, before it comes up for a vote.

New rules have been in the works for months

Commissioner Dan Kowal, who had a 28-year career in law enforcement, proposed the changes, saying he'd noticed that e-bikes had become "abundant," along sidewalks and pathways throughout the county, and they needed to be regulated better.

While most e-bikes are designed for speeds up to 28 miles per hour (Class 3), Kowal noted some custom or high-performance versions can top 35 miles per hour.

The work on the new regulations started about six months ago, before the recent accident, involving the local teen, and it involved conversations and coordination with the traffic unit of the Collier County Sheriff's Office, county staff and others.

Now, children are being armed with e-bikes and using them on public streets, sidewalks and other shared pathways, without training and supervision, Kowal said. With more regulation, he hopes the county can do a better job at protecting them, as well as the many others who are traveling around them.

"It would just basically reinforce keeping up with technology," Kowal said, and the "world around us."

ORDINANCE NO. 2025 - _____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA, AMENDING ORDINANCE NO. 2022-02, THE “COLLIER COUNTY PEDESTRIAN SAFETY ORDINANCE”, BY AMENDING SECTION THREE, DEFINITIONS; AMENDING SECTION FOUR, JURISDICTION; PROVIDING FOR A NEW SECTION ESTABLISHING REQUIREMENTS FOR THE OPERATION OF BICYCLES ON SIDEWALKS, CROSSWALKS, AND IN INTERSECTIONS WITHIN THE UNINCORPORATED PORTIONS OF COLLIER COUNTY, FLORIDA; PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, a recent compilation of motor vehicle crash data for 2020 published by the National Highway Traffic Safety Administration in October 2022 stated that Florida ranked fourth in the percentage of pedestrian fatalities in 2020; and

WHEREAS, Collier County has a significant government interest in pedestrian and bicyclist safety and this ordinance regulates conduct for the purpose of promoting pedestrian and bicyclist safety; and

WHEREAS, according to the Florida Department of Highway Safety and Motor Vehicles Crash Dashboard website at <https://www.flhsmv.gov/traffic-crash-reports/crash-dashboard/>, in 2022, there were 172 bicycle crashes in Collier County, resulting in 4 fatalities, and 164 injuries suffered, as well as, 190 pedestrian crashes resulting in 5 fatalities, and 122 injuries suffered (this data covers crashes occurring between January 1, 2022 and December 29, 2022); and

WHEREAS, the Florida Statutes expressly authorize local authorities such as Collier County to regulate the operation of bicycles and electric bicycles within their jurisdiction and within the reasonable exercise of their police power under the State Uniform Traffic Control Statute at §§ 316.008(h) and 316.2068(5); and

WHEREAS, the Board of County Commissioners finds that requiring the progression of bicycles on sidewalks and upon public rights of way to travel in the same direction as the flow of traffic will promote safer pedestrian travel and reduce the potential for crash events between vehicles and both pedestrian and bicycle travelers; and

WHEREAS, there has been a noticeable increase in the operation of electric bicycles on public sidewalks in Collier County, which presents enhanced opportunities for crashes and injuries with other pedestrian travelers upon those sidewalks, due in part to the steady accelerated speed which electric bicycles can maintain as compared to manually operated bicycles; and

WHEREAS, the Board of County Commissioners finds that this Amendment to Ordinance No. 2022-02 is narrowly tailored to impose specific regulations to protect the public health, safety, and welfare by reducing the likelihood of serious bodily injury or death that results from conflicts between vehicular traffic, bicyclists, and pedestrians progressing on the sidewalks, crosswalks, and intersections in the unincorporated area of Collier County; and

WHEREAS, the Board of County Commissioners seeks to prevent further pedestrian fatalities or injuries within the County.

NOW, THEREFORE, BE IT DULY ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA, that:

SECTION ONE: Section Three: Definitions of Ordinance No. 2022-02, codified as Section 110-162 of the Code of Laws and Ordinances, is amended as follows:

SECTION THREE: DEFINITIONS.

For the purpose of this division, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

Bicycle means every vehicle propelled solely by human power, having two tandem wheels, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels, as defined in § 316.003(4), Florida Statutes, including any device generally recognized as a bicycle though equipped with two front or two rear wheels. The term does not include motorized scooters, micromobility devices, or such similar devices as defined in § 316.003(41).

Bicycle lane means any portion of a roadway or highway which is designated by pavement markings and signs for preferential or exclusive use by bicycles. See also *Travel Lane* below.

Bicycle path means any road, path, or way that is open to bicycle travel, which road, path, or way is physically separated from motorized vehicular traffic by an open space or by a barrier and is located either within the right-of-way or within an independent right-of-way.

Crosswalk means: (a) that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway, measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway, and (b) any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

Electric bicycle means a bicycle or tricycle equipped with a fully operable pedals, a seat or saddle for the use of the rider, and an electric motor of less than 750 watts which meets the requirements of one of the following three classifications:

(a) “Class 1 electric bicycle” means an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the electric bicycle reaches the speed of 20 miles per hour.

(b) “Class 2 electric bicycle” means an electric bicycle equipped with a motor that may be used exclusively to propel the electric bicycle and that ceases to provide assistance when the electric bicycle reaches the speed of 20 miles per hour.

(c) “Class 3 electric bicycle” means an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the electric bicycle reaches the speed of 28 miles per hour.

Intersection means: (a) the area embraced within the prolongation or connection of the lateral curblines or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles; or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict, and (b) where a highway includes two roadways 30 feet or more apart, every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. If the intersecting highway also includes two roadways 30 feet or more apart, every crossing of two roadways of such highways shall be regarded as a separate intersection.

Median means the portion of the roadway separating the opposing traffic flows. Medians can be depressed, raised, or flush.

Moped means any vehicle with pedals to permit propulsion by human power, having a seat or saddle for the use of the rider and designed to travel on not more than three wheels, with a motor rated not in excess of 2 brake horsepower and not capable of propelling the vehicle at a speed greater than 30 miles per hour on level ground and with a power-drive system that functions directly or automatically without clutching or shifting gears by the operator after the drive system is engaged. If an internal combustion engine is used, the displacement may not exceed 50 cubic centimeters. The term does not include an electric bicycle.

Motorized scooter means any vehicle or micromobility device that is powered by a motor with or without a seat or saddle for the use of the rider, which is designed to travel on not more than three wheels, and which is not capable of propelling the vehicle at a speed greater than 20 miles per hour on level ground. The term does not include an electric bicycle.

Motor vehicles means any vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, but not including any bicycle or moped as defined in this section.

Pedestrian means any person afoot.

Person means any natural person, firm, co-partnership, association, or corporation.

Sidewalk is the portion of the street right-of-way intended for the use of pedestrians that is between the curb and the adjacent property line. If there is no curb or right-of-way parking area, it is the portion of the street right-of-way intended for the use of pedestrians that is between the roadway and the adjacent property line. If there is no curb but there is a right-of-way parking area, it is the portion of the street right-of-way intended for the use of pedestrians that is between the right-of-way parking area and the adjacent property line.

Traffic separator means a barrier, such as a concrete wall, raised median, guardrail, fence, or landscaped or gravel area, whether or not raised, that is less than 6 feet in width placed between lanes of a roadway to divide traffic moving in opposite directions.

Travel lane means the portion of the roadway dedicated to the movement of motor vehicles traveling from one destination to another where a motor vehicle may not remain stationary indefinitely without eventually obstructing the free flow of motor vehicle traffic, and not including; shoulders, bicycle lanes, or on the street parking. Travel lanes do not include sidewalks, bike paths, private property, or streets closed to vehicular traffic. The term shall include ~~bike~~-bicycle lanes which are delineated but a contiguous part of the street or highway pavement.

SECTION TWO: Section Four of Ordinance No. 2022-02, codified as Section 110-163 of the Code of Laws and Ordinances of Collier County, Florida, is amended as follows:

SECTION FOUR: JURISDICTION

The provisions of this section shall be in effect upon all streets and highways and sidewalks owned and maintained by the county within the unincorporated area of the county over which Collier County has traffic control jurisdiction. This Ordinance does not apply to motorized wheelchairs having three or more wheels.

SECTION THREE: Ordinance No. 2022-02 is amended to include the following new section:

OPERATION OF BICYCLES ON PUBLIC SIDEWALKS AND CROSSWALKS WITH FLOW OF TRAFFIC.

1. Authorization: Bicycle riding is allowed upon the public sidewalks within the unincorporated area of Collier County over which the County has traffic control jurisdiction.
2. Power Assisted Bicycle Restrictions:

- a. Any person over the age of 16 years old must operate an electric bicycle in the bicycle lane when available. Use of the sidewalks in such cases are prohibited and is a violation of this Ordinance.
- b. If an adult is operating an electric bicycle while accompanying children under the age of 16 who are riding on a sidewalk, the adult shall lawfully be allowed to operate the electric bicycle on the sidewalk with those children, so as not to separate the children from the adult's supervision.
- c. Any person under the age of 16 years old is prohibited from riding a Class 3 electric bicycle on public roads, bicycle paths, and shared roadways/pathways.
- d. Any person using, operating, or driving an electric bicycle on either a sidewalk or in a bicycle lane must, upon approaching any school bus which displays a stop signal, bring such electric bicycle to a full stop while the bus is stopped, and the vehicle shall not pass the school bus until the signal has been withdrawn. Any person using, operating, or driving an electric bicycle that passes a school bus on the side that children enter and exit when the school bus displays a stop signal is a violation of this Ordinance. The driver of an electric bicycle upon a divided Roadway with an unpaved space of at least 5 feet, a raised median, or a physical barrier is not required to stop when traveling in the opposite direction of a school bus which is stopped in accordance with the provisions of this section.
- e. An open intersection is one without traffic control signs or signals. Any person operating an electric bicycle or bicycle, traveling in the opposite direction of traffic, must come to a complete stop before crossing the open intersection, and must yield the right-of-way if a vehicle is already in the intersection.
- f. At a signalized intersection, a bicyclist approaching on a sidewalk must obey the instructions of any applicable pedestrian control signal. That is, the bicyclist may start to cross a roadway in a crosswalk only during a steady "Walk" phase, if one is displayed. If no pedestrian signal is provided, the bicyclist may proceed in accordance with the signal indications for the parallel roadway traffic flow.
- g. With respect to shared pathways that are not located adjacent to roadways, including those that are located in parks and recreational areas, all bicycles and electric bicycles must yield the right of way to pedestrians on these types of pathways, and when passing a pedestrian must deliver a warning by some type of sound device before the act of passing them.

SECTION FOUR: CONFLICT AND SEVERABILITY

In the event this Ordinance conflicts with any other Ordinance of Collier County or other applicable law, the more restrictive shall apply. If any phrase or portion of the Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion.

SECTION FIVE: INCLUSION IN THE CODE OF LAWS AND ORDINANCES

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Collier County, Florida. The sections of the Ordinance may be renumbered or relettered to accomplish such, and the word “ordinance” may be changed to “section,” “article,” or any other appropriate word.

SECTION SIX: EFFECTIVE DATE

This Ordinance shall become effective upon filing with the Department of State.

PASSED AND DULY ADOPTED by the Board of County Commissioners of Collier County, Florida, this _____ day of _____, 2025.

ATTEST:
CRYSTAL K. KINZEL,
Clerk of Courts & Comptroller

BOARD OF COUNTY COMMISSIONERS
COLLIER COUNTY, FLORIDA

By: _____
_____, Deputy Clerk

By: _____
Burt L. Saunders, Chairman

Approved as to form and legality:

Jeffrey A. Klatzkow, County Attorney

Bicycle Ordinance Questions & Comments

1. SPEED LIMIT AND PASSING

Legal Question: Can the Town implement a lower speed limit for e-bikes on sidewalks?

Answer: Likely not. The statutory language appears to pre-empt the regulation of speed for lawful operation of an e-bike to the State by establishing a maximum speed of 15 miles per hour as stated in Section 316.008, Florida Statutes.

Explanation: The language establishing a maximum speed of 15 miles per hour for e-bikes is required by statute. Section 316.008, F.S. provides that “A county or municipality may enact an ordinance to permit, control, or regulate the operation of vehicles, golf carts, mopeds, motorized scooters, electric bicycles, and electric personal assistive mobility devices on sidewalks or sidewalk areas when such use is permissible under federal law. **The ordinance must restrict such vehicles or devices to a maximum speed of 15 miles per hour in such areas.**” Therefore, any ordinance adopted by a municipality must restrict e-bikes to a maximum speed of 15 miles per hour. Case law in Florida provides for an implied pre-emption of regulations to the State when the State mandates certain requirements upon municipalities. For this reason, the Town should not consider a change to the language as stated in the statute, even if the proposed change would lower the speed. Moreover, speed limits for e-bikes and bicycles would be difficult to enforce because the Town is challenged on how to accurately measure the speed of these vehicles.

In the alternative, other provisions in the ordinance that govern passing have been added to address the Town Council’s concerns for speed and pedestrian safety

- 28-83(b)(3) - Bicycles shall not be ridden on a sidewalk in a manner that endangers the safety of pedestrians.
- 28-83(b)(7) - Whenever any person is riding a bicycle upon a sidewalk, such person shall yield the right-of-way to any pedestrian and shall give audible signal before overtaking and passing such pedestrian.
- 28-83(b)(8) - Bicyclists must exercise due care to avoid collisions with pedestrians, including reducing speed and giving an audible warning when necessary, especially when approaching children, pets, or individuals who appear confused or incapacitated.

Note that these requirements can also be enforced against e-bike operators pursuant to Section 28-84(c)(2), which provides: “A person operating an electric bicycle shall comply with all regulations under Florida law and this Code applicable to bicycles and bicycle operators.”

There was also a request to add language suggested by a resident. This language was incorporated in Sections 28-84(c)(4) and (5) of the draft ordinance for specifically for e-bikes. Pursuant to Council feedback, this language has now also been added to Sections 28(b)(7) and (8) and applies to all bicycle riders.

2. FINES AND ENFORCEMENT

Legal Question: Can the Town impose a \$100.00 fine for endangering pedestrian safety?

Answer: It depends on whether the endangering conduct is already regulated by Chapters 316 and 318, F.S. The Town may impose a \$100.00 fine for conduct not regulated by Chapters 316 and 318, F.S. If the conduct is regulated by Chapter 316 or 318, the Town is preempted from imposing a fine different from what the statute prescribes, unless specifically authorized by statute

Explanation and Revisions:

Sections 316.0087(a) and 316.20655, F.S. specifically authorize municipalities to regulate the operation of vehicles (including bicycles and e-bikes) on sidewalks. The Council discussed imposing a fine for “endangering pedestrian safety.” While this approach may be viable in some circumstances, the Town must navigate around the fact that it is preempted from imposing additional fees, fines, or surcharges for conduct already regulated by statute. Currently, Section 318.18(1), F.S., provides a maximum fine of \$15.00 (plus statutory fees) for nearly all bicycle and pedestrian violations.

Section 316.2065, F.S., already requires bicycle and e-bike operators to yield to pedestrians and give an audible warning before passing when riding on a sidewalk. Because passing conduct is regulated under Chapter 316, the Town cannot impose its own fine for violations of these requirements, even if the conduct would otherwise qualify as “endangering pedestrian safety.”

However, a \$100.00 fine could still be imposed for violations not covered by Chapters 316 and 318, such as failing to observe pedestrian-only zones or failing to remain in the area of the sidewalk designated for bicyclists. See *Thomas v. State*, 614 So. 2d 468 (Fla. 1993) (holding that penalties for violating a municipal ordinance requiring bicycles to be equipped with bells were not preempted because no similar requirement existed in Chapter 316). See also *Masone v. City of Aventura*, 147 So. 3d 492, 497 (Fla. 2014).

The previous version of the ordinance provided that the operation of an electric bicycle on a sidewalk in a manner that violates Chapter 28, Article III of the Code is punishable by a fine in an amount to be set by resolution. To specify a fine of \$100.00 while addressing preemption concerns, the ordinance has been revised to allow for a \$100.00 fine only for violations not already covered by Chapters 316 and 318, Florida Statutes. Specifically, Section 28-87(1) provides: “An enforcement officer who discovers the operation of a bicycle or an electric bicycle on a sidewalk in a manner that violates Sections 28-83(b)(2), (3), (4), (5), (6), or (8) or Section 28-84(c)(1), (5), (6), or (7) will be subject to a \$100.00 fine issued in accordance with the citation procedures for parking violations set forth in Sections 28-25 through 28-27.”

3. PEDESTRIAN ONLY ZONE

Legal Question: Can the Town implement a “pedestrian only zone” between Avenue C and Times Square?

Answer: Yes.

Explanation and Revisions:

The Town has the legal authority to define pedestrian-only sidewalk zones by ordinance. It is a valid exercise of police power to prohibit the riding of bicycles on sidewalks in the Town. See *McCrimmon v. State*, 505 So. 2d 13 (Fla. 5th DCA 1987) (“First, the municipal ordinance, which prohibited the riding of bicycles on sidewalks in the City of Orlando, was a valid exercise of municipal authority. See §§316.002 and **316.008(1)(h)**, Fla.Stat.”).

Language to this effect was added to Section 28-83(b)(2), but, for the sake of precision, it uses street names as the boundaries, which can be amended as needed in the future. Section 28-83(b)(2) provides: “Notwithstanding the foregoing, it shall be unlawful for any person to ride a bicycle or electric bicycle upon any sidewalk adjacent to Estero Boulevard between Old San Carlos Boulevard and Avenue C.”

Additionally, Section 28-83(b)(3) was added to address the possibility of future pedestrian-only zones. Section 28-23(b)(3) provides: “It shall be unlawful for any person to disobey any sign erected on or adjacent to a public sidewalk or path prohibiting bicycle riding.”

4. SIDEWALK MARKINGS AND SIGNAGE

Question: How can the Town designate a side of the sidewalk for bicycles and E-bikes?

Answer: The most straightforward approach would be to install signage designating a side of the sidewalk for bicyclists and e-bikes. Alternatively, the Town could try to enter into an interlocal agreement with the County to allow for sidewalk markings.

Explanation and Revisions:

The Council discussed the possibility of either adding a dividing line on the sidewalk between bikes and pedestrians or installing signage designating a side of the sidewalk for bicycles/e-bikes. No consensus was reached regarding which approach to adopt, however there were comments that pushback was anticipated from the County regarding sidewalk markings. Therefore, the ordinance was prepared to require bicyclists and e-bike operators to generally obey both signs and markings. Specifically, Section 28-83(b)(5) provides: “When signage adjacent to and/or markings upon a sidewalk designate an area for bicycle travel, bicyclists riding on the sidewalk shall only ride within the area designated for bicycle travel and shall yield the remaining sidewalk space to pedestrians.” This way, the council can move ahead with the ordinance while continuing to evaluate the best approach to divide the traffic on sidewalks.

5. SIDEWALK JURISDICTION

Legal Question: Does the Town have jurisdiction to regulate conduct on the county-owned sidewalk?

Answer: Yes. The Town has jurisdiction to regulate the portions of the sidewalk within the municipal limits of the town.

No specific statute assigns regulatory jurisdiction over sidewalks. However, Section 316.006(2), Florida Statutes, sets forth the jurisdiction a municipality possesses over streets and highways:

- (a) Chartered municipalities shall have original jurisdiction over all streets and highways *located within their boundaries*, except state roads, and may place and maintain such traffic control devices which conform to the manual and specifications of the Department of Transportation upon all streets and highways under their original jurisdiction as they shall deem necessary to indicate and to carry out the provisions of this chapter or to regulate, warn, or guide traffic.

316.006(3)(a) continues, “Counties shall have original jurisdiction over all streets and highways located within their boundaries, **except** all state roads and **those streets and highways specified in [316.006(2)]**.”

In Section 316.003(90)(a), the definition of “street or highway” encompasses “[t]he entire width between the boundary lines of every way or place of whatever nature when any part thereof is open to the use of the public for purposes of vehicular traffic.” Section 316.006(109) defines a vehicle as “every device in, upon, or by which any person or property is or may be transported or drawn upon a highway.” By these definitions, e-bikes and bicycles are vehicles, and the sidewalk can be regulated with the same authority as the Town may regulate a “street.”

Therefore, since the Town is a charter municipality, it has jurisdiction to enforce traffic control regulations over all county streets and highways within the town limits (unless the Town has entered into an agreement to the contrary).

Based on the Lee County Charter, the Town also has the authority to regulate conduct upon county-owned sidewalks within Town limits. Section 1.4 of the Lee County Charter provides that “Municipal ordinances shall prevail over County ordinances to the extent of any conflict.”

Moreover, Section 316.008(7)(a) specifically authorizes municipalities to regulate the conduct of vehicles on sidewalks within their municipal bounds. Section 316.008(7)(a) provides “A county or municipality may enact an ordinance to permit, control, or regulate the operation of vehicles, golf carts, mopeds, motorized scooters, electric bicycles, and electric personal assistive mobility devices on sidewalks or sidewalk areas when such use is permissible under federal law.” Although there was some concern that Section 316.1995 might preempt this ordinance because it generally prohibits vehicles other than those powered by human force on sidewalks, Section 316.008 is specifically exempted, so it remains valid authority for municipal regulation. Therefore, the Town may regulate conduct upon county-owned sidewalks.

1. **Request:**

Meeting Date: April 7, 2025

Town Council to Select Top 5 Town Manager Candidates for Interviews on April 18, 2025

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Talissa Oliveira, Human
Resources Director

5. **Background:**

As provided in Paragraph 12 of the Town Council's Policies and Procedures Manual, "[t]he Town Council may direct the acting current Town Manager or designee to review the proposals submitted by the applicants for Town Manager Services and provide the Town Council with a list of five (5) candidates, with two (alternates) for interviews as provided for herein." The purpose of this agenda item is for the Town Manager or designee to provide the Town Council with an update of the recruitment process.

As of March 28, 2025, 66 applications have been received. As part of its fact-finding, the Town Manager and Human Resources Director created a comprehensive list of candidates, posted a copy of the resumes on the Town's webpage, and provided a copy of the resumes to the Town Council by email in advance of the April 7, 2025 public meeting.

The Town Manager and Human Resources Director compared the minimum qualifications in the Town Manager Job Description, which was approved by Town Council, to the qualifications of each candidate. Exhibit A is a list of those candidates who met the minimum qualifications. To further assist the Town Council in its discussion, debate and decision on which candidate to interview on April 18, 2025, the Town Manager has identified candidates, listed in alphabetical order in Exhibit A, who appear well-qualified and demonstrate an alignment with the Town Council's vision for the role.

The resumes for each candidate can be viewed by clicking on their name below:

Adediran, Emmanuel	Amos, Nathan	Boby, Michael	Brillhart, Michael
Brown, Javion	Calvert, Michael	Corredor, Melvin	Davis, James
Davis, Jason	Day, Timothy	Dillon, Chris	DiMauro, Jeffrey
Dyal, Paul	Eck, Caitlyn	Edwards, Michael	Evans, Brian
Ferrel, Taylor	Forrest, Robert	Gagliardi, Thomas	Geoghegan, Brian
Hall Jr., Dennis	Higgins, David	Hooker, Jeffrey	Humber, Casey
Johnson, Marc	Jones, Adrian	Jordan, Patrick	Kimball, Taner
Kross, Katya	Krum-Tinsley, Marcy	LaFave, Lacy	Lange, Jeffrey
Lawrence, William	Mascaro, John	McKannay, Will	Mendez-Saldivia, Ricardo
Moye, Scott	Murphy, John	Murray, Sadia	ORiley, Chelsea
Parcell, Jacob	Phillips, James	Powell, Sean	Reinshuttle, Robert
Robinson, Scotty	Saggere, Sanjay	Sanchez, Walter	Schofield, Jeremiah
Segui, Eddie	Sener, Benjamin	Shaffer, Jeremy	Shirey, Gary
Sun, Golden	Swan, Michael	Thomas, Thomas	Tibbs, Larry
Trew, John	Upchurch, James	Urban, Charlie	Urias, Elijah
Valiente, Lazaro	Webb, Cole	Wells, Brian	Whitlock, Jacob
Winstead, Connor V.	Wright, Matthew		

The Town Council should review the agenda materials and thereafter discuss and debate which candidates to select for an interview on April 18, 2025.

Attachments:

1. Town Manager Job Advertisement

2. Exhibit A-Town Manager Candidate Listing

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Jason Freeman, Deputy Town Clerk / Legislative Liaison
Amy Baker, Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 3/26/2025
Approved - 3/27/2025
Approved - 3/28/2025
Approved - 3/28/2025
Final Approval - 3/28/2025



Town of Fort Myers Beach Job Advertisement

Position: Town Manager
Reports to: Town Council
Emergency Classification: Essential
FLSA Classification: Exempt
Pay Grade: UNG
Pay Range: Depending on Qualifications (DOQ)

The Town of Fort Myers Beach is seeking an exceptional leader to serve as its next Town Manager. Our vibrant beach community offers a unique opportunity to lead with purpose, vision, and innovation during this pivotal chapter of recovery and transformation.

We're seeking a visionary, results-driven, and hands-on leader who excels at transforming ideas into actionable strategies, propelling Fort Myers Beach along its path of growth and transformation. We're looking for a leader with an open-door policy who empowers their team, values collaboration, and leads by example. As Town Manager, you will bring a high level of expertise, an unwavering dedication to public service, and a proactive, solution-focused mindset.

While the Town of Fort Myers Beach does not operate its own police or fire department, we maintain close partnerships with the Lee County Sheriff's Office and Fort Myers Beach Fire Control District. We are seeking a candidate who can strengthen these vital interlocal relationships, fostering collaboration and ensuring the safety and efficiency of our community's operations.

Position Summary:

The Town Manager is responsible for the administration of the Town's affairs, including the enforcement of ordinances, implementation of Town Council policies, and management of the annual budget. The Town Manager provides visionary leadership and strategic direction to ensure the effective management of all municipal operations.

The Town Manager oversees all departments and functions, ensuring operational excellence and fiscal responsibility while fostering a culture of collaboration and innovation. This position is tasked with translating the Town Council's vision into actionable goals by planning, organizing, and directing Town operations in alignment with the Town's mission, vision, and strategic priorities.

As the primary leader of the municipality, the Town Manager is dedicated to advancing the long-term success of the community, maintaining transparent communication with the Town Council, and promoting the well-being and sustainability of the Town for its residents, businesses, and stakeholders.

Position Qualifications:

Education, Certification, and Experience:

- Bachelor's degree in Public Administration, Political Science, Business Administration, or a related field. A Master's degree is preferred.
- Minimum of five (5) years of executive leadership experience in municipal government required, with experience in a Florida municipality, beach / coastal community strongly preferred.
- Minimum of five (5) years proven recent experience in emergency preparedness, response, and recovery, including coordinating emergency operations and managing FEMA-related processes.
- ICMA Credentialed Manager designation highly preferred.
- FCCMA Membership in active standing.
- Certification in Emergency Management (e.g., FEMA ICS, NIMS, or CEM) is highly preferred.

The ideal candidate will have the following key areas of expertise:

- Experience serving in a Town Manager capacity for a Florida municipality, preferably in a coastal or beach community.
- Expertise in hurricane emergency response, recovery, and FEMA compliance.
- Demonstrated ability to lead crisis response efforts in a municipal setting.
- Grant administration experience.
- Previous experience working closely with outside law enforcement and fire departments.
- Legislative experience with the ability to advocate at local, state, and federal levels.
- Capital improvement project planning and execution.
- Experience in strategic planning.
- Strong skills in community engagement and maintaining trust in municipal governance.

The Town of FMB Offers a Competitive Benefits Package!

- **Health & Wellness:** Comprehensive health insurance with low deductibles and annual maximums. The Town covers 100% of employee premiums and 50% of dependent premiums. Benefits include employer-paid life insurance, short- and long-term disability coverage, gym membership reimbursement and more.
- **Work/Life Balance:** Executive staff accrue 19 hours of paid leave monthly, plus 1 sick day and a birthday annually. The Town observes 14 paid holidays and offers flexible scheduling options.
- **Retirement Planning:** Immediate vesting in a 401(a)/457(b) pension plan with generous employer contributions.
- **And More!** Join a team that values your well-being and future.

How to Apply

To apply, submit your resume, cover letter, and three (3) professional references through our job ad by visiting the Careers page at <https://www.fortmyersbeachfl.gov/248/Careers>. Locate the Town Manager position and follow the prompts to complete your application. For added convenience, you can also apply directly using the link below.

Please note: All applications are subject to Florida's Public Records Law. If you qualify for an exemption, contact hr@fmbgov.com to request the exemption form.

Applications will be reviewed on a rolling basis, so candidates are encouraged to apply early. This position will remain open until filled.

Don't miss this opportunity to make a meaningful impact on the future of Fort Myers Beach!

If you have any questions regarding the recruitment process, please contact Talissa Oliveira, Director of Human Resources at 239-896-4284 or toliveir@fmbgov.com.

If you meet the qualifications and believe this opportunity is the perfect fit for you, click the link below to review the full job description and submit your application. Join us in shaping the future of Fort Myers Beach!

Veteran's Preference:

The Town of Fort Myers Beach provides Veterans' Preference in employment for eligible veterans, spouses of veterans, and qualifying family members, in accordance with the Florida Department of Veterans' Affairs guidelines.

How to Claim Veterans' Preference:

1. Notify Human Resources at hr@fmbgov.com to request Veterans' Preference at the time of application.
2. Obtain the Veterans' Preference Form, which will be provided by Human Resources, and indicate your eligibility.
3. Submit the required documentation (e.g., DD-214 form, VA disability letter, or applicable spouse documentation) along with your completed application.

If you require assistance or have questions about this process, please contact Human Resources at (239) 896-4284 or hr@fmbgov.com.

The Town of Fort Myers Beach is an EOE (Equal Opportunity Employer)

Name (Last Name, First Name)	Meets Qualifications	Best Fit
Adediran, Emmanuel		
Amos, Nathan		
Boby, Michael		
Brillhart, Michael	X	X
Brown, Javion		
Calvert, Michael		
Corredor, Melvin		
Davis, Jason	X	
Davs, James		
Day, Timothy	X	
Dillon, Christopher	X	
DiMauro, Jeffrey		
Dyal, Paul	X	
Eck, Caitlyn		
Edwards, Michael		
Evans, Brian		
Ferrel, Taylor		
Forrest, Robert		
Gagliardi, Thomas		
Geoghegan, Brian	X	
Hall Jr, Dennis		
Higgins, David		
Hooker, Jeffrey	X	
Humber, Casey		
Johnson, Marc		
Jones, Adrian		
Jordan, Patrick	X	X - Alternate
Kimball, Taner		
Kross, Ekaterina		
Krum-Tinsley, Marcy		
LaFave, Lacy		
Lange, Jeffrey		
Lawrence, William	X	X
Mascaro, John		
McKannay, William	X	X
Mendez-Saldivia, Ricardo		
Moye, Scott	X	X
Murphy, John	X	
Murray, Sadia		
O'Riley, Chelsea	X	
Parcell, Jacob		
Phillips, James		
Powell, Sean		

Reinshuttle, Robert		
Robinson, Scotty		
Saggere, Sanjay		
Sanchez, Walter		
Schofield, Jeremiah		
Segui, Eddie		
Sener, Benjamin		
Shaffer, Jeremy	X	X
Shirey, Gary		
Sun, Golden		
Swan, Michael		
Thomas, Thomas	X	
Tibbs, Larry	X	
Trew, John	X	X - Alternate
Upchurch, James		
Urban, Charlie		
Urias, Elijah		
Valiente, Lazaro		
Webb, Cole		
Wells, Brian		
Whitlock, Jacob		
Winstead Jr., V. Connor		
Wright, Matthew		
Total: 66	17	5 candidates / 2 alternates

1. **Request:**

Meeting Date: April 7, 2025

Adopt CDBG-DR Policies

Why the action is necessary:

The action is necessary in order to receive CDBG-DR funding from HUD

What the action accomplishes:

The action allows the town to comply with HUD and Lee County requirements related to being a recipient of CDBG-DR funding.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Joe Onzick, Finance Director

5. **Background:**

HUD and Lee County requires specific policies to be adopted and implemented by the Town as a recipient of CDBG-DR funding. The policies include the following:

Exhibit A: Accessibility Coordinator Designation Form

Exhibit B: Fair Housing Coordinator Designation Form

Exhibit C: Fair Housing Complaint Process Addendum

Exhibit D: Citizen Complaint Policy Template

Exhibit E: Financial Management Policies and Procedures Addendum

It is proposed that the Assistant to the Town Manager be appointed as Accessibility Coordinator and Fair Housing Coordinator, with legal support regarding the complaint processes to be provided by the Town Attorney. The Finance Director would be responsible for implementing and maintaining the Financial Management Policies and Procedures.

Attachments:

1. Exhibit A: Accessibility Coordinator Designation Form
2. Exhibit B: Fair Housing Coordinator Designation Form
3. Exhibit C: Fair Housing Complaint Process Addendum for HUD CDBG
4. Exhibit D: Citizen Complaint Policy
5. Exhibit E: Financial Management Policies and Procedures Addendum
6. NS 25-95, Authorizing Adoption of Policies Required by HUD for CDBG-DR

Financial Impact:

There is no financial impact regarding implementation of the policies other than the cost of personnel time to abide by them. The cost of not implementing the policies is the potential loss of CDBG-DR funding.

6. **Alternative Action**

The council may choose not to adopt the policies.

7. **Management Recommendations:**

Management recommends adopting the policies.

8. Recommended Approval:

Jason Freeman, Deputy Town Clerk / Legislative Liaison
nancy stuparich, Town Attorney
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 3/19/2025
Approved - 3/20/2025
Approved - 3/20/2025
Approved - 3/25/2025
Final Approval - 3/25/2025



Accessibility Coordinator Designation Form

Subrecipient Information:

Subrecipient Name: Town of Fort Myers Beach

Address: 2731 Oak Street

City, State, Zip Code: Fort Myers Beach, FL 33931-3517

Contact Person: Andrew Hyatt

Phone Number: 239-313-0895

Email: andyhyatt@fmbgov.com

Accessibility Coordinator Information:

Name: Dr. Traci Kohler

Title: Assistant to the Town Manager

Work Unit: Town Manager's Office

Phone Number: 239-457-7403

Email: traci.kohler@fmbgov.com

Start Date: April 7, 2025

Responsibilities of the Accessibility Coordinator:

The Accessibility Coordinator is responsible for ensuring compliance with the Americans with Disabilities Act (ADA) and other related federal laws and regulations. This includes:

- Overseeing the implementation of accessibility policies and procedures.
- Conducting training and outreach programs to educate staff and the public about accessibility rights and responsibilities.
- Investigating and resolving complaints of accessibility issues.

- Ensuring that all programs and activities are conducted without bias or discrimination on the basis of disability.
- Maintaining documentation that demonstrates efforts to comply with accessibility and nondiscrimination obligations.

Process of Appointment:

The Accessibility Coordinator is appointed by the Subrecipient's executive leadership. The appointment process includes:

- Identifying a qualified individual with knowledge and experience in fair housing laws and regulations.
- Conducting an interview and selection process.
- Providing training and resources to support the Accessibility Coordinator in their role.

Certification:

I, the undersigned, hereby designate the above-named individual as the Accessibility Coordinator for our organization. This individual is authorized to act on behalf of our organization in matters related to Fair Housing compliance.

Agency Approval:

Signature: _____

Date: _____





Fair Housing Coordinator Designation Form

Subrecipient Information:

Subrecipient Name: Town of Fort Myers Beach

Address: 2731 Oak Street

City, State, Zip Code: Fort Myers Beach, FL 33931-3517

Contact Person: Andrew Hyatt

Phone Number: 239-313-0895

Email: andyhyatt@fmbgov.com

Fair Housing Coordinator Information:

Name: Dr. Traci Kohler

Title: Assistant to the Town Manager

Work Unit: Town Manager's Office

Phone Number: 239-457-7403

Email: traci.kohler@fmbgov.com

Start Date: April 7, 2025

Responsibilities of the Fair Housing Coordinator:

The Fair Housing Coordinator is responsible for ensuring compliance with the Fair Housing Act and other related federal laws and executive orders. This includes:

- Overseeing the implementation of fair housing policies and procedures.
- Conducting training and outreach programs to educate staff and the public about fair housing rights and responsibilities.
- Investigating and resolving complaints of housing discrimination.

- Ensuring that all programs and activities are conducted without bias or discrimination on the basis of race, color, religion, sex, familial status, national origin, and disability.
- Maintaining documentation that demonstrates efforts to comply with fair housing and nondiscrimination obligations.

Process of Appointment:

The Fair Housing Coordinator is appointed by the Subrecipient's executive leadership. The appointment process includes:

- Identifying a qualified individual with knowledge and experience in fair housing laws and regulations.
- Conducting an interview and selection process.
- Providing training and resources to support the Fair Housing Coordinator in their role.

Certification:

I, the undersigned, hereby designate the above-named individual as the Fair Housing Coordinator for our organization. This individual is authorized to act on behalf of our organization in matters related to Fair Housing compliance.

Agency Approval:

Signature: _____

Date: _____



Fair Housing Complaint Process for HUD CDBG-DR Recipients

ADENDUM to LEE County Fair Housing and Equal Opportunity (EEO) Policy

Introduction The purpose of this process is to ensure that all complaints related to fair housing are addressed promptly and effectively. This process is in compliance with the U.S. Department of Housing and Urban Development (HUD) regulations and the Fair Housing Act.

1. Fair Housing Coordinator Appointment Process

- **Appointment process:** The Fair Housing Coordinator is appointed by the Subrecipient's executive leadership. The appointment process includes identifying a qualified individual with knowledge and experience in fair housing laws and regulations.
- **Selection Process:** An interview and selection process is conducted to ensure the best candidate is chosen.
- **Ongoing Support:** Training and resources are provided to support the Fair Housing Coordinator in their role.

2. Accessibility Coordinator Appointment Process

- **Appointment process:** The Accessibility Coordinator is appointed by the Subrecipient's executive leadership. The appointment process includes identifying a qualified individual with knowledge and experience in accessibility laws and regulations.
- **Selection Process:** An interview and selection process is conducted to ensure the best candidate is chosen.
- **Ongoing Support:** Training and resources are provided to support the Accessibility Coordinator in their role.

3. Filing a Complaint

- **Who Can File:** Any individual or group who believes they have been subjected to housing discrimination can file a complaint.
- **How to File:** Complaints can be submitted online, by telephone, email, or mail. The complaint should include the complainant's contact information, a description of the alleged discrimination, and any relevant documentation.

4. Intake and Initial Review

- **Intake:** Upon receiving a complaint, the intake officer will review the information to determine if it falls under the jurisdiction of the Fair Housing Act.
- **Initial Review:** If the complaint is within jurisdiction, the intake officer will draft a formal complaint, have the complainant review and sign it, and notify all parties involved that a complaint has been filed.

5. Investigation

- **Assignment:** An investigator will be assigned to the case and will contact the complainant to gather additional information if necessary.
- **Investigation Process:** The investigator will collect evidence, interview witnesses, and review relevant documents. The investigation aims to determine whether there is reasonable cause to believe that discrimination occurred

6. Resolution

- **Voluntary Resolution:** Throughout the investigation, efforts will be made to reach a voluntary resolution between the parties. This may include mediation or conciliation.
- **Findings:** If a voluntary resolution is not reached, the investigator will issue findings based on the evidence collected. If the findings indicate a violation of the Fair Housing Act, HUD or the Department of Justice may take legal action to enforce the law

7. Reporting and Referrals

- **Reporting:** The results of the investigation will be documented, and the complainant will be informed of the outcome.
- **Referrals:** In some cases, the complaint may be referred to a state or local agency for further investigation and resolution

8. Record Keeping

- **Documentation:** All records related to the complaint, including the initial complaint, investigation notes, and resolution, will be maintained in accordance with HUD regulations.
- **Confidentiality:** The confidentiality of the complainant and all parties involved will be protected throughout the process

9. Protective Measures

- **Non-Retaliation:** Retaliation against any individual who files a complaint or participates in the investigation is strictly prohibited.
- **Support Services:** Complainants will be provided with information about available support services, including legal assistance and counseling

Approved by Name: Andrew Hyatt

Signature : _____

Date: April 7, 2025

Town of Fort Myers Beach

CDBG-DR/MIT Funding

CITIZEN COMPLAINTS POLICY

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1 Overview

The Town of Fort Myers Beach (“JURISDICTION”) has developed a Citizen Participation Plan in compliance with 24 C.F.R. § 91.115 and applicable U.S. Department of Housing and Urban Development (HUD) alternative requirements as published in Federal Register Notices for Community Development Block Grant – Disaster Recovery (CDBG-DR) and Community Development Block Grant – Mitigation (CDBG-MIT), which supersede/waive and replace certain requirements with respect to citizen participation. These alternative requirements can be found in the Federal Register Notices listed below, and in any additional notices as applicable:

Table 1: Federal Register Notices and Alternative Requirements

CDBG-DR	CDBG-MIT
• Federal Register Notices Vol. 83, No. 28 (Friday, February 9, 2018), 83 FR 5844; • Federal Register Notice Vol. 83, No. 157 (Tuesday, August 14, 2018), 83 FR 40314; • Federal Register Notice Vol. 85, No. 17 (Monday, January 27, 2020), 85 FR 4681; • Federal Register Notice Vol. 86, No. 3 (Wednesday, January 6, 2021), 86 FR 569; and • Federal Register Notice Vol. 86, No. 117 (Tuesday, June 22, 2021), 86 FR 32681.	• Federal Register Notice Vol. 84 No. 169 (Friday, August 30, 2019) 84 FR 45838; and • Federal Register Notice Vol. 85 No. 17 (January 27, 2020), 85 FR 4676. • Federal Register Vol. 87 No. 23 (Thursday, February 3, 2022) 87 FR 6364 • Federal Register Notice Vol. 87 No. 100 (Tuesday, May 24, 2022), 87 FR 31636.

As per 24 C.F.R. § 91.115(h), and as part of addressing JURISDICTION long-term recovery needs, citizen complaints on any issues related to the general administration of CDBG-DR/MIT funds are welcomed throughout the duration of the grant lifecycle. JURISDICTION aims to provide an opportunity to address all complaints received. This is an essential responsibility for JURISDICTION as it establishes the importance of an open communication regarding citizens’ concerns, about JURISDICTION CDBG-DR/MIT Programs.

JURISDICTION is committed to ensuring that citizens with disabilities have effective means to communicate with the JURISDICTION and that the JURISDICTION effectively communicates with citizens with disabilities regarding their policies and procedures. JURISDICTION will make information available in alternate formats, as needed and upon request, to ensure adequate communication to persons with disabilities.

2 Scope

This policy applies to all JURISDICTION complaints received regarding program administration, management, and/or operation procedures for CDBG-DR/MIT funding.

3 Purpose

This Policy outlines JURISDICTION’S responsibility to ensure that all complaints are dealt with promptly and consistently and at a minimum, to provide a timely, substantive written response to every written complaint, within fifteen (15) working days, where practicable, as a CDBG grant recipient. 24 C.F.R. § 91.115(h). Therefore, this policy is intended to serve as guidance for the responsible, efficient, and transparent oversight of citizen complaints through the implementation of a structure that properly organizes policy and systems necessary to uphold JURISDICTION’S responsibility. As well, this policy serves to encourage individuals to express their complaints on any issues related to the general administration of CDBG-DR/MIT funds, for these to be addressed and, where appropriate, acted upon.

4 Definitions/Acronyms

Anonymous Complaints – Complaints with insufficient data and/or submitted by a third party with no standing in the matter being submitted, which do need not be accepted nor reviewed.

CDBG-DR – Community Development Block Grant – Disaster Recovery.

CDBG-MIT – Community Development Block Grant – Mitigation

Complainant – Any natural or legal person and/or authorized representative of such person who submits a complaint. Also known as the “aggrieved person” or the individual who is subject to the situation that is the basis for the complaint.

Complaint – A formal statement of grievance submitted in writing, which will be documented, processed, filed, and answered as per 24 C.F.R. § 91.115(h).

Confidentiality – The protection of personal or sensitive information, as defined in the Personally Identifiable Information, Confidentiality, and Nondisclosure Policy.

HUD – Refers to the United States Department of Housing and Urban Development.

JURISDICTION – Refers to the subrecipient jurisdiction.

PII Policy – Personally Identifiable Information, Confidentiality, and Nondisclosure Policy.⁵

POC - Point of Contact.

Programmatic Area – Area/Department/Division of the JURISDICTION responsible for implementing CDBG-DR/MIT funded programs and activities that will assist and support citizens’ complaints responses, as well as gather relevant information and documentation.

Recordkeeping Policy – Record Keeping, Management, and Accessibility Policy (RKMA Policy).⁶

5 Policy

The federal statutes that governs CDBG-DR/MIT Programs requires for local governments, as part of its citizen’s participation, to “provide citizens the address, phone number, and times for

submitting complaints and grievances, and provide timely written answers to written complaints and grievances, within fifteen (15) working days where practicable.” 24 C.F.R. § 570.486(a)(7). Federal Register Vol. 87 No. 23 (February 3, 2022), 87 FR 6364, 6384 introduces a citizen participation waiver (which includes the aforementioned regulation) and alternative requirements; it, however, keeps the fifteen (15) days requirement for the CDBG-DR/MIT Programs: “[t]he grantee will provide a timely written response to every citizen complaint. The response must be provided within fifteen (15) working days of the receipt of the complaint”.

Individuals have the right to offer their views and positions at any moment during the development and implementation of the CDBG-DR/MIT Programs. JURISDICTION implements this Policy to address complaints received in a prompt, responsible, and confidential manner. The complainant’s identity and circumstances will be held in confidence, unless prior written authorization is granted. JURISDICTION will treat citizens in a fair and courteous manner when responding to a complaint. The aim of this policy is to address such issues in a manner that is both sensitive of the complainant’s needs and is fully compatible with applicable Federal and local laws, regulations, codes, and ordinances.

JURISDICTION’S non-discrimination policy extends to the intake and handling of complaints. JURISDICTION does not discriminate based on race, color, religious beliefs, political beliefs, trade union affiliation, sex, sexual orientation, gender, disability, familial status, marital status, national origin, or any other unjustifiable factor, for example: language difficulties, age, pregnancy, etc.

No person shall intimidate, threaten, coerce, or discriminate against any other person because they have made a complaint, testified, assisted, and/or participated in any matter, in an investigation, proceeding, or hearing related to a complaint.

6 Complaints

During the course of the CDBG-DR/MIT Programs, it is possible that citizens may wish to present a complaint through a written statement of grievance. JURISDICTION will accept complaints concerning any issue related to the general administration of the Programs. A complaint can be filed by any person and/or authorized representative of such person.

6.1 Complaint Formalities

In order for a complaint to be processed and reviewed by the JURISDICTION Legal Division, it requires the following formalities:

1. Needs to be in writing.
2. Complainant’s full name.
3. Complainant’s Contact information and preferred method of notification for communications regarding complaint (telephone; physical, postal, and Email addresses).
4. Nature of complaint (CDBG-DR/MIT Programs/Other, please specify).
5. Summary of complaint and desired remedy.
6. Previously contacted individuals concerning complaint (CDBG-DR/MIT Programs personnel/Project Manager/JURISDICTION Staff/and/or other individual, if applicable).

7. Any supporting evidence.

Requirements 1-5 are mandatory. The complaint should be filed by the complainant, or by an authorized representative. Any individual filing a complaint on behalf of an individual or entity, shall present proper documentation confirming they have the authority to represent the complainant.

In order to ensure adequate communication with and from persons with disabilities, a complainant may request an alternate format, as needed. One of these may be to allow that a complaint be received verbally. CDBG-DR/MIT personnel or other related CDBG- DR/MIT parties receiving said complaint must assure compliance with all the requirements as described above.

6.2 Complaint Submittal

Citizens who wish to submit a complaint related to on any issues related to the general administration of CDBG-DR/MIT funds may do so in writing through any of the following methods:

- Via email at: CDBGDR@fmbgov.com
- Online at: www.fortmyersbeachfl.gov > “CDBG-DR” > “CDBG-DR Concerns and Complaints” > “Report” > “CDBG-DR”
- In writing at: Town of Fort Myers Beach, 2731 Oak Street, Fort Myers Beach, FL 33931

If the complainant is unable to submit a complaint in writing (this could be due to a disability and/or other special circumstance), the complaint should be formalized as a written complaint through an interview process.

If requested, a complaint may be submitted verbally via:

- Telephone: 239-765-0202
- Personally: Town of Fort Myers Beach, 2731 Oak Street, Fort Myers Beach, FL 33931

6.2.1 Complaints received by other parties

Complaints received by JURISDICTION offices, Contractors, HUD, or other agencies, should be immediately notified to JURISDICTION Legal Division via email or regular mail at the addresses mentioned above. Forwarded complaints will be evaluated by JURISDICTION upon receipt and handled appropriately.

6.2.2 Complaints without standing or data

Complaints with insufficient data, or submitted by a third party, with no standing in the subject matter of the complaint need not be accepted or reviewed. Anonymous complaints will not be addressed.

7 Responsibilities

JURISDICTION has designated the appropriate and practicable steps to handle complaints from citizens. Upon the receipt of a complaint, JURISDICTION will work to provide a timely, substantive written response within the established time period of fifteen (15) working days, as per 24 C.F.R. § 91.115(h).

7.1 Complaint Review

In those cases that JURISDICTION Legal Division deems it necessary, it will follow up with any of the involved parties to obtain any additional information and/or evidence needed to responsibly answer the complaint. Delays in providing additional information and/or evidence requested may result in an answer to a complaint after the **fifteen (15) working-day** period.

7.2 Reporting and Referrals

Depending on the type of complaint filed and the requested remedy, the Legal Division Director may follow different approaches to produce a timely and substantive written response. On a case-by-case basis, any complaint could be referred to the corresponding program area or division for consideration when reviewing the complaint, as applicable, as to provide applicable data for the response. Examples of these referrals may be:

- Complaints pertaining to personnel may be referred to Human Resources Division; whilst copying the Disaster Recovery Deputy Secretary.
- Complaints pertaining to procurement may be referred to the Procurement Division; whilst copying the Disaster Recovery Deputy Secretary.
- Complaints pertaining to a Program Applicant may be referred to the specific Program; whilst copying the Disaster Recovery Deputy Secretary.

Complaints pertaining to a Fraud, Waste, Abuse, or Mismanagement matter, shall be referred to the Town of Fort Myers Beach Town Manager's Office.

Complaints pertaining to a Conflict of Interest matter, shall follow the Conflict of Interest and Standards of Conduct Policy. However, if these are received by the CDBG-DR/MIT Legal Division, these will be dealt by the policies and procedures that the CDBG-DR/MIT Legal Division has implemented for such matters.

Complaints pertaining to any Fair Housing Act Matter, shall be referred to Town of Fort Myers Beach Town Manager's Office within 5 working days.

Complaints that are sufficient in and of themselves to warrant monitoring to investigate further, will be referred to the Town of Fort Myers Beach Town Manager's Office.

7.3 Records

The JURISDICTION keeps and maintains a log of complaints received and answered. All complaints received will be documented, processed, and filed in compliance with the Recordkeeping Policy.

The Town of Fort Myers Beach hereby adopts and agrees to implement the preceding policies and procedures.

Authorized Signature

Andrew Hyatt, Town Manager

Name and title of Authorized Signatory

Approval Date: April 7, 2025

Financial Management Policies and Procedures Addendum Template

1. Introduction

This document is designed to provide a comprehensive framework for managing the financial resources of the Town of Fort Myers Beach in compliance with 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

The purpose of these financial management policies is to establish a clear and consistent approach to financial decision-making and resource management. By adhering to these policies, the following objectives should be met:

- Ensure the proper management of financial resources to meet the present and future needs of the Town of Fort Myers Beach.
- Maintain the integrity and accuracy of Town of Fort Myers Beach financial records.
- Comply with all relevant federal, state, and local regulations, including the requirements of 2 CFR Part 200
- Promote accountability and transparency in all financial transactions.

The Financial Management Policies apply to all employees, contractors, and stakeholders involved in the financial management of the Town of Fort Myers Beach.

2. General Requirements

- Adherence to 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards
- Compliance with federal regulations including OMB updates for audits and procurement applicable on October 1, 2024.

3. Financial Management System - 2 CFR 200.302

- Establish written procedures for financial management that comply with 2 CFR 200.302. This includes:
 - Implementing internal controls to ensure compliance with federal statutes, regulations, and the terms and conditions of the federal award.
 - Identifying all federal awards received and expended.
 - Providing accurate, current, and complete disclosure of the financial results of each federal award.
 - Maintaining records that adequately identify the source and application of funds for federally funded activities.
 - Ensuring effective control over, and accountability for, all funds, property, and other assets.
 - Comparing expenditures with budget amounts for each federal award.
 - Implementing written procedures to comply with 2 CFR 200.305 (payment).

- Establishing written procedures for determining the allowability of costs in accordance with Subpart E-Cost Principles of this part and the terms and conditions of the federal award.

4. Program Income - 2 CFR 200.307

- **Definition and Sources:** Program income means gross income received by a state, a unit of general local government, or a subrecipient of a unit of general local government that was generated from the use of CDBG funds. Examples include proceeds from the sale or long-term lease of real property purchased or improved with CDBG funds, proceeds from the disposition of equipment purchased with CDBG funds, gross income from the use or rental of property acquired or improved with CDBG funds, payments of principal and interest on loans made using CDBG funds, and interest earned on program income pending its disposition.
- **Use of Program Income:** Program income must be used for the purposes and under the conditions of the federal award. It should be added to the federal award and used to further eligible project or program objectives. Alternatively, it may be deducted from the total allowable costs to determine the net allowable costs.
- **Accounting for Program Income:** Program income must be accounted for in the same manner as other federal funds. This includes maintaining records that adequately identify the source and application of program income, ensuring that program income is used in accordance with federal regulations, and reporting program income in financial reports.
- **Reporting Program Income:** Program income must be reported in the financial reports submitted to the federal awarding agency. The reports should include the amount of program income earned, the amount expended, and the balance remaining.
- **Disposition of Program Income:** Any program income remaining at the end of the project period must be disposed of in accordance with the terms and conditions of the federal award. This may include returning the funds to the federal awarding agency or using the funds for other eligible activities.

5. Budgeting - 2 CFR 200.302 and 2 CFR 200.308

- **Budget Preparation and Approval:** All budgets must be prepared in accordance with the guidelines set forth in 2 CFR 200.302 and 2 CFR 200.308
 - Budgets should be developed based on realistic estimates of revenues and expenditures, taking into account historical data, current trends, and future projections.
 - The budget must be reviewed and approved by the appropriate authority within the organization before it is submitted to any federal awarding agency.
- **Budget Monitoring and Control:** Regular monitoring of actual expenditures against the approved budget is required to ensure that spending is in line with the budgeted amounts.
 - Any significant variances between actual expenditures and budgeted amounts must be investigated and addressed promptly.
 - Budget adjustments or revisions must be documented and approved in accordance with the organization's internal control procedures.
- **Cost Principles:**
 - All costs included in the budget must be allowable, allocable, and reasonable as defined in 2 CFR 200.403, 2 CFR 200.404, and 2 CFR 200.405

- Costs must be necessary for the performance of the federal award and must be adequately documented.
- **Indirect Costs:**
 - Indirect costs must be budgeted and charged in accordance with the organization's approved indirect cost rate agreement or the de minimis rate as specified in 2 CFR 200.414
 - The organization must maintain documentation to support the allocation of indirect costs to the federal award.
- **Budget Revisions:**
 - Any revisions to the approved budget must be submitted to the federal awarding agency for prior approval if required by the terms and conditions of the federal award.
 - Budget revisions must be justified and documented, and the revised budget must be approved by the appropriate authority within the organization.
- **Record Keeping:**
 - The organization must maintain accurate and complete records of all budget-related activities, including budget preparation, approval, monitoring, and revisions.
 - Records must be retained for the period specified in 2 CFR 200.333

6. Procurement Policies – 2 CFR 200.318-327

- **General Procurement Standards:** All procurement transactions must be conducted in a manner providing full and open competition. This includes avoiding practices that may restrict competition, such as unreasonable requirements on firms to qualify to do business, unnecessary experience and bonding requirements, and noncompetitive pricing practices
- **Procurement Methods:** Micro-Purchases: For procurement of supplies or services where the aggregate dollar amount does not exceed the micro-purchase threshold (currently \$10,000). Micro-purchases may be awarded without soliciting competitive quotations if the price is reasonable.
 - **Simplified Acquisitions:** For procurement of supplies or services where the aggregate dollar amount does not exceed the simplified acquisition threshold (currently \$250,000). Simplified acquisitions require obtaining rate quotations from an adequate number of qualified sources
 - **Sealed Bids:** For procurement of construction projects or other large purchases where the aggregate dollar amount exceeds the simplified acquisition threshold. Sealed bids are publicly solicited and a firm-fixed-price contract is awarded to the responsible bidder whose bid conforms to all the material terms and conditions of the invitation for bids and is the lowest in price
 - **Competitive Proposals:** For procurement of services or other complex purchases where the aggregate dollar amount exceeds the simplified acquisition threshold. Competitive proposals are used when conditions are not appropriate for the use of sealed bids. Proposals are solicited from an adequate number of qualified sources, and the contract is awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered

- **Noncompetitive Proposals:** Procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply: the item is available only from a single source, the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation, the federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-federal entity, or after solicitation of a number of sources, competition is determined inadequate

- **Standards of Conduct**

Maintain written standards of conduct covering conflicts of interest and governing the actions of employees engaged in the selection, award, and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if they have a real or apparent conflict of interest.

- **Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms**

Take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. This includes placing qualified small and minority businesses and women's business enterprises on solicitation lists, assuring that they are solicited whenever they are potential sources, and dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such businesses.

- **Procurement Documentation**

Maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

- **Contract Provisions**

Include the applicable provisions described in Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards in all contracts made by the non-federal entity under the federal award.

Key Updates Effective October 1, 2024

1. Terminology Changes:

- The term "small purchase" has been changed to "simplified acquisition" to align with the updated terminology.
- Micro-purchases and simplified acquisitions are now referred to as "informal procurement methods."

2. Procurement Thresholds:

- The micro-purchase threshold has been increased to \$10,000.
- The simplified acquisition threshold has been increased to \$250,000.

3. Judgment in Rate Quotations:

- The updated regulation allows recipients or subrecipients to exercise judgment in determining the number of rate quotations to be obtained to meet competition requirements.

7. Internal Control Requirements - 2 CFR 200.303

- **Establishment and Maintenance:** Establish and maintain effective internal control over the federal award to provide reasonable assurance that the entity is managing the federal award in compliance with federal statutes, regulations, and the terms and conditions of the federal award. These internal controls should comply with the guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States and the “Internal Control Integrated Framework” issued by the Committee of Sponsoring Organizations of the Treadway Commission.
- **Segregation of Duties:** Implement segregation of duties to reduce the risk of errors and fraud. Ensure that no single individual has control over all aspects of any significant transaction.
- **Authorization and Approval:** Establish procedures for the authorization and approval of transactions. Ensure that all transactions are properly authorized and approved by appropriate personnel.
- **Documentation and Record Keeping:** Maintain adequate documentation to support all transactions. Ensure that records are accurate, complete, and readily available for review.
- **Reconciliation and Review:** Perform regular reconciliations of accounts and review financial reports to ensure accuracy and compliance with federal requirements.
- **Safeguarding Assets:** Implement measures to safeguard assets and prevent loss, theft, or misuse. This includes physical security measures and regular inventory checks.
- **Monitoring and Evaluation:** Establish procedures for monitoring and evaluating the effectiveness of internal controls. Conduct regular assessments and make necessary improvements to address any identified weaknesses.
- **Training and Awareness:** Provide training and raise awareness among staff about the importance of internal controls and their role in maintaining compliance with federal requirements.

8. Reporting Requirements - 2 CFR 200.329

- **Performance Reports:** Non-federal entities must submit performance reports at intervals required by the federal awarding agency or pass-through entity. These reports should include a comparison of actual accomplishments to the objectives of the federal award, reasons why established goals were not met (if applicable), and other pertinent information such as analysis and explanation of cost overruns or high unit costs.
- **Financial Reports:** Non-federal entities must submit financial reports as required by the federal awarding agency or pass-through entity. These reports should provide an accurate, current, and complete disclosure of the financial results of each federal award or program.
- **Frequency and Due Dates:** The frequency and due dates for performance and financial reports must be specified by the federal awarding agency or pass-through entity. Reports must be submitted at least annually but no more frequently than quarterly, except in unusual circumstances.
- **Significant Developments:** Non-federal entities must immediately notify the federal awarding agency or pass-through entity of any significant developments that impact the

ability to meet the objectives of the federal award. This includes problems, delays, or adverse conditions that materially impair the ability to meet the objectives of the federal award.

- **Closeout Reports:** Non-federal entities must submit all required performance, financial, and other reports as part of the closeout process. These reports must be submitted no later than 90 calendar days after the end date of the period of performance.

9. Record Keeping - 2 CFR 200.334-337

- **Retention Requirements for Records:** Maintain financial records, supporting documents, statistical records, and all other pertinent records for a period of at least three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by the federal awarding agency.
- **Methods for Collection, Transmission, and Storage of Information:** Implement effective methods for the collection, transmission, and storage of information. This includes using electronic systems that ensure the integrity, accuracy, and accessibility of records. Ensure that records are stored in a secure environment to prevent unauthorized access, loss, or damage.
- **Access to Records:** Provide access to records for the federal awarding agency, inspectors general, the Comptroller General of the United States, or any of their authorized representatives, as necessary for audit, examination, excerpts, and transcripts. Ensure that access to records is granted promptly and without undue delay.
- **Restrictions on Public Access to Records:** Protect the confidentiality and privacy of records by restricting public access to sensitive information. Implement policies and procedures to ensure that records containing personal, financial, or other sensitive information are not disclosed to unauthorized individuals or entities.
- **Jurisdictional Compliance:** Ensure that records management practices comply with all applicable federal, state, and local regulations. This includes maintaining records in a manner that meets the specific requirements of each jurisdiction, such as retention periods, data protection standards, and access controls. Regularly review and update records management policies to reflect changes in laws and regulations.

10. Audit Requirements – 2 CFR 200.501

- **Federal Requirements:** For fiscal years starting after June 30, 2023, non-Federal entities that have expended more than \$1,000,000 in federal funds within a fiscal year are required to have a Single Audit conducted. If an organization expends less than \$1,000,000 a year in federal funds, it is exempt from the federal audit requirements for that year, but financial records must be made available if needed.
- **Single Audit:** Under the provisions of 2 CFR 200.500, an audit is required whenever the amount of federal expenditures in a year exceeds \$1,000,000. This type of audit, which includes a full set of financial statements and other detailed information, is often referred to as a "single audit." The single audit will meet federal accountability requirements and will also be sufficient to meet state accountability requirements.
- **Audit Costs:** The only costs allowable under the Disaster Recovery CDBG Program for financial report preparation are single audit costs. If single audit costs are to be charged to

the Disaster Recovery CDBG program, the grantee must follow the "Procurement" guidelines established under the Common Rule. A written procurement policy must be prepared and adopted by the governing body. The portion of the total single audit cost which can be charged to the Disaster Recovery CDBG program may be determined by multiplying the total single audit cost times a fraction, the numerator of which is the Disaster Recovery CDBG program expenditures for the period, and the denominator of which is the government entity's total expenditures for the period, including the Disaster Recovery CDBG program expenditures.

11. Training and Capacity Building - 2 CFR 200.473

- **Training Programs for Staff:** Develop and implement comprehensive training programs for all staff involved in financial management. Training should cover federal regulations, internal controls, financial reporting, procurement standards, and other relevant topics. Ensure that training is ongoing and includes updates on any changes in regulations or policies.
- **Capacity Building Initiatives:** Implement initiatives to build the capacity of staff and the organization as a whole. This includes providing resources for professional development, encouraging staff to obtain relevant certifications, and fostering a culture of continuous improvement.
- **Documentation and Evaluation:** Maintain records of all training sessions, including attendance, topics covered, and feedback from participants. Regularly evaluate the effectiveness of training programs and make improvements as needed.
- **Compliance with Federal Requirements:** Ensure that all training and capacity building activities comply with federal requirements, including those outlined in 2 CFR 200.331 (requirements for pass-through entities) and 2 CFR 200.430 (compensation—personal services).
- **Collaboration and Partnerships:** Collaborate with other organizations, agencies, and institutions to share best practices, resources, and training opportunities. Establish partnerships with professional associations and training providers to enhance the quality and reach of training programs.
- **Technology and Tools:** Utilize technology and tools to enhance training and capacity building efforts. This includes online training platforms, webinars, and other digital resources that can provide flexible and accessible learning opportunities for staff.
- **Leadership Development:** Focus on developing leadership skills within the organization. Provide training and mentoring opportunities for emerging leaders to ensure a strong pipeline of talent for future leadership roles.
- **Monitoring and Reporting:** Establish procedures for monitoring and reporting on training and capacity building activities. This includes tracking progress, measuring outcomes, and reporting to stakeholders on the impact of these initiatives.

12. Cost Principles - 2 CFR 200.400-434

- **General Provisions:** Costs must be necessary, reasonable, and allocable to the federal award. They must conform to any limitations or exclusions set forth in these principles or in the federal award as to types or amounts of cost items.

- **Cost Reasonableness:** A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. Consideration must be given to whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-federal entity or the proper and efficient performance of the federal award.
- **Allocability of Costs:** A cost is allocable to a particular federal award if the goods or services involved are chargeable or assignable to that federal award in accordance with relative benefits received. This standard is met if the cost is incurred specifically for the federal award, benefits both the federal award and other work of the non-federal entity and can be distributed in proportions that may be approximated using reasonable methods.
- **Allowability of Costs:** Costs must be consistent with policies and procedures that apply uniformly to both federally financed and other activities of the non-federal entity. They must be accorded consistent treatment and be determined in accordance with generally accepted accounting principles (GAAP).
- **Documentation:** Costs must be adequately documented. This includes maintaining records that support the nature and amount of the costs incurred, such as invoices, receipts, and time records.

13. Records Management - 2 CFR 200.334-337

- **Jurisdictional Compliance:** Ensure that records management practices comply with all applicable federal, state, and local regulations. This includes maintaining records in a manner that meets the specific requirements of each jurisdiction, such as retention periods, data protection standards, and access controls. Regularly review and update records management policies to reflect changes in laws and regulations.
- **Retention Requirements for Records:** All financial records, supporting documents, statistical records, and other pertinent records must be retained for a period of at least three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by the federal awarding agency.
- **Requests for Transfer of Records:** If the federal awarding agency or pass-through entity requests the transfer of records, the organization must comply with the request. The transfer must be done in a manner that ensures the integrity and confidentiality of the records.
- **Methods for Collection, Transmission, and Storage of Information:** The organization must implement effective methods for the collection, transmission, and storage of information. This includes using secure and reliable systems to ensure the accuracy, integrity, and confidentiality of the records.
- **Access to Records:** The organization must provide access to records to the federal awarding agency, inspectors general, the Comptroller General of the United States, or any of their authorized representatives, as required by 2 CFR 200.336. Access must be provided in a timely manner and in a format that is easily accessible and readable.
- **Restrictions on Public Access to Records:** The organization must comply with any restrictions on public access to records as specified in 2 CFR 200.337. Confidential or sensitive information must be protected from unauthorized disclosure.

14. Timekeeping Policy - 2 CFR 200.302-303

- **Timekeeping Requirements for Employees:** All employees must accurately record their time worked, including start and end times, breaks, and any leave taken. Time records must be submitted and approved by supervisors on a regular basis.
- **Procedures for Recording and Approving Time Worked:** Employees must use the designated timekeeping system to record their hours worked. Supervisors are responsible for reviewing and approving time records to ensure accuracy and compliance with company policies.
- **Compliance with Federal and State Labor Laws:** The timekeeping policy must comply with all applicable federal and state labor laws, including the Fair Labor Standards Act (FLSA) and any state-specific regulations regarding overtime, breaks, and leave.
- **Documentation and Retention of Timekeeping Records:** Timekeeping records must be maintained for a minimum of five years and be readily accessible for review by authorized personnel. Records should include time sheets, electronic time logs, and any related documentation.
- **Regular Audits and Reviews:** Conduct regular audits and reviews of timekeeping records to ensure accuracy and compliance with company policies and legal requirements. Any discrepancies or issues identified during audits must be promptly addressed and corrected.

15. Appendices - Optional

- Relevant forms and templates.
- Contact information for key personnel.

Effective Date:

April 7, 2025

Approval:

Authorized Signature

Andrew Hyatt, Town Manager

Name and title of Authorized Signatory

Approval Date: April 7, 2025

RESOLUTION NUMBER 25-95

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE ADOPTION OF FINANCIAL POLICIES REQUIRED FOR ACCEPTANCE OF CDBG-DR GRANT FUNDING FROM HUD AND LEE COUNTY; AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, it is in the best interest of the Town to adopt policies required by HUD and by Lee County for the administration of the CDBG-DR grants.

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

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

Section 2. That the Town Council hereby authorizes the adoption of the following policies as required by HUD and Lee County for the administration of the CDBG-DR grants:

- Exhibit A: Accessibility Coordinator Designation Form
- Exhibit B: Fair Housing Coordinator Designation Form
- Exhibit C: Fair Housing Complaint Process Addendum
- Exhibit D: Citizen Complaint Policy Template
- Exhibit E: Financial Management Policies and Procedures Addendum

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

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

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
Karen Woodson, Council Member	_____

Scott Safford, Council Member _____
John R. King, Council Member _____

ADOPTED this 7th day of April 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorneys

This Resolution was filed in the Office of the Town Clerk on this ____ day April 2025.

1. **Request:**

Meeting Date: April 7, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, APPROVING INTERFUND LOAN TO COVER OUTSTANDING FEMA AND FDEM RECEIVABLES; PROVIDING FOR EFFECTIVE DATE.

Why the action is necessary:

The action is necessary to obtain formal authorization from the Town Council for the interfund loan.

What the action accomplishes:

The action formally authorizes an interfund loan between the Bridge Loan Fund and the Emergency Fund to cover the receivable balance from FEMA and FDEM.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Andy Hyatt, Town Manager

5. **Background:**

The town currently has \$7.7 million of emergency expenses incurred from Hurricanes Ian, Helene and Milton that are expected to be reimbursed by FEMA and FDEM.

The town recently approved an additional \$2.6 million of emergency expenditures (for debris removal from waterways and reconstruction of the North Beach segment) for which we are also expecting reimbursement from FEMA and FDEM.

The current receivable balance of \$7.7 million plus the additional receivable balance of \$2.6 million yields a total receivable balance of \$10.3 million from FEMA and FDEM.

Since the town only has \$4.1 million of unallocated cash available in the Emergency Fund, there is a projected shortfall of \$6.2 million of unallocated cash available to cover the \$10.3 million of receivables from FEMA and FDEM.

At the same time, there currently exists \$4.2 million of unallocated cash currently available in the Bridge Loan Fund. After the \$7.5 million Lost Revenue Replacement grant is received, there will be \$11.7 million of unallocated cash available in the Bridge Loan Fund.

Therefore, the finance director is recommending a temporary interfund loan from the Bridge Loan Fund to the Emergency Fund of \$8 million. \$4 million may be transferred from the Bridge Loan Fund to the Emergency Fund Loan immediately, and an additional \$4 million may be transferred from the Bridge Loan Fund to the Emergency Fund as needed after receipt of the Lost Revenue Replacement Grant. The interfund loan will be repaid immediately after receiving reimbursement from FEMA and FDEM.

Attachments:

1. FY25 Emergency Exp, Reimb, Rcvbl 01-31-25
2. 25-94, Authorize Interfund Loan to Cover FEMA-FDEM Receivable ns reviewed

Financial Impact:

The financial impact will be an \$8 million interfund loan from the Bridge Loan Fund to the

Emergency Fund in order to cover the FEMA and FDEM receivable balances until reimbursement is received from FEMA and FDEM.

6. **Alternative Action**

The Town Council may reject the Interfund Loan Proposal.

7. **Management Recommendations:**

Management recommends approval of this interfund loan

8. **Recommended Approval:**

Joe Onzick, Finance Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 3/16/2025
Approved - 3/16/2025
Approved - 3/20/2025
Approved - 3/25/2025
Final Approval - 3/25/2025

Analysis of Emergency Expenditures, Reimbursements, Contributions, and Related FEMA, FDEM, Insurance Receivables

As of January 31, 2025

	A (Expense)	B (Revenue)	C (Revenue)	D (Rcvbl)	E (Rcvbl)	F (Rcvbl)	A + B + C - D - E - F	
Project / Item Description	Total Expenses Incurred	Total Insurance & Contributions Received	Total FEMA & FDEM Received	Total FEMA & FDEM Receivable	Total Insurance Receivable	Total Refund Receivable	Unreimbursed Expenses	Unused Insurance Proceeds & Contributions
Emerg Prot Meas 100%	7,085,894.76	-	(7,646,206.37)	(560,311.61)			-	-
Emerg Berm	9,244,685.00	-	(9,236,343.26)	8,341.74			-	-
Waterway Debris Removal	31,949.64	-	-	31,949.64			-	-
Emerg Prot Meas 90%	291,170.43	-	-	291,170.43			-	-
DRRA 1206	390,479.60	-	(336,772.10)	(0.00)			53,707.50	-
Beach Renourishment	1,167,700.15	-	-	1,167,700.15			-	-
Debris Removal	36,872.69	-	-	36,872.69			-	-
Town Hall Reconstruction	13,192.00	(1,485,591.89)	-	-			-	(1,472,399.89)
Temp Town Hall	1,269,402.09	-	(47,500.00)	2,500.00	1,000,000.00		219,402.09	-
Stormwater Repairs	806,307.43	-	-	806,307.43			-	-
North Pump Station	196,075.33	(309,168.60)	-	-			-	(113,093.27)
South Pump Station	29,045.18	(273,770.55)	-	-			-	(244,725.37)
Moss Marina Inline Pump Station	94,433.15	(12,880.49)	-	81,552.66			-	-
Potable Water System Repairs	221,950.70	(2,632,335.00)	-	-			-	(2,410,384.30)
Road Signage Repair	188,012.94	-	(170,192.20)	-			17,820.74	-
Dinghy Dock Replacement	20,282.26	-	-	20,282.26			-	-
Vehicles & Equip Lost or Damaged	55,366.20	(375,067.33)	(7,200.00)	(7,200.00)			-	(319,701.13)
Mooring Field Repairs	266,409.23	-	-	266,409.23			-	-
Beach Access Repair	55,061.53	-	-	55,061.53			-	-
Palm Ave Rest Room Trailer	76,754.09	(38,155.00)	(38,599.09)	(0.00)			-	-
PW Water Valve Pads & Meters	125,421.09	-	-	125,421.09			-	-
TW Curb & Sidewalk Repair	33,798.39	-	-	33,798.39			-	-
Townwide Contents	388,377.75	(1,997,131.63)	-	-			-	(1,608,753.88)
Management Costs	3,591,260.92	-	(463,308.56)	3,127,952.36			-	-
428 Parks & Rec	2,487,127.79	(2,535,936.61)	-	-			-	(48,808.82)
Paid Parking Signs	6,370.86	-	(43,318.34)	(36,947.48)			-	-
Roads Damaged by Debris Removal	315.00	-	-	315.00			-	-
Idalia Emergency Protective Measures 100%	277,870.87	-	(286,632.09)	(8,761.22)			-	-
Idalia Emergency Protective Measures 75%	129,962.94	-	(73,057.95)	56,904.99			-	-
Old San Carlos	13,047.68	-	-	13,047.68			-	-
Hurricane Helene (September 2024)	854,230.72	(111,366.00)	-	742,864.72			-	-
Hurrican Milton (October 2024)	1,847,501.40	(370,780.70)	-	1,476,720.70			-	-
Temp Town Hall Insurance Reimbursable	54,444.24	(28,125.00)					26,319.24	-
New Town Hall Insurance	15,356.57	-					15,356.57	-
Refund Expected	1,000.00	-				1,000.00	-	-
Hurricane Irma (2017)	-	(24,834.13)					-	(24,834.13)
Hurricane Nicole (Nov 2022)	23,180.00	-					23,180.00	-
Winter Storm	35,849.51	-					35,849.51	-
Hurricane Debby (August 2024)	5,667.02	-					5,667.02	-
General Donation	-	(219.23)					-	(219.23)
Fuel (reimbursed by FEMA for Equip Usage)	30,299.60	-					30,299.60	-
Contribution from General Fund	-	(4,145,000.00)					-	(4,145,000.00)
Undocumented Vetor Expense	637,523.54	(636,481.00)					1,042.54	-
Total	32,099,650.29	(14,976,843.16)	(18,349,129.96)	7,731,952.38	1,000,000.00	1,000.00	428,644.81	(10,387,920.02)

RESOLUTION NUMBER 25-94

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, APPROVING INTERFUND LOAN TO COVER OUTSTANDING FEMA AND FDEM RECEIVABLES; PROVIDING FOR EFFECTIVE DATE.

WHEREAS, Florida Statutes s. 200.065 establishes the method for adoption of a budget for all taxing authorities in the State of Florida and Florida Statutes s. 166.241 requires the governing body of each municipality in Florida to adopt a budget via ordinance or resolution before the start of each fiscal year; and

WHEREAS, on September 25, 2023, the Town Council of the Town of Fort Myers Beach, following due public notice, adopted a final operating budget for fiscal year 2023-24, as set forth with greater specificity in Town Resolution 23-117; and

WHEREAS, Section 11.05 of Article XI of the Charter of the Town of Fort Myers Beach provides that the Town Manager will report to Town Council regarding any anticipated excess revenues; any reduction of appropriations and any request for transfers for the Town operating budget, including the estimated amount of such increase, decrease, remedial action(s) taken, and recommendations as to any other steps to be taken; and

WHEREAS, Section 11.05(d) of Article XI of the Town Charter further provides that the Town Council upon written request by the Town Manager, may by resolution transfer between funds any unencumbered appropriations; and

WHEREAS, the Town has been incurring emergency expenditures related to Hurricanes Ian, Helene and Milton totaling approximately \$7.7 million as of January 31, 2025, that are expected to be reimbursed by FEMA and FDEM; and

WHEREAS, the Town has recently approved approximately \$2.6 million of additional expenditures for which it also expects to be reimbursed by FEMA and FDEM (via resolution 25-26 approved on January 8, 2025 for \$200,000.00 and resolution 25-81 approved on March 3, 2025, for \$1,800,000.00 for removal of debris from the waterways; and via resolution 25-83 approved on March 3, 2025 for \$631,930 for reconstruction of the North Segment of Beach); and

WHEREAS, the total receivables from FEMA and FDEM are expected to be at least \$10.3 million as a result of the above mentioned incurred and planned expenditures; and

WHEREAS, the Town has only \$4.1 million of unallocated cash in the Emergency Fund, thereby resulting in a projected shortfall of unallocated cash of \$6.2 million in comparison to the \$10.3 million of receivables; and

WHEREAS, the Town currently has at least \$4.2 million of available cash in the Bridge Loan Fund, and will have at least \$11.7 million of available cash after the \$7.5 million Lost Revenue Replacement grant is received; and

WHEREAS, the Bridge Loan may be used to fund emergency expenditures; and

WHEREAS, it is in the best interest of the Town to draw upon the unrestricted, available cash in the Bridge Loan Fund to fund current and future emergency expenditures in the Emergency Fund while awaiting reimbursement.

IT IS HEREBY RESOLVED by the Town Council of Fort Myers Beach, Florida as follows.

Section 1. The above recitals as set forth in the various “Whereas” clauses are hereby adopted by reference and incorporated into the body of this Resolution.

Section 2. The Town Council hereby approves, adopts and accepts a not-to-exceed \$8,000,000.00 temporary Interfund Loan from the Bridge Loan Fund to the Emergency Fund to finance current and future emergency expenditures related to Hurricanes Ian, Helene and Milton while awaiting reimbursement by FEMA and FDEM. \$4 million is to be transferred immediately from the Bridge Loan Fund to the Emergency Fund, and the remaining \$4 million will be transferred as needed after the receipt of the \$7.5 million Lost Revenue Replacement grant. The Town Council further finds that this use of funds is consistent with the requirements of Section 11.05 (a), and (d) of Article XI of the Town Charter. The interfund loan is to be repaid immediately upon receipt of reimbursements from FEMA and FDEM.

Section 3. This resolution is effective immediately upon adoption.

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

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

ADOPTED this 7th day of April, 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

APPROVED AS TO FORM:

Vose Law Firm, Town Attorneys

This Resolution was filed in the Office of the Town Clerk on this ____ day of April 2025.

1. **Request:**

Meeting Date: April 7, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING THE SCOPE OF SERVICES FROM METRO FORECASTING MODELS, LLC AS A SOLE SOURCE PROVIDER AND AUTHORIZING THE TOWN MANAGER TO EXECUTE A PROFESSIONAL SERVICES CONTRACT IN THE AMOUNT NOT TO EXCEED \$150,000.00; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

Town Council approval of this contract is required by the Town's purchasing ordinance since it exceeds the \$75,000 threshold requiring Town Council approval.

What the action accomplishes:

This action will authorize the Town manager to execute a professional services contract with Metro Forecasting Models, LLC to perform computer modeling services.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Frankie Kropacek, Operations & Compliance Director

5. **Background:**

The Town of Fort Myers Beach needs accurate data and analysis of that data to determine appropriate and sustainable redevelopment targets.

Metro Forecasting Models, LLC has provided a copy of their United States Trademark and Copyright demonstrating that they are the sole provider (source) of their trademarked and copyrighted "Interactive Growth Model," (IGM) which performs the computer modeling services the town needs.

Metro Forecasting Models, LLC uses cutting edge technology to collect and analyze data for their Interactive Growth Model (IGM). Their planners evaluate parcels spatially in GIS for their existing and future development characteristics. The GIS attributes are loaded into the IGM that produces forecasting data for population, housing, commercial, industrial and government facilities.

The IGM forecasts when and where development takes place as well as the population and housing types from the baseline year (i.e. 2025) in 5-year increments to buildout (2030, 2035, 2040 etc.).

The IGM Land Use Model is ideal for determining the aggregate and spatial apportionment of land to achieve certain goals and maintain desired Levels of Service. The IGM, as a planning tool, provides the data and insight needed by planners and policy makers to balance the economy and encourage data driven decisions.

Attachments:

1. NS 25-90, Authorize Sole Source Contract with MFM
2. Corrected 25-90, Contract with MFM - Signed REV
3. Exhibit B - IGM Trademark and Copyright
4. Exhibit C - IGM Scope of Work

5. Exhibit D - IGM Fee Schedule
6. 25-90, Contract with MFM - COI WC
7. 25-90, Contract with MFM - COI

Financial Impact:

The cost for this service is a not-to-exceed amount of \$150,000 and will be funded by savings from Fiscal Year 2024.

6. Alternative Action

The Town Council may choose not to approve this contract.

7. Management Recommendations:

Management recommends approval of this contract.

8. Recommended Approval:

Judith Frankel, Principal Planner
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 3/20/2025
Approved - 3/20/2025
Approved - 3/28/2025
Approved - 3/28/2025
Final Approval - 3/28/2025

RESOLUTION NUMBER 25-90

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING THE SCOPE OF SERVICES FROM METRO FORECASTING MODELS, LLC AS A SOLE SOURCE PROVIDER AND AUTHORIZING THE TOWN MANAGER TO EXECUTE A PROFESSIONAL SERVICES CONTRACT IN THE AMOUNT NOT TO EXCEED \$150,000.00; AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, the Town of Fort Myers Beach needs accurate data and analysis of that data to determine appropriate and sustainable redevelopment targets; and

WHEREAS, funding is available from savings from Fiscal Year 2024; and

WHEREAS, Section 2-480(c)(1)(a) of the Town of Fort Myers Beach Code of Ordinances provides that when it is in the best interest of the Town of Fort Myers Beach, a contract may be awarded without competition when the Town Manager, with the recommendation of the finance department director and department director, determines after conducting a good faith review of available sources that there is only one source for the required supply, equipment, service, or construction item; and

WHEREAS, Metro Forecasting Models, LLC has provided a copy of their United States Trademark and Copyright demonstrating that they are the sole provider (source) of their trademarked and copyrighted “Interactive Growth Model,” which performs the computer modeling services the Town needs; and

WHEREAS, it is in the best interest of the residents of the Town of Fort Myers Beach to execute a Professional Services Contract with Metro Forecasting Models, LLC in the amount not to exceed \$150,000.00 for their services.

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

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

Section 2. The Town Council hereby approves the sole source purchase from Metro Forecasting Models, LLC for their Trademarked and Copyrighted Interactive Growth Model buildout and reporting in the amount not to exceed \$150,000 and authorizes the Town Manager or his designee to execute the related Professional Services Contract and any other documentation related to the contract, which is attached hereto as “Exhibit A.”

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

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

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

ADOPTED this 7th day of April 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on the ____ day of April 2025.

Exhibit A: Professional Services Contract
Exhibit B: U.S. Trademark and Copyright
Exhibit C: Scope of Services
Exhibit D: Fee Schedule

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** is made and entered into this 7th day of April 2025, by and between the Town of Fort Myers Beach, Florida, a municipality of the State of Florida, whose address is 2731 Oak Street, Fort Myers Beach, Florida 33931 ("Town"), and Metro Forecasting Models ("Consultant"), whose address is 9410 Fountain Medical Ct, Suite 103, Bonita Springs, FL 34135.

WHEREAS the Town desires the Consultant to provide and perform professional services as further described hereinafter concerning Ongoing Miscellaneous Professional Services, ("Project"); and

WHEREAS the selection and engagement of the Consultant has been made by the Town in accordance with Section 2-480(c) of the Town's Code of Ordinances related to sole source purchases.

TIME OF CONTRACT: This contract will be for a period of three (3) years with an option to renew for two (2) terms of one-year each by mutual agreement of the parties. Hourly rates and all other negotiated expenses will remain in effect throughout the duration of the contract period, and any subsequent renewal.

NOW, THEREFORE, in consideration of the mutual covenants, terms and provisions contained herein, the parties hereto agree as follows:

ARTICLE 1.00 - SCOPE OF PROFESSIONAL SERVICES

1.01 SCOPE OF SERVICES. The consultant hereby agrees to provide and perform the professional services required and necessary to complete the work set forth on EXHIBIT "A", entitled "Scope of Professional Services", which is attached hereto and incorporated herein by reference. Such services shall be referred to hereunder as "Basic Services."

1.02 ADDITIONAL SERVICES. Should the Town request the Consultant to provide and perform related professional services for this Project which are not set forth in EXHIBIT "A", the Consultant agrees to provide and perform such Additional Services as may be agreed to in a Supplemental Task Authorization to this Agreement.

1.03 SUPPLEMENTAL TASK AUTHORIZATION. All authorized changes to the scope of professional services, tasks, work or materials to be performed or provided by the Consultant; the compensation and method of payment; the schedule or time period for performance and completion; and/or the guidelines, criteria and requirements pertaining thereto, shall be (i) reduced to writing on the Town's standard form Supplemental Task Authorization and (ii) signed by both parties, to be effective. Notwithstanding anything to the contrary herein, the Town shall have the unilateral right to delete all, or portions, of the Scope of Services, set forth on EXHIBIT "A" and/or any Supplemental Task Authorization executed hereunder, by the unilateral issuance of a written Supplemental Task Authorization to the Consultant, which shall be effective with or without Consultant's execution thereof.

ARTICLE 2.00 - OBLIGATIONS OF THE CONSULTANT

The obligations of the Consultant shall include, but not be limited to, the following:

2.01 LICENSES: Consultant certifies that it possesses valid, current licenses to do business, including, but not limited to, licenses required by the respective State Boards and other governmental agencies responsible for regulating and licensing the professional services provided and performed by the Consultant pursuant to this Agreement. Consultant agrees to maintain such licenses throughout the period that this Agreement is in effect.

2.02 QUALIFIED, WILLING AND ABLE. Consultant certifies it is qualified, willing and able to provide and perform all services hereunder, in accordance with the requirements hereof.

2.03 PERSONNEL

2.03 PERSONNEL

1. QUALIFIED PERSONNEL: The Consultant shall employ and/or retain only qualified personnel for all services it provides hereunder. Such personnel shall have all license(s), certificate(s) of authorization and other legal qualifications to provide such services.
2. CONSULTANT'S PROJECT DIRECTOR: The Consultant agrees to employ and designate, in writing, a qualified and properly licensed professional as the Consultant's Project Director. The Consultant's Project Director shall be authorized and responsible to act on behalf of the Consultant with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement and all addenda hereto. The Consultant's Project Director shall have full authority to bind and obligate the Consultant on any matter arising hereunder unless the parties have previously agreed otherwise in writing. The Project Director shall devote whatever time is required to satisfactorily direct, supervise and manage the services provided and performed by the Consultant throughout the entire period this Agreement is in effect. The person selected by the Consultant to serve as the Consultant's Project Director shall be subject to prior approval and acceptance by the Town.
3. REMOVAL OF PERSONNEL: Within ten (10) days of receipt of the Town's written request, the Consultant shall remove and replace its Project Director, or any other personnel employed or retained by the Consultant, or personnel of the sub consultant(s) or subcontractor(s) engaged by the Consultant to provide and/or perform services and/or work pursuant to this Agreement, and any Addenda hereto. The Town shall have the ability to make such a request with or without cause.
4. SUB-CONSULTANT: The Consultant shall have the ability to engage the professional services of a Sub-consultant or Sub-consultants to assist the Consultant in providing and performing the professional services, work and materials for which the Consultant is contractually obligated to perform hereunder. The Town shall not be a party to, responsible or liable for, or assume any obligation whatever for any Agreement entered into between the Consultant and any Sub-consultant. Such engagement shall be with the prior written approval of the Town and is subject to the terms of ARTICLE 8 below.
5. SUB-CONTRACTOR: The Consultant shall have the ability to engage the services of a Sub-contractor or Sub-contractors to assist the Consultant in providing and performing services, work and materials for which the Consultant is contractually obligated to perform hereunder. The Town shall not be a party to, responsible or liable for, or assume any obligation whatever for any Agreement entered into between the Consultant and any Subcontractor. Such engagement shall be with the prior written approval of Town and is subject to the terms of ARTICLE 8 below.

2.04 TIMELY ACCOMPLISHMENT OF SERVICES: The timely performance and completion of the required services, work and materials is vitally important to the interests of the Town and time is of the essence for all of the duties and obligations contained in this Agreement. The Town may suffer damages in the event that the Consultant does not accomplish and complete the required services in a timely manner. The Consultant agrees to employ, engage, retain and/or assign an adequate number of personnel throughout the period of this Agreement so that all services will be provided, performed and completed in a timely and diligent manner throughout.

2.04 STANDARDS OF PROFESSIONAL SERVICE: The work and/or services to be provided and/or performed by the Consultant (and by any Sub-consultant(s) and/or Sub-contractor(s) engaged by the Consultant) as set forth in the Scope of Professional Services, EXHIBIT "A", shall be done in accordance with the generally accepted standards of professional practice and in accordance with the laws, rules, regulations, ordinances, codes, policies, standards or other guidelines issued by those governmental agencies which have jurisdiction over all or a portion of this project and which are in effect at the time the Town approves this Agreement, or which may subsequently be changed or revised.

2.06 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

1. RESPONSIBILITY TO CORRECT: The Consultant agrees to be responsible for the professional quality, technical adequacy and accuracy, timely completion, and the coordination of all data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and other services, work and materials performed, provided, and/or furnished by Consultant or by any Sub consultant(s) and/or Subcontractor(s) retained or engaged by the Consultant pursuant to this Agreement. The Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents and instruments, and other services, work and materials resulting from the negligent act, errors or omissions or intentional misconduct of Consultant or any Sub consultant(s) or Subcontractor(s) engaged by the Consultant.
2. TOWN'S APPROVAL NOT RELIEVING CONSULTANT OF RESPONSIBILITY: Neither review, approval, nor acceptance by the Town of data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and/or incidental professional services, work and materials furnished hereunder by the Consultant or any Sub consultant(s) or Subcontractor(s) engaged by the Consultant, shall in any way relieve Consultant of responsibility for the adequacy, completeness and accuracy of its services, work and materials and the services, work and materials of any and all Sub consultants and/or Subcontractors engaged by the Consultant to provide and perform services in connection with this Agreement. Neither the Town's review, approval or acceptance of, nor payment for, any of the Consultant's services, work and materials shall be construed to operate as a waiver of any of the Town's rights under this Agreement, or any cause of action it may have arising out of the performance of this Agreement.

2.07 LIABILITY/HOLD HARMLESS. The Consultant shall be liable and agrees to be liable for and shall indemnify and hold the Town harmless for any and all claims, suits, judgments or damages, losses and expenses including but not limited to court costs and attorney's fees (including but not limited to appellate attorney fees) arising out of, or resulting from, the Consultant's errors, omissions, and/or negligence, and/or willful and/or deliberate acts or failure to act, or those of any and all Sub consultants and/or Subcontractors engaged by the Consultant during the providing, performing and furnishing of services, work and materials pursuant to this Agreement and any and all Supplemental Task Authorizations hereto. The Consultant shall not be liable to nor indemnify the Town for any portions of damages arising out of any error, omission, and/or negligence of the Town, its employees, agents, or representatives or third parties. The Consultant hereby acknowledges that the compensation to be paid by the Town hereunder includes compensation as consideration for the indemnification provided herein.

2.08 NOT TO DIVULGE CERTAIN INFORMATION: Consultant agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without Town's prior written consent, or unless incident to the proper performance of Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by Consultant or any sub consultant(s) or subcontractor(s) hereunder, subject to the requirements of the Florida Public Records Law. Consultant shall require all of its employees, Sub consultant(s) and Subcontractor(s) to comply with these provisions.

2.09 Deleted

2.10 Deleted

2.11 TRUTH-IN-NEGOTIATIONS CERTIFICATE: The Consultant shall execute a Truth-in-Negotiations Certificate ("Certificate"), in a form attached as EXHIBIT "F" and incorporated herein by reference. The Certificate shall state that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time this Agreement is executed. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the Town determines the contract price was increased due to inaccurate, incomplete or non-current wage rates or other factual unit costs.

2.12 COMPLETION OF TASKS: Unless otherwise set forth herein, the Consultant shall be responsible for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete all of the tasks set forth in EXHIBIT "A" entitled "Scope of Professional Services" and Supplemental Task Authorizations, if any, hereto. The compensation to be paid the Consultant as set forth in EXHIBIT "B" entitled "Compensation and Method of Payment" and Supplemental Task Authorizations authorized hereunder shall be understood and agreed to adequately and completely compensate the Consultant for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete the tasks set forth in EXHIBIT "A" and Supplemental Task Authorizations, if any, thereto.

2.13 DUTIES AND OBLIGATIONS IMPOSED ON THE CONSULTANT: The duties and obligations imposed upon the Consultant by this Agreement and the rights and remedies available hereunder to the Town shall be in addition to, and not a limitation of, any which are otherwise imposed or available by law, regulation, ordinance or statute.

2.14 REPRESENTATION OF THE TOWN BY CONSULTANT: Other than as specified in the Scope of Services which is attached to this Agreement as Exhibit "A" or in any duly executed addendum to this Agreement, the Consultant is not authorized to act on the Town's behalf, and shall not act on the Town's behalf. The Town will neither assume nor accept any obligation, commitment, responsibility or liability which may result from representation by the Consultant not specifically provided for and authorized as stated hereinabove.

ARTICLE 3.00 - OBLIGATIONS OF THE TOWN

3.01 TOWN PROJECT MANAGER: The Town shall promptly provide written notice to Consultant of the name of the Town's PROJECT MANAGER, who, on behalf of the Town, shall provide information, assistance, guidance, coordination, review, approval and acceptance of the professional services, work and materials to be provided and performed by the Consultant pursuant to this Agreement and any addenda hereto. The PROJECT MANAGER is not authorized to, and shall not issue any verbal or written request or instruction to the Consultant that would have the effect or be interpreted to have the effect, of modifying or changing in any way whatever the: (1) Scope of Services to be provided and performed by the Consultant; (2) the time the Consultant is obligated to commence and complete all such services; and (3) the amount of compensation the Town is obligated or committed to pay the Consultant.

3.02 AVAILABILITY OF TOWN INFORMATION

1. **PROJECT GUIDELINES AND CRITERIA:** Guidelines to the Consultant regarding requirements the Town has established or suggests relative to the Project, including, but not limited to such items as: goals, objectives, constraints, and any special financial, budgeting, space, site, operational, equipment, technical, construction, time and scheduling criteria, are set forth in EXHIBIT "E", entitled "PROJECT GUIDELINES AND CRITERIA", which is attached hereto and incorporated herein by reference.
2. **TOWN TO PROVIDE PERTINENT REFERENCE MATERIAL:** At the Consultant's request, the Town agrees to provide to the Consultant, at no cost to the Consultant, all pertinent information known to be available to the Town to assist the Consultant in providing and performing the required professional services. Such information may include, but not be limited to: previous reports; plans, drawings and specifications; maps; property, boundary, easement, right-of-way, topographic, reference monuments, control points, plats and related survey data; data prepared or services furnished by others to the Town such as sub-surface investigations, laboratory tests, inspections of natural and man-made materials, property appraisals, studies, designs and reports.

ARTICLE 4.00 - COMPENSATION AND METHOD OF PAYMENT

4.01 BASIC SERVICES: The Town shall pay the Consultant for all requested and authorized Basic Services rendered hereunder by the Consultant and completed in accordance with the requirements, provisions, and/or terms hereof and accepted by the Town. Such payment shall be as set forth in EXHIBIT "B", entitled "COMPENSATION AND METHOD OF PAYMENT", which is attached hereto and incorporated herein by reference.

4.02 ADDITIONAL SERVICES: The Town shall pay the Consultant for all such Additional Services as have been requested and authorized by the Town and agreed to, in writing, by both parties hereto, which have been rendered as Additional Services by the Consultant and completed in accordance with the requirements, provisions, and/or terms of this Agreement and accepted by the Town. Such payment shall be made as set forth under "ADDITIONAL SERVICES" in EXHIBIT "B".

4.03 LUMP SUM AND NOT-TO-EXCEED PAYMENTS

1. LUMP SUM FEE(S): When the Consultant's compensation hereunder (including any Addenda) is established on a Lump Sum Fee ("L.S.") basis, it shall include all direct and indirect labor costs, personnel-related costs, overhead and administrative costs, costs of Sub consultant(s) and/or Subcontractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant, as may be required and/or necessary to complete each and every task set forth in this Agreement and/or any Addenda hereto.
2. NOT-TO-EXCEED FEE(S): When the Consultant's compensation hereunder (including any Addenda) is established on a NOT-TO-EXCEED ("N.T.E.") amount basis, it shall mean:
 - For the actual hours necessary, required and expended by the Consultant's professional and technical personnel, multiplied by the applicable hourly rates for each classification or position as set forth in Attachment No. 1 to EXHIBIT "B" to this Agreement; and
 - For actual necessary, required and expended non-personnel reimbursable expenses and costs, multiplied by the applicable "Basis of Charges" for each item as set forth in Attachment No. 2 to EXHIBIT "B" to this Agreement and any Supplemental Task Authorizations and
 - For actual, necessary and required hours, and non-personnel expenses and costs, expended by Sub-consultants and Subcontractors engaged by the Consultant, multiplied by such hourly rates and unit costs as are agreed to by the Town and the Consultant and as are set forth as a part of this Agreement and any Supplemental Task Authorizations thereto; and
 - Any payment hereunder is subject to the Consultant presenting an itemized and detailed invoice with appropriate supporting documentation attached thereto to show evidence satisfactory to the Town covering all such costs and expenses; and
 - The Consultant's invoices and all payments to be made for all N.T.E. amounts shall be subject to the review, acceptance and approval of the Town; and
 - When the Consultant's compensation is established on a N.T.E. basis for a specific Task(s), the total amount of compensation to be paid to the Consultant to cover all personnel costs, non-personnel reimbursable expenses and costs, and Sub consultant and Subcontractor costs for any such specific Task(s) shall not exceed the amount of the total N.T.E. compensation established and agreed to for each specific Task(s).
 - If the amount of compensation for any Task(s) which the Consultant is entitled on the N.T.E. basis set forth above is determined to be necessary, required and actually expended and is determined to be actually less than the N.T.E. amount established for the specific Task, any unexpended amount under a specific Task may not be used, applied, transferred, invoiced or paid for services or work provided or performed on any other Task(s).

4.04 METHOD OF PAYMENT

1. MONTHLY STATEMENTS: The Consultant shall submit no more than one invoice statement to the Town each calendar month, covering services rendered during the preceding calendar month. The Consultant's invoice statement(s) shall be itemized to correspond to the basis of compensation as set forth in the Agreement or Supplemental Task Authorization(s) hereunder. The Consultant's invoice statements shall contain a breakdown of charges, description of service(s) and work provided and/or performed, and where appropriate, supportive documentation of charges consistent with the basis of compensation set forth in the Agreement, or in Supplemental Task Authorization(s) hereunder.
2. PAYMENT FOR SERVICES PERFORMED: The Town shall pay the Consultant for services performed using either of the following methods, or using a combination thereof:
 - a. The Town shall pay the Consultant on the basis of services completed, for tasks set forth in EXHIBITS "A" and "B", as evidenced by work products such as reports, drawings, specifications, etc., submitted by the Consultant and accepted by the Town. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the Town, the Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

- b. The Town shall pay the Consultant for services performed for tasks set forth in EXHIBITS "A" and "B" on the basis of an invoice statement covering Consultant's Work-in-Progress, expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such Work-in-Progress percentages (WIPP) are subject to the review and approval of the Town. The decision of the Town shall be final as to the Work-in-Progress percentages paid. Payment by the Town for tasks on a Work-in-Progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the Town of any such service or Work-in-Progress. The Consultant shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous Work-in-Progress payments have been made. All tasks to be paid for on a Work-in-Progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in EXHIBIT "B" with the notation (WIPP). Only tasks so identified will be paid on a Work-in-Progress percentage basis. The Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

(3) **PAYMENT SCHEDULE:** The Town shall issue payment to the Consultant within thirty (30) calendar days after receipt of an invoice statement from the Consultant in an acceptable form and containing the requested breakdown and detailed description and documentation of charges. Should the Town object or take exception to the amount of any Consultant's invoice statement, the Town shall notify the Consultant of such objection or exception within the thirty (30) calendar day payment period set forth in this subparagraph. If such objection or exception remains unresolved at the end of said thirty (30) calendar day period, the Town shall withhold the disputed amount and make payment to the Consultant of the amount not in dispute. Payment of any disputed amount, or adjustments thereto, shall be made within thirty (30) calendar days of the date such disputed amount is resolved by mutual agreement of the parties to this Agreement.

4.05 PAYMENT IF SERVICES ARE TERMINATED AT CONVENIENCE OF THE TOWN:

If this Agreement is terminated at the convenience of the Town and not at the fault of the Consultant, the Town shall compensate the Consultant only for services performed prior to the effective date of termination and reimbursable expenses then due including project drawings, plans, data, and other project documents.

4.06 PAYMENT WHEN SERVICES ARE SUSPENDED: If the Town suspends the Consultant's services and work on all or part of the services required be providing and performing by the Consultant pursuant to this Agreement, the Town shall compensate the Consultant only for the services performed prior to the effective date of suspension and reimbursable expenses then due.

4.07 NON-ENTITLEMENT TO ANTICIPATED FEES IN THE EVENT OF SERVICE TERMINATION, SUSPENSION, ELIMINATION, CANCELLATION AND/OR DECREASE: If the services required pursuant to this Agreement are terminated, eliminated, cancelled, or decreased by the Town and/or are modified by the subsequent issuance of Supplemental Task Authorization(s), other than receiving the compensation set forth in Sub Articles 4.05 and 4.06, the Consultant shall not be entitled to receive compensation for anticipated professional fees, profit, mobilization costs, general and administrative overhead expenses or for any other anticipated or unanticipated income or expense which may be associated with the services terminated, suspended, eliminated, cancelled or decreased.

ARTICLE 5.00 - TIME AND SCHEDULE OF PERFORMANCE

5.01 NOTICE TO PROCEED: Following the execution of this Agreement by both parties, and after the Consultant has complied with the insurance requirements set forth hereinafter, the Town shall issue the Consultant a written Notice to Proceed. Following the issuance of such Notice to Proceed, the Consultant shall commence work promptly and shall carry on all such services and work as may be required in a timely and diligent manner to completion. A separate Notice to Proceed shall be issued for each Project requested by the Town hereunder.

5.02 TIME OF PERFORMANCE: The Consultant agrees to complete the services required pursuant to this Agreement by the date assigned with each individual Supplemental Task Authorization as defined for completion of the various phases and/or tasks of each individual project as set forth and described in this Agreement, and specifically as set forth in EXHIBIT "C", entitled "Time and Schedule of Performance", which EXHIBIT "C" is attached hereto and hereby incorporated by reference.

Should the Consultant be obstructed or delayed in the prosecution or completion of its obligations under this Agreement as a result of causes beyond the control of the Consultant, or its Sub consultant(s) and/or Subcontractor(s), and not due to their fault or neglect, the Consultant shall notify the Town, in writing, within two (2) calendar days after the commencement of such delay, stating the cause(s) thereof and requesting an extension of the Consultant's time of performance. Upon receipt of the Consultant's request for an extension of time, the Town shall grant the extension if the Town determines the delay(s) encountered by the Consultant, or its Sub consultant(s) and/or Subcontractor(s), is due to unforeseen causes and not attributable to their fault or neglect, in the Town's sole judgment.

5.03 CONSULTANT WORK SCHEDULE: The Consultant shall be required as a condition of this Agreement to prepare and submit to the Town, on a monthly basis, commencing with the issuance of the NOTICE TO PROCEED, a Consultant's Work Schedule for each project. The Work Schedule shall set forth the time and manpower scheduled for all of the various phases and/or tasks required to provide, perform and complete all of the services and work requiring completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in EXHIBIT "C", pursuant to this Agreement in such a manner that the Consultant's planned and actual work progress can be readily determined. The Consultant's Work Schedule of planned and actual work progress shall be updated and submitted by the Consultant to the Town on a monthly basis or as otherwise indicated by the Town in writing.

5.04 FAILURE TO PERFORM IN A TIMELY MANNER: Should the Consultant fail to commence, provide, perform and/or complete any of the services and work required hereunder in a timely and diligent manner, the Town may consider such failure as justifiable cause to terminate this Agreement. As an alternative to termination, the Town at its option, may, upon written notice to the Consultant, withhold any or all payments due and owing to the Consultant, not to exceed the amount of the compensation for the work in dispute, until such time as the Consultant resumes performance of his obligations in such a manner as to get back on schedule in accordance with the time and schedule of performance requirements set forth in this Agreement, or any Supplemental Task Authorization(s) hereto. The termination rights specified in this sub-paragraph are in addition to any termination rights set forth elsewhere herein.

ARTICLE 6.00 - SECURING AGREEMENT:

The Consultant warrants that the Consultant has not employed or retained any company or person other than a bona fide, regular, full time employee working for the Consultant to solicit or secure this Agreement and that the Consultant has not paid or agreed to pay any person, company, corporation individual, or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

ARTICLE 7.00 - CONFLICT OF INTEREST:

The Consultant represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. The Consultant further agrees that no person having any such interest shall be employed or engaged by the Consultant for said performance.

If Consultant, for itself and on behalf of its Sub-consultants and Subcontractors, is about to engage in representing another client, which it in good faith believes could result in a conflict of interest with the work being performed by Consultant or such Sub consultant or Subcontractor under this Agreement, then it will promptly bring such potential conflict of interest to the Town's attention, in writing. The Town will advise the Consultant, in writing, within ten (10) calendar days as to the period of time required by the Town to determine if such a conflict of interest exists. If the Town determines that there is a conflict of interest, Consultant or such Sub consultant shall decline the representation upon written notice by the Town.

If the Town determines that there is not such conflict of interest, then the Town shall give its written consent to such representation. If the Consultant or Sub consultant accepts such a representation without obtaining the Town's prior written consent, and if the Town subsequently determines that there is a conflict of interest between such representation and the work being performed by Consultant or such Sub consultant under this Agreement, then the Consultant or such Sub consultant agrees to promptly terminate such representation. Consultant shall require each of such Sub consultants to comply with the provisions of this Section. Should the Consultant fail to advise or notify the Town as provided hereinabove of representation which could, or does, result in a conflict of interest, or should the Consultant fail to discontinue such representation, the Town may consider such failure as justifiable cause to terminate this Agreement.

ARTICLE 8.00 - ASSIGNMENT, TRANSFER AND SUBCONTRACTS:

The Consultant shall not assign or transfer any of its rights, benefits or obligations hereunder, except for transfers that result from: (1) the merger or consolidation of Consultant with a third party; or (2) the disestablishment of the Consultant's professional practice and the establishment of a successor consultant, or consulting organization. The Consultant shall not subcontract any of its service obligations hereunder to third parties, except as otherwise authorized in this Agreement, without prior written approval of the Town. The Consultant shall have the right, subject to the Town's prior written approval, to employ other persons and/or firms to serve as Sub consultants and/or Subcontractors to Consultant in connection with Consultant providing and performing services and work pursuant to the requirements of this Agreement. The Town shall have the right and be entitled to withhold such approval.

In providing and performing the services and work required pursuant to this Agreement, Consultant intends to engage the assistance of the Sub consultant(s) and/or Subcontractor(s) set forth in EXHIBIT "D", entitled "CONSULTANT'S ASSOCIATED SUB-CONSULTANTS AND SUBCONTRACTORS."

ARTICLE 9.00 - APPLICABLE LAW:

Unless otherwise specified, this Agreement shall be governed by the applicable ordinances, laws, rules, and regulations of the Town of Fort Myers Beach, Lee County, Florida, and the State of Florida. It shall be governed by the laws, rules, and regulations of the United States when the Consultant is providing services funded by the United States government.

ARTICLE 10.00 - LITIGATION

The venue for any litigation arising from this Agreement shall be in the 20th Judicial Circuit in and for Lee County, Florida. Each party shall be responsible for the payment of any attorney fees and costs incurred by the party due to litigation arising out of this agreement.

ARTICLE 11.00 - COVENANTS AGAINST DISCRIMINATION

The Consultant for itself, its successors in interest, and assigns as part of the consideration thereof, does hereby covenant and agree that in the furnishing of services to Town hereunder, no person on the grounds of race, color, national origin, handicap, or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination. The Consultant shall comply with state laws in the hiring of sub consultants.

ARTICLE 12.00 - WAIVER OF BREACH:

Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

ARTICLE 13.00 - OWNERSHIP OF DOCUMENTS

All documents such as drawings, tracings, notes, computer files, photographs, plans, specifications, maps, evaluations, reports and other records and data relating to this project, other than working papers, specifically prepared or developed by the Consultant under this Agreement shall be property of the Consultant until the Consultant has been paid for providing and performing the services and work required to produce such documents.

Upon completion or termination of this Agreement, or upon the issuance by the Town of written Supplemental Task Authorization(s) deleting all or portions of the scope of services or task(s) to be provided or performed by the Consultant, all of the above documents, to the extent requested in writing by the Town, shall be delivered by the Consultant to the Town within seven (7) calendar days of the Town making such a request. If the Town gives the Consultant a written Notice of Termination of all or part of the services or work required, or upon the issuance to the Consultant by the Town of a written Supplemental Task Authorization deleting all or part of the services or work required, the Consultant shall deliver to the Town the requested documents as set forth hereinabove, with the mutual understanding and commitment by the Town that compensation earned or owing to the Consultant for services or work provided or performed by the Consultant prior to the effective date of any such termination or deletion will be paid to the Consultant within thirty (30) calendar days of the date of issuance of the Notice of Termination or Supplemental Task Authorization.

The Consultant, at its expense, may make and retain copies of all documents delivered to the Town for reference and internal use. The Consultant shall not, and agrees not to use any of these documents, and data and information contained therein on any other project or for any other client without the prior express written permission of the Town.

Any use by the Town of said documents, and data and information contained therein, obtained by the Town hereunder for any purpose not within the scope of this Agreement shall be at the risk of the Town, and without liability to the Consultant.

ARTICLE 14.00 - MAINTENANCE OF RECORDS

The Consultant will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed hereunder. Said records and documentation will be retained by the Consultant for a minimum of five (5) years from the date of termination of this Agreement.

The Town and its authorized agents shall have the right to audit, inspect and copy all such records and documentation as often as the Town deems necessary during this Agreement, and during the period of five (5) years thereafter. Such activity shall be conducted only during normal business hours and at the expense of the Town. To the extent permitted by law, the Town shall retain all such records as confidential.

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

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

**TOWN HALL
2731 OAK STREET
FORT MYERS BEACH, FL. 33931
(239)765-0202
FMBPUBLICRECORDS@FMBGOV.COM**

Public Records Compliance Indemnification. Contractor agrees to indemnify and hold the Town harmless against any and all claims, damage awards, and causes of action arising from the contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.

ARTICLE 15.00 - TERMINATION

TERMINATION FOR CAUSE If, through any cause, Contractor shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if Contractor shall violate any of the covenants, agreements, warranties or stipulations of this Contract, the Town of Fort Myers Beach, shall thereupon have the right to terminate this Contract for cause by giving written notice to Contractor of such termination and specifying the date thereof, at least ten (10) calendar days before the effective date of such termination. In such event, all finished and unfinished documents, data, studies, surveys, drawings, specifications, field notes, maps, models, photographs, and reports prepared by Contractor under this Contract shall become the property of the Town of Fort Myers Beach, and Contractor shall be entitled to receive just and equitable final compensation for any work satisfactorily completed hereunder provided such compensation is approved by the Town of Fort Myers Beach, in its sole discretion. Notwithstanding the above, Contractor shall not be relieved of liability to the Town of Fort Myers Beach for damages sustained by the Town of Fort Myers Beach by virtue of any intentional and/or negligent act or omission or any breach of the Contract by Contractor, and the Town of Fort Myers Beach may withhold any payment for the purpose of reasonable setoff until such time as the exact amount of damages due the Town of Fort Myers Beach from Contractor is determined. Contractor agrees that the Town of Fort Myers Beach shall have all rights and remedies afforded to it at law to recover any damages sustained by the Town of Fort Myers Beach in connection with the work performed by Contractor under the Contract. In the alternative, the Town of Fort Myers Beach shall also have all rights and remedies afforded to it in equity to enforce the terms of the Contract. The exercise of any one right or remedy shall be without prejudice the enforcement of any other right or remedy allowed at law or in equity.

TERMINATION FOR CONVENIENCE The contractor or the Town of Fort Myers Beach may terminate this contract for its convenience at any time by giving at least thirty (30) calendar days' notice in writing to the other party. If the Contract is terminated by the Town of Fort Myers Beach and/or Contractor as provided herein, Contractor will be paid for the time and work properly provided, and expenses incurred up to the termination date, if such final compensation is approved by the Town of Fort Myers Beach, in its sole discretion.

ARTICLE 16.00 - MODIFICATION AND AMENDMENTS

Modifications and amendments to the covenants, terms and provisions of this Agreement shall only be valid when issued in writing as a properly executed Supplemental Task Authorization(s) or written contract amendment, executed by both parties. In the event of any conflicts between the requirements, provisions, and/or terms of this Agreement and any written Supplemental Task Authorization(s), the latest executed Supplemental Task Authorization(s) shall take precedence.

In the event the Town issues a purchase order, memorandum, letter, or other instruments covering the professional services, work and materials to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that such purchase order, memorandum, letter or other instruments are for the Town's internal control purposes only, and any terms, provisions and conditions contained therein, whether printed or written, shall in no way modify the covenants, terms and provisions of this Agreement and shall have no force or effect thereon.

No modification, waiver, or termination of the Agreement or of any terms hereof shall impair the rights of either party.

ARTICLE 17.00 - HEADINGS

The Headings of the Articles, Sections, Exhibits, Attachments, Phases or Tasks herein are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such Articles, Sections, Exhibits, Attachments, Phases or Tasks.

ARTICLE 18.00 – MISCELLANEOUS

Compliance/Consistency with Section 768.28, Fla. Stat. Any indemnification or agreement to defend or hold harmless by Town specified in the Agreement shall not be construed as a waiver of Town's sovereign immunity and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Fla. Stat. and subject to the procedural requirements set forth therein. Any other purported indemnification by Town in the Agreement in derogation hereof shall be void and of no force or effect.

Non-appropriation. Town's performance and obligation to pay under this Agreement is contingent upon an appropriation during the Town's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by memorandum from the Town Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year end shall be without penalty or expense to the Town subject to the Town paying all invoices for services rendered during the period the Agreement was funded by appropriations.

E-Verify Compliance. By entering into this Agreement, the Contractor is obligated to comply with the provisions of Section 448.095, Florida Statutes "Employment Eligibility," as amended from time to time. This includes but is not limited to register with and use the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Contractor attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Contractor agrees to maintain a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Florida Statutes, as amended and Contractor will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Contractor will also be liable for any additional costs to the Town as a result of the termination of this Agreement in accordance with this paragraph. Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Florida Statutes, Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Florida Statutes.

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

Disclosure Requirements for “Foreign Countries of Concern.” Contractor shall comply with the disclosure requirements set forth in Section 286.101(3)(a), Florida Statutes, which requires “Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a “foreign country of concern” if such interest, contract, grant or gift received from a “foreign country of concern” if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable “foreign country of concern” and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services”. Pursuant to section 268.101(7), Florida Statutes: “In addition to any fine assessed under [section 286.101(7)(a), Florida Statutes], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause.”

Venue and Jurisdiction. Notwithstanding any of other provision to the contrary, this Agreement and the parties’ actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally consents to submit and does submit to the jurisdiction of the Circuit Court in and for Lee County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement. Both parties waive the right to file any action, suit or proceeding in, or remove any action, suit or proceeding to, any Federal Court.

Attorneys’ Fees and Costs. Notwithstanding any of other provision to the contrary, if litigation ensues regarding this Agreement, each party hereto shall bear its own attorneys’ fee and costs.

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

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

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

Taxes. The Town shall not be liable for any taxes and assessments imposed by a federal, state or local governmental agency as provided in Section 11.4 of the Agreement, to the extent that the Town is exempt from same by Florida law, including but not limited to any sales or use tax.

No Coercion for Labor or Services. The Contractor swears under penalty of perjury that the Contractor does not use coercion for labor or services as defined as follows:

“Coercion” means:

1. Using or threatening to use physical force against any person;
2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not

respectively limited and defined;

4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
5. Causing or threatening to cause financial harm to any person;
6. Enticing or luring any person by fraud or deceit; or
7. Providing a controlled substance as outlined in Schedule I or Schedule II of Sec. 893.03, Fla. Stat. to any person for the purpose of exploitation of that person.

Force Majeure. The Town reserves the right to suspend, modify or terminate this contract in the event of an act of god or act of man beyond the control of the parties, including but not limited to a hurricane, tropical storm, tornado, or other destructive weather event, flooding, pandemic, plague, war, armed conflict, domestic or foreign terrorism, riot, labor condition, state or federal governmental action, and catastrophic internet disturbance, making performance inadvisable, economically impracticable, illegal, or impossible.

Additional Terms. Notwithstanding any other provision to the contrary, the parties agree as follows:

- A. None.

ARTICLE 19.00 - ENTIRE AGREEMENT

This Agreement, including referenced Exhibits and Attachments hereto, constitute the entire Agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matters set forth herein, and any such prior agreements or understandings shall have no force or effect on this Agreement.

The following listed documents, which are referred to hereinbefore, are attached to and are acknowledged, understood and agreed to be an integral part of this Agreement:

- (1) EXHIBIT "A" entitled "Scope of Professional Services", dated _____
- (2) EXHIBIT "B" entitled "Compensation and Method of Payment" dated _____
- (3) EXHIBIT "C" entitled "Time and Schedule of Performance", dated _____
- (4) EXHIBIT "D" entitled "Consultant's Associated Sub- Consultant(s) and Subcontractor(s)", dated _____
- (5) EXHIBIT "E" entitled "Project Guidelines and Criteria", dated _____
- (6) EXHIBIT "F" entitled "Truth in Negotiation Certificate", dated _____
- (7) EXHIBIT "G" entitled "Insurance". (Containing copies of applicable Certificates of Insurance)
- (8) EXHIBIT "H" entitled "Amendment to Articles", dated _____
- (9) EXHIBIT "I" entitled "Public Entity Crime Affidavit", dated _____
- (10) EXHIBIT "J" entitled "Affidavit Certification Immigration Laws", dated _____
- (11) EXHIBIT "K" entitled "Affidavit of Confidentiality", dated _____

ARTICLE 20 .00 - NOTICES AND ADDRESS OF RECORD

20.01 NOTICES BY CONSULTANT TO TOWN

All notices hereunder from the Consultant to the Town shall be in writing and shall be given by US first class mail service, postage prepaid, addressed to: Town of Fort Myers Beach, 2731 Oak Street, Fort Myers Beach, Florida 33931

20.02 NOTICES BY TOWN TO CONSULTANT

All notices hereunder from the Town to the Consultant shall be in writing and shall be given by U.S. first class mail service, postage prepaid, addressed to:

Metro Forecasting Models
9410 Fountain Medical CT, Suite 103
Bonita Springs, FL 34135
Phone 239-913-6949

ATTENTION: David Farmer, MFM Project Director

20.03 CHANGE OF ADDRESS OF RECORD

Either party may change its address of record by written notice to the other party given in accordance with the requirements of this Article.

ARTICLE 21.00 - ACCEPTANCE. Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the hereinabove named parties in the space provided hereinafter and being attested and witnessed as indicated.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement effective the day and year first written above.

TOWN OF FORT MYERS BEACH

ATTEST:

By: _____
Andrew Hyatt, Town Manager

By: _____
Amy Baker, Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

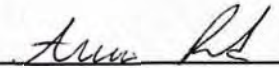
BY: _____
Town Attorney

PROVIDER: Metro Forecasting Models
Printed name of organization

BY: 
Signature

David Farmer
Printed name of person signing

CEO
Title (printed)


Witness Signature

Alvaro Padron
Printed name of Witness

EXHIBIT A - SCOPE OF PROFESSIONAL SERVICES

TYPES OF WORK

The following is a list of the Types of Work the Town of Fort Myers Beach may require. Each Type of Work states the minimum requirements to be met in order to be qualified by the Town of Fort Myers Beach.

Proposed Scope of Services and Work Tasks For the Development an Interactive Growth Model Ver 3 (IGM Ver3)

Metro Forecasting Models uses cutting edge technology to collect and analyze data for the Interactive Growth Model. Our skilled planners evaluate parcels spatially in GIS for their existing and future development characteristics. The GIS attributes are loaded into the IGM that produces superior forecasting data for population, housing, commercial, industrial and government facilities.

Proposed agreement between Metro Forecasting Models, LLC (hereafter referred to as the CONSULTANT) and the Town of Fort Myers Beach, Florida (hereafter referred to as the CLIENT) to provide services with the assistance of CLIENT's Staff for the development of an Interactive Growth Model Ver 3 (hereinafter referred to as the IGM) The key steps in the development of the model include:

- Apply demographics in each of the disaggregated zones with 2020 Census Block Group data.
- Retrieve, review and evaluate Lee County Property Appraiser parcel data to create 2025 Baseline data.
- Interviews with landowners, commercial real estate brokers and town staff to understand future buildout potential of larger vacant land tracts.
- Buildout inventory of development by type and intensity and forecast of demographics by Zone.
- Accurate population forecast (the Population and Housing Forecast Sub Model).
- Aggregate the Zones into clusters for custom planning areas.
- Design and develop criteria and formulas for spatial distribution of development over time.
- Design and develop sub models selected herein.
- Data output by Zone for 5-year increments.
- Graphic interpretation of baseline, buildout and incremental forecast data in a custom GIS web application for use by all departments

Work Task 1.0

The CONSULTANT will develop the current year baseline data for current development with staff assistance that can be updated annually. Individual zones for the total CLIENT's incorporated area will be delineated. Each zone will be inventoried for current development such as housing unit by type, population characteristics, retail space by building area, office/services by building area industrial and wholesale by building area, public parks, fire stations and other data considered relevant. The baseline scenario will be developed for each zone using GIS from the following sources:

- Parcel property attributes from Property Appraiser database
- E911 database
- National Wetland Inventory database
- Building permits, provided by CLIENT
- Entitled projects which are not yet fully developed, provided by CLIENT

Upon completion of the zone data and zone delineation, it will serve as the baseline for the IGM. This will provide an opportunity to test the CLIENT's database to query land use data. The model can be updated annually. It could also be used to provide an annual report to the Council/Board Members about the current population and development.

The CONSULTANT will develop an interactive web application to communicate the baseline scenario data. The purpose of building the interactive web application is to produce a streamlined and data-rich visualization tool for staff, policymakers and stakeholders to use and review. This web application will demonstrate the baseline condition, including housing, population, vacant land, and commercial space. This web application can be enhanced as requested to include various other spatial datasets, including socioeconomic and environmental characteristics.

The CONSULTANT will attend one initial workshop to communicate the data and research methodology for the Interactive Growth Model.

Work Task 2.0

The CONSULTANT will develop a buildout database with staff assistance. Similar to the current year baseline database, each parcel will be inventoried for buildout development such as housing units by type, population characteristics, retail space by building area, office/services by building area, industrial and wholesale by building area, and other data considered relevant. Data will be entered for each zone into the computer program for export to Excel workbooks for analysis. The database can be updated to reflect the changes in zoning or future land uses that add or reduce density/intensity of future development.

The buildout scenario will be developed for each parcel from the following sources:

- Current zoning by land use type and intensity, vested rights and current practices
- Comprehensive Plan, its future land use map overlay, community's vision and current and future trends as well as stakeholder's perceptions
- Approved but not developed planned developments, provided by CLIENT
- Parcel property attributes from CLIENT database
- Simulation models of similar communities

Work Task 3.0

Population and Housing Model: This model produces the forecast for single family and multifamily housing units by parcels per zone including the rate of change for household size and vacancy rates in 5-year increments from the baseline year (i.e. 2025) to buildout (i.e. 2085) for each of the disaggregated zones. This task also includes the inventory and ground-trothing of current housing units by type and the developed acres of housing for each zone. The demographics of the population by zones are analyzed for forecasting. This task requires an estimate of housing development by type and acreage at buildout for each zone (the supply) by estimating the yield according to zoning, the comprehensive plan and other development characteristics. The forecast of household size and vacancy rates to buildout are also included. The CONSULTANT will upload the baseline and buildout data, and the CONSULTANT will process the data in 5-year increments and provide reports of the output data in Excel format in 5-year increments.

Work Task 4.0

Commercial Sub Model: This sub model determines and forecasts the internal demand for commercial building area and land area by disaggregated zones in 5-year increments to buildout. This task also includes the inventory of current commercial space by type, ground-trothing with aerial photography and the developed acres of commercial use for each zone. This task requires an estimate of commercial development by type and acreage at buildout for each zone by estimating the yield according to zoning, the comprehensive plan and other variables. When the internal supply of commercial development exceeds internal demand for commercial space, analysis will be conducted to determine the external population required to support the internal supply of developed commercial space. The sub model will forecast the internal demand for neighborhood and community commercial centers by zone and year and the supply of commercial land to meet those needs. The data can also be analyzed for the community's economic objectives. This model also provides a land budget for the area required to meet the needs of the CLIENT residents. The CONSULTANT will process the data in 5-year increments and provide reports of the output data in Excel format in 5-year increments.

Work Task 5.0

Deliverables:

Interactive Growth Model Summary Report

The CONSULTANT will develop a report to summarize the methodology, results, and key findings of the Interactive Growth Model and selected government Submodels. The report will include a description of the methodology, data inputs/research, and key findings. The report will describe the results of the buildout analysis and forecast(s), including spatial housing and population growth, vacant land by type/category, future demand for specific government services, and key land use policy considerations.

Meetings with Staff/Department Heads

The CONSULTANT will attend meetings as requested subject to the budget allowance.

Presentation to Town Council

The CONSULTANT will attend one public hearing to present the findings from the update to CLIENT Council and accept the Fort Myers Beach Interactive Growth Model and Final Summary Report.

Additional Meetings

The CONSULTANT will attend meetings at the request of the CLIENT subject to the budget allowance.

Work Task 6.0

Alternative Development Scenarios

Alternative IGM scenarios give the CLIENT the ability to test different planning policies and gauge their impact. For example, planning policies can be tested (the Land Development Regulations) for the undeveloped areas near arterials/collectors, etc., to determine which policies are most efficient and reduce traffic in the roadway network. Different scenarios can be tested any time after the population and housing model has been processed.

Work Task 7.0

Park Sub Model: To develop an open space model to determine standards and the needs of the population for developing open spaces (neighborhood, community and regional parks), the timing of facilities and their location as a function of population. This model can be updated every five years for scheduled capital improvement programs. The CONSULTANT will upload the baseline (inventory and location of current facilities) and build out data (future needs for facilities), and build out data, and the CONSULTANT will process the data in 5-year increments and provide reports of the output.

Fire Stations Sub Model: To develop a sub-model to determine the need, service area, and spatial distribution of fire stations (pumper and ladder stations). The CONSULTANT will upload the baseline (inventory and location of current facilities) and build out data (future needs for facilities), process the data in 5-year increments and provide reports of the output data in Excel format in 5- year increments. The criteria are the ISO standards for a Class 1 insurance rating.

Work Task 9.0 (presented as a package)

Interactive Growth Model Maintenance

The CONSULTANT will store, host, and maintain the Interactive Growth Model for the CLIENT. The CONSULTANT will perform one annual update one year after the model is completed. Intermittent updates will be performed using information provided by the CLIENT to update the forecast including, but not limited to, building permits, proposed projects, redevelopment, and plan and policy changes.

Update Report

After the annual update is performed, the CONSULTANT will provide an Update Summary Report. The Update Summary Report will describe the process and methodology of updating the baseline and buildout data, as well as provide a description of key findings and trends. The Update Report will serve as a benchmark to track spatial growth by area, vacant land by type, development trends, and key land use considerations.

QUALIFICATION FOR TYPE OF WORK

Name of Firm: METRO FORECASTING MODELS

Date: _____

Code: _____ Type of Work: Collect and Analyze Data for Interactive Growth Model

List the personnel employed by your firm and indicate the groups of work that you feel they are qualified to do. Attach supplemental sheets if necessary and attach a resume for each person which supports their ability

Name of Employee	City of Residence	Florida Registration Number	Years of Professional Experience	Type of Work
David Farmer	Collier County	PE 55384	35	Planning, Data Analysis & Forecasting
Victor Soto	Collier County	none	4	GIS & Data Analysis
Alvaro Pedron	Fort Myers	none	3	GIS & Data Analysis
Adele Zelinski	Bonita Springs	none	15	Planning & Technical Writing
Ned Price	Bonita Springs	None	12	Planning, Data Analysis & Forecasting
Dr Paul Van Buskirk	Estero	PE 20592	65	Planning, Data Analysis & Forecasting

EXHIBIT B - COMPENSATION AND METHOD OF PAYMENT**Date:** _____**Section 1. BASIC SERVICES/TASK(S)**

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

NOTE: A Lump Sum (L.S.) or Not-to-Exceed (N.T.E.) amount of compensation to be paid the CONSULTANT should be established and set forth below for each task or sub-task described and authorized in Exhibit "A". In accordance with Agreement Article 4.04(2) "Method of Payment", tasks to be paid on a Work-in-Progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (Y) for (W.I.P.P.)
1	Develop Baseline Database & Web App	\$25,000	L.S.	Y
2	Developing Buildout Database	\$15,000	L.S.	Y
3	Develop Population and Housing Model	\$10,000	L.S.	Y
4	Develop Commercial Sub Model	\$10,000	L.S.	Y
5	Deliverables	\$20,000	L.S.	Y
		\$15,000	NTE	Y
6	Meetings and Presentations (T&M)	\$15,000	NTE	Y
7	IGM Alternative Scenarios (Budget)			
	Develop Government Sub Models	\$12,500	L.S.	Y
	Park Sub Model	\$ 7,500	L.S.	Y
8	Fire Station Sub Model	\$20,000	L.S.	Y
	2026 Annual Update, Staff Support, Model & Web App Maintenance			
TOTAL		\$150,000	NTE	

(Unless list is continued on next page)

Section 2. ADDITIONAL SERVICES

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

Should it be mutually agreed to base compensation for ADDITIONAL SERVICES on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained in EXHIBIT B-1 hereto dated January 1, 2025, entitled "*MFM Rate Schedule as of January 1, 2025*".

Section 3. REIMBURSABLE EXPENSES AND COSTS

When the CONSULTANT'S compensation and method of payment is based on an hourly rate for professional and/or technical personnel, the CONSULTANT shall, in addition to such hourly rates as are set forth in Attachment No. 1 hereto, be entitled to reimbursement of out-of-pocket, non-personnel expenses and costs resulting from work outside of the scope of services. If reimbursable expenses are anticipated by the CONSULTANT, CONSULTANT will provide a written estimate of said costs to the Town's Project Manager prior to requesting said reimbursement.



Exhibit B-1

MFM Rate Schedule as of January 1, 2025

Principal Planner/Ph.D	\$250/hr
Project Manager	\$190/hr
Senior Data Analyst	\$160/hr
Staff Planner	\$140/hr
GIS Data Analyst	\$140/hr
Research Assistant/Model Technician	\$100/hr

ATTACHMENT NO. 1 TO EXHIBIT B

Date: _____

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE

Consultant Name: _____

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

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

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

ATTACHMENT NO. 2 TO EXHIBIT B

Date: _____

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS FOR CONSULTANT

Consultant Name: _____

[illegible]

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

EXHIBIT C – TIME AND SCHEDULE OF PERFORMANCE

Date: _____

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

Phase and/or Task Reference As Enumerated in EXHIBIT “A”	NAME OR TITLE Of Phase and/Task	Number Of Calendar Days For Completion Of Each Phase And/or Task	Cumulative Number Of Calendar Days For Completion From Date of Notice to Proceed
	See Exhibit C-1 (attached)		

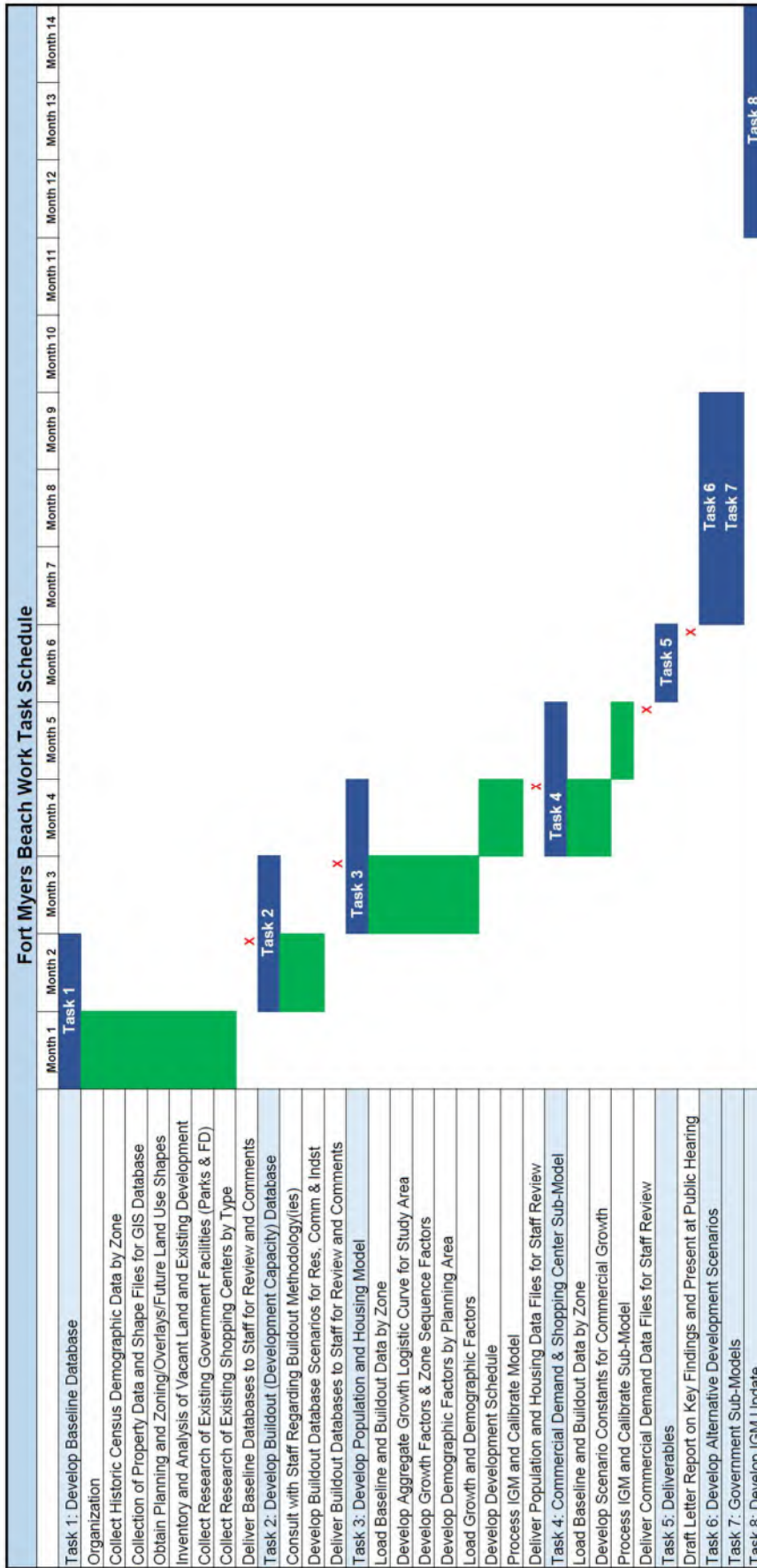


EXHIBIT D - CONSULTANT'S ASSOCIATED SUB-CONSULTANT(S)

Date: _____

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

CONSULTANT has identified the following Sub Consultant(s) and/or Subcontractor(s) which may be engaged to assist the CONSULTANT in providing and performing services and work on this Project:
(If none, enter the word "none" in the space below.)

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm				Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage	
					Yes	No
	None					

EXHIBIT E - PROJECT GUIDELINES AND CRITERIA

Date: _____

The Town has established the following Guidelines, Criteria, Goals, Objectives, Schedule, Budget and/or Requirements which shall serve as a guide to the Consultant in performing the professional services and work to be provided pursuant to this Agreement:

Item No. 1

Work will be negotiated, authorized, scheduled, funded, and accounted for by the issuance of Supplemental Task Authorizations, by the requesting department, division, or government entity.

Item No. 2

Any governmental entity may utilize the provisions of this contract for their specific needs.

Item No. 3

Work may be assigned at any time during the thirty-six (36) month contract duration. This contract also contains an option to renew by mutual agreement of both parties.

Item No. 4

No amount of work is guaranteed upon the execution of a Professional Services Agreement.

Item No. 5

Hourly rates and all other negotiated expenses will remain in effect throughout the duration of the contract.

Item No. 6

This Contract Document does not entitle any firm to exclusive rights to Town contracts. The Town reserves the right to perform any and all required work in house, through another firm, and/or by any means it so desires. The Consultant may be requested to complete portions of certain tasks in coordination with the Town and/or other Consultants under contract with the Town.

Item No. 7

In reference to Attachment No. 2 to Exhibit "B" of the Professional Service Agreement, vehicle travel mileage is considered incidental to the work and not an extra expense.

Item No. 8

Town reserves the right to add or delete, at any time, any or all tasks or services associated with this agreement.

The Consultant's services may be retained for any of the tasks separately or all of the tasks collectively. The Town and the Consultant will mutually establish the specific scope of work, which will serve as the basis for the Supplemental Task Authorization (STA) and will be based on the specifics and parameters relating to the issue or concern under study.

Item No. 9

Town shall have the right to use the documents on any Town project without the Consultant's authorization. All documents created, prepared and presented under this Agreement may be used by the Town in connection with any public offering; borrowing or other financing arrangements. The Consultant shall have the right to retain copies of all such materials.

EXHIBIT F - TRUTH IN NEGOTIATION CERTIFICATE

This Certificate is executed and given by the undersigned as a condition precedent to entering into a Professional Services Agreement with the Town of Fort Myers Beach for the project known as:
Ongoing Miscellaneous Professional Services

Before me, the undersigned authority personally appeared, who having personal knowledge as to the facts and statements contained herein after being duly sworn, deposes and states under oath that:

1. This Certificate shall be attached to and constitute an integral part of the above said Professional Services Agreement as provided in Article 2.11.
2. The undersigned hereby certifies that the wage rates and other factual unit costs supporting the compensation on which this Professional Services Agreement is established are accurate, complete, and current on the date set forth here-in-above.
3. The truth of statements made herein may be relied upon by the Town and the undersigned is fully advised of the legal effect and obligations imposed upon him by the execution of this instrument under oath.

Executed on behalf of the Party to the Professional Services Agreement referred to as the CONSULTANT, doing business as:

Metro Forecasting Models, LLC

SIGNED:

David Farmer

BY:

David Farmer

TITLE:

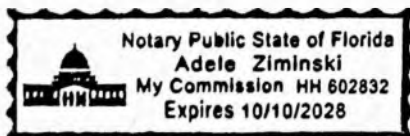
CEO

STATE OF FLORIDA

COUNTY OF LEE

The foregoing instrument was acknowledged before me this 11th day of March, 2025, by David Farmer, by means of (X) physical presence or () online notarization, personally appeared before me and (X) is personally known to me or () who has produced _____, as identification.

My Commission Expires: 10/10/2028



Adele Ziminski
Signature of Notary Public

Notary Public, State of
Florida

Adele ZIMINSKI
Printed, Typed or Stamped
Name

Commission/Serial No. HH 602832

EXHIBIT "G": INSURANCE

FOR THE PROJECT ENTITLED: INTERACTIVE GROWTH MODEL (IGM)

Section One. Insurance Coverage's to Be Obtained

(1) The Consultant shall obtain and maintain such insurance as will protect it from: (1) claims under workers' compensation laws, disability benefit laws, or other similar employee benefit laws; (2) claims for damages because of bodily injury, occupational sickness or disease or death of its employees including claims insured by general personal injury liability coverage; (3) claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees including claims insured by usual personal injury liability coverage; and (4) from claims for injury to or destruction of tangible property, including loss of use resulting there from; any or all of which claims may arise out of, or result from, the services, work and operations carried out pursuant to and under the requirements of this Agreement, whether such services, work and operations are performed by the Consultant, its employees, or by any Sub consultant(s), Subcontractor(s), or anyone employed by or under the supervision of any of them, or for whose acts any of them may be legally liable.

(2) The insurance protection set forth hereinabove shall be obtained and written for not less than the limits of liability specified hereinafter, or as required by law, whichever is greater.

(3) The Consultant, throughout the time this Agreement is in effect, shall require and ensure that any and all of its Sub-consultants and/or Sub-Contractors obtain, have, and maintain the insurance coverages required by law to be provided.

(4) The Consultant shall obtain, have and maintain during the entire period of this Agreement all such insurance policies as are set forth and required herein.

(5) In the event that the Consultant engages Sub-consultants or Sub-Contractors to assist the Consultant in providing or performing services or work pursuant to the requirements of this Agreement, the insurance coverages required under this Article to be provided by the Consultant shall cover all of the services or work to be provided or performed by all of the Sub consultants or Subcontractors engaged by the Consultant. However, in the event the services or work of Sub consultants or Sub-Contractors engaged by the Consultant is not covered by the Consultant's insurance policy or policies, it shall be the responsibility of the Consultant to ensure that all Sub-consultants or Sub-Contractors have fully complied with the Town insurance requirements for: (1) Worker's Compensation; (2) Comprehensive General Liability; (3) Comprehensive Automobile Liability; and (4) Professional Liability as required and set forth in this Exhibit.

The services or work to be provided or performed by the following Sub-consultant(s) or Sub-Contractor(s) identified elsewhere in this agreement are exempted and excluded from the Professional Liability insurance coverage requirements set forth in this Agreement:

None

Service and/or work to be
Provided and/or Performed

Indicate Name of
Individual or Firm

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

(6) The insurance coverage to be obtained by the Consultant or by Sub-consultants or Sub-Contractors engaged by the Consultant, as set forth in this Article for: (1) Workers' Compensation; (2) Comprehensive General Liability; and (3) Professional Liability is understood and agreed to cover any and all of the services or work set forth in this Agreement and all subsequent Supplemental Task Authorization(s). In the event the Town shall execute and issue written Supplemental Task Authorization(s) authorizing the Consultant to provide or perform services or work in addition to those set forth in this Agreement, it is agreed that the Town has the right to change the amount of insurance coverages required to cover the additional services or work. If the additional insurance coverages established exceeds the amount of insurance coverage carried by the Consultant, the compensation established for the Supplemental Task Authorization(s) shall include consideration of any increased premium cost incurred by the Consultant to obtain same.

Section Two. Consultant Required to File Insurance Certificate(s)

(1) The Consultant shall submit to the Town's RISK MANAGEMENT DIVISION all insurance certificates which are required under this Agreement for review and approval with respect to compliance with the insurance requirements. After approval by the RISK MANAGER, the Town will execute this Agreement and issue a written Notice to Proceed. The Consultant may then commence with any service or work pursuant to the requirements of this Agreement. All such Insurance Certificates shall be attached to this Agreement at the end of this EXHIBIT "G" and are hereby incorporated by reference thereto.

(2) All such insurance certificates shall be in a form and underwritten by an insurance company(s) acceptable to the Town and licensed in the State of Florida.

(3) Each Certificate of Insurance submitted to the Town shall be an original and shall be executed by an authorized representative of the insurance company affording coverage.

(4) Each Certificate of Insurance shall be addressed to the TOWN OF FORT MYERS BEACH, ATTN: TOWN MANAGER, at the address listed at the beginning of this Agreement.

(5) Each Certificate of Insurance shall specifically include all of the following:

(A) The name and type of policy and coverages provided; and

(B) The amount or limit applicable to each coverage provided and the deductible amount, if any, applicable to each type of insurance coverage being provided; and

(C) The date of expiration of coverage; and

(D) The designation of the TOWN OF FORT MYERS BEACH both as an additional insured and as a certificate holder. (This requirement is excepted for Professional Liability Insurance and for Workers' Compensation Insurance); and

(E) A specific reference to this Agreement and the Project to which it pertains. (This requirement may be excepted for Professional Liability Insurance).

In the event the Consultant has, or expects to enter into an agreement for professional services with the Town in addition to those provided for in this Agreement, the Consultant may elect, in the alternative, to submit a certificate of insurance containing the following statement:

"This policy covers the services or work provided or performed by the Named Insured for any and all projects undertaken for the Town of Fort Myers Beach, pursuant to one or more written Professional Services Agreements, or written Supplemental Task Authorizations thereto, and the limit(s) of liability shown shall not be intended or construed as applying to only one project."

Upon receipt and approval of such a certificate of insurance, the Town will administer the insurance required for all such agreements utilizing the single "multi-project" certificate of insurance and a separate certificate of insurance will not be required for each separate agreement.

(F) The following clause must appear on the Certificate of Insurance:

"Cancellation - Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the Certificate Holder named."

(G) A statement indicating any services or work included in or required under this Agreement that is specifically excluded or exempted from coverage under the provisions, terms, conditions or endorsements of the Consultant's insurance policy(s). A statement which indicates any and all deductible amounts applicable to each type of insurance coverage required. In the absence of any such statements, the Town will proceed with the understanding, stipulation and condition that there are no deductible amount(s), or exclusions or exemptions to the insurance coverage(s) provided.

(6) Each Certificate of Insurance shall be issued by an insurance agent and/or agency duly authorized to do so by and on behalf of the insurance company affording the insurance coverage(s) indicated on each Certificate of Insurance.

(7) If the initial, or any subsequently issued Certificate of Insurance expires prior to the completion of the work or termination of this Agreement, the Consultant shall furnish to the Town renewal or replacement Certificate(s) of Insurance, or Certified Binder(s), not later than fifteen (15) calendar days prior to the date of their expiration. Failure of the Consultant to provide the Town with such renewal certificate(s) shall be considered justification for the Town to terminate this Agreement.

(8) If any of the insurance coverage(s) required by this Agreement shall reach the date of expiration indicated on the approved Certificate(s) of Insurance without the Town having received satisfactory evidence of renewal or replacement, the Consultant shall automatically and without further notice stop performing all previously authorized services and work. During any time period that the Consultant's services or work is suspended for failure to comply with the insurance requirements set forth in the Agreement, the Consultant shall not be entitled to any additional compensation or time to provide and perform the required services or work and the Town shall not be required to make payment on any invoices submitted by the Consultant. Upon receipt and approval of renewal or replacement Certificates of Insurance, payment for any such invoices shall be made promptly by the Town.

Section Three. Insurance Coverages Required

The Consultant shall obtain and maintain the following insurance coverages as provided hereinbefore, and in the type, amounts and in conformance with the following minimum requirements:

(1) WORKERS' COMPENSATION

Coverage to comply for all employees for statutory limits in compliance with the applicable State and Federal laws. In addition, the policy must include the following:

(A) Employer's Liability with a minimum limit per accident in accordance with statutory requirements, or a minimum limit of \$500,000 for each accident, whichever limit is greater.

(B) Notice of Cancellation and/or Restriction - The policy must be endorsed to provide the Town with thirty (30) days prior written notice of cancellation and/or restriction.

(2) COMMERCIAL GENERAL LIABILITY

Coverage must be afforded on a form no more restrictive than the last edition of the Commercial General Liability Policy filed by the Insurance Services Office and must include the following:

(A) Minimum limits of \$1,000,000 per occurrence and \$1,000,000 aggregate for Bodily Injury Liability and a minimum limit of \$1,000,000 for Property Damage Liability, or a minimum combined single limit of \$1,000,000.

(B) Contractual coverage applicable to this specific Agreement including any hold harmless and/or such indemnification agreement.

(C) Such additional requirements as are set forth in the Agreement above.

(3) PROFESSIONAL LIABILITY

Coverage must include the following:

(A) A minimum aggregate limit of \$1,000,000.00

(B) Such additional requirements as are set forth in the Agreement above.

(C) Should the Professional Liability Insurance Policy issued pursuant to the above requirements and limits be written so as to provide an applicable deductible amount, or other exclusion or limitation as to the amount of coverage to be provided within the minimum coverage limits set forth above, the Town shall hold the Consultant responsible and liable for any such difference in the amount of coverage provided by the insurance policy. In the event of any such deductible amount, exclusion or limitation, the Consultant shall be required to provide written documentation that is acceptable to the Town establishing that the Consultant has the financial resources readily available to cover damages, injuries and/or losses which are not covered by the policy's deductible amounts, exclusions and/or limitations as stated above.

**EXHIBIT H - AMENDMENT TO ARTICLES
FOR THE PROJECT ENTITLED: INTERACTIVE GROWTH MODEL (IGM)**

Date: _____

For amending (i.e., changing, deleting from or adding to) the articles.

(NOTE: Each Article to be amended should be set forth below and described in such a manner as to clearly indicate what the proposed changes, deletions or additions are with respect to the present Article provisions and should set forth the wording of the Article resulting from the Amendment. The following identification system should be followed: Indicate additional (new) words or phrases by inserting the words in the text and then underline, (i.e., Months) and indicated words or phrases in the text to be deleted by striking over (i.e. ~~Weeks~~).

THE PROVISIONS HEREBY SUPERCEDE ANY PROVISIONS TO THE CONTRARY
CONTAINED ELSEWHERE IN THE ARTICLES OR EXHIBITS.

AMENDMENT NO.

ARTICLE No.____ is hereby amended as follows:

EXHIBIT I - PUBLIC ENTITY CRIME AFFIDAVIT

SWORN STATEMENT PURSUANT TO SECTION 287.133(3) (a), FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER
OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to Town of Fort Myers Beach
(print name of public entity)

by David Farmer, CEO
(print individual's name and title)

for Metro Forecasting Models, LLC
(print name of entity submitting sworn statement)

whose business address is 9410 Fountain Medical Court Suite 103
Bonita Springs, FL 34135

and (if applicable) its Federal Employer Identification Number (FEIN) is 47-3162367

2. I understand that a "public entity crime" as defined in Paragraph 287.233(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid, proposal or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that "convicted" or "conviction" as defined in Paragraph 287.233 (1) (b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an "affiliate" as defined in Paragraph 287.133 (1) (a), Florida Statutes, means:
1. A predecessor or successor of a person convicted of a public entity crime; or
 2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate
5. I understand that a "person" as defined in Paragraph 287.133 (1) (e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.
6. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement. (Indicate which statement applies.)

X Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

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EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

TOWN OF FORT MYERS BEACH WILL NOT INTENTIONALLY AWARD TOWN CONTRACTS TO ANY CONTRACTOR WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING A VIOLATION OF THE EMPLOYMENT PROVISIONS CONTAINED IN 8 U.S.C. SECTION 1324 a(e) SECTION 274A(e) OF THE IMMIGRATION AND NATIONALITY ACT ("INA").

TOWN OF FORT MYERS BEACH SHALL CONSIDER THE EMPLOYMENT BY ANY CONTRACTOR OF UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A (e) OF THE INA. SUCH VIOLATION BY THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN SECTION 274A (e) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY LEE COUNTY.

PROVIDER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

Company Name:

Metro Forecasting Models, LLC

David Farmer
(Signature)

CEO
(Title)

3-11-25

(Date)

STATE OF FLORIDA

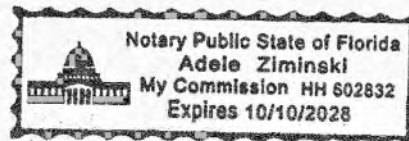
COUNTY OF LEE

The foregoing instrument was signed and acknowledged before me this 11 day of March, 2025, by David Farmer who is personally known to me.

Adele Ziminski
Notary Public Signature

Adele ZIMINSKI
Printed Name of Notary Public

HH602832 / 10-10-2028
Notary Commission Number/Expiration



The signee of this Affidavit guarantee, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made. TOWN OF FORT MYERS BEACH RESERVES THE RIGHT TO REQUEST SUPPORTING DOCUMENTATION, AS EVIDENCE OF SERVICES PROVIDED, AT ANY TIME.

**EXHIBIT K – AFFIDAVIT OF CONFIDENTIALITY
FOR THE PROJECT ENTITLED: INTERACTIVE GROWTH MODEL (IGM)**

I, the undersigned, David Farmer, am a principal of Metro Forecasting Models, LLC, the Town's provider of professional services, and serve as a member of the Professional Service team for the Town of Fort Myer Beach.

This is to certify that I have been informed of the Town's policy on disclosure of information, and agree to not use, disclose, or share Town information in any way, except for as directed by the Town Manager or his/her designee. I agree to use my best efforts to prevent and protect information, or any part thereof, from disclosure to any person other than the intended recipient, who is required to receive said information.



Signature
8-11-25

Date

United States of America

United States Patent and Trademark Office

THE INTERACTIVE GROWTH MODEL

Reg. No. 3,871,653

Registered Nov. 2, 2010

Int. Cl.: 42

SERVICE MARK

SUPPLEMENTAL REGISTER

VAN BUSKIRK, RYFFEL AND ASSOCIATES, INC. (FLORIDA CORPORATION)
100 ESTERO BLVD., SUITE 434
FORT MYERS BEACH, FL 33931

FOR: COMPUTER PROGRAMMING; COMPUTER MODELING SERVICES, NAMELY,
COMPUTER SIMULATION FROM COMPUTER PROGRAMS FOR OTHERS, IN CLASS 42
(U.S. CLS. 100 AND 101).

FIRST USE 1-5-2003; IN COMMERCE 1-5-2003.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PAR-
TICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 76-703,242, FILED P.R. 6-4-2010; AM. S.R. 9-16-2010.

DAVID MURRAY, EXAMINING ATTORNEY



David J. Kyfas

Director of the United States Patent and Trademark Office

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Acting Register of Copyrights, United States of America

Registration Number
TX 7-278-236

**Effective date of
registration:**

June 9, 2010

Title

Title of Work: THE INTERACTIVE GROWTH MODEL

Completion/Publication

Year of Completion: 2007

Date of 1st Publication: February 5, 2007

Nation of 1st Publication: United States

Author

■ **Author:** VAN BUSKIRK, RYFFEL AND ASSOCIATES, INC

Author Created: Computer program

Work made for hire: Yes

Citizen of: United States

Copyright claimant

Copyright Claimant: VAN BUSKIRK, RYFFEL AND ASSOCIATES, INC

100 Estero Blvd., Suite 434, Fort Myers Beach, FLA, 33931, United States

Rights and Permissions

Organization Name: VAN BUSKIRK, RYFFEL AND
ASSOCIATES, INC.

Email: cryffel@interactivegrowthmodel.com

Telephone: 239-281-6312

Address: 100 Estero Blvd., Suite 434

Fort Myers Beach, FLA 33931

Certification

Name: PAUL VAN BUSKIRK

Date: May 26, 2010

Correspondence: Yes



9410 Fountain Medical Ct. Suite 103
Bonita Springs, FL 34135
239.913.6949
metroforecasting.com

Proposed Scope of Services and Work Tasks
For the Update of the Interactive Growth Model Ver 3 (IGM Ver3)

Metro Forecasting Models uses cutting edge technology to collect and analyze data for the Interactive Growth Model. Our skilled planners evaluate parcels spatially in GIS for their existing and future development characteristics. The GIS attributes are loaded into the IGM that produces superior forecasting data for population, housing, commercial, industrial and government facilities.

Proposed agreement between Metro Forecasting Models, LLC (hereafter referred to as the CONSULTANT) and the Town of Fort Myers Beach, Florida (hereafter referred to as the CLIENT) to provide services with the assistance of CLIENT's Staff for the update of an Interactive Growth Model Ver 3 (hereinafter referred to as the IGM)

The key steps in the development of the model include:

- Apply demographics in each of the disaggregated zones with 2020 Census Block Group data.
- Retrieve, review and evaluate Lee County Property Appraiser parcel data to create 2025 Baseline data.
- Interviews with land owners, commercial real estate brokers and city staff to understand future buildout potential of larger vacant land tracts.
- Buildout inventory of development by type and intensity and forecast of demographics by Zone.
- Accurate population forecast (the Population and Housing Forecast Sub Model).
- Aggregate the Zones into clusters for custom planning areas.
- Design and develop criteria and formulas for spatial distribution of development over time.
- Design and develop sub models selected herein.
- Data output by Zone for 5-year increments.
- Graphic interpretation of baseline, buildout and incremental forecast data in a custom GIS web application for use by all departments.

The IGM Land Use Model will disaggregate the study area into Zones, primarily Traffic Analysis Zones (TAZ) delineated according to the Metropolitan Planning Organization (MPO). The IGM Ver 3 will forecast when and where development takes place as well as the population and housing types in the TAZ/Block zones from the **baseline year** (i.e. 2025) in 5-year increments to **buildout** (2030, 2035, 2040 etc.).

The IGM Land Use Model is ideal for determining the aggregate and spatial apportionment of land to achieve certain goals and maintain desired Levels of Service. The IGM, as a planning tool, provides the data and insight needed by planners and policy makers to balance the economy and encourage data driven decisions.

Study Area

The study area shall consist of the political boundary of the Town of Fort Myers Beach, Florida limits existing at the time of the execution of this contract.

Scope of Services

The CLIENT, in consultation with the CONSULTANT, will organize a staff taskforce for the development and implementation of the IGM. The CLIENT will appoint staff members within the CLIENT government and request representatives from other agencies on an as-needed basis. The CLIENT will also assign staff members with experience in comprehensive planning. The purpose of the taskforce is to provide input for the development and application of the IGM Ver 3. The taskforce will also assist the CONSULTANT in identifying and collecting pertinent data that are instrumental to the development of the IGM Ver 3 and the many sub models.

PHASE ONE

Work Task 1.0

The CONSULTANT will develop the current year **baseline** data for current development with staff assistance that can be updated annually. Individual zones for the total CLIENT's incorporated area will be delineated. Each zone will be inventoried for current development such as housing unit by type, population characteristics, retail space by building area, office/services by building area industrial and wholesale by building area, public parks, fire stations and other data considered relevant. The **baseline** scenario will be developed for each zone using GIS from the following sources:

- Parcel property attributes from Property Appraiser database
- E911 database
- National Wetland Inventory database
- Building permits, provided by CLIENT
- Entitled projects which are not yet fully developed, provided by CLIENT

Upon completion of the zone data and zone delineation, it will serve as the **baseline** for the IGM. This will provide an opportunity to test the CLIENT's database to query land use data. The model can be updated annually. It could also be used to provide an annual report to the Council/Board Members about the current population and development.

The CONSULTANT will develop an interactive web application to communicate the baseline scenario data. The purpose of building the interactive web application is to produce a streamlined and data-rich visualization tool for staff, policymakers and stakeholders to use and review. This web application will demonstrate the baseline condition, including housing, population, vacant land, and commercial space. This web application can be enhanced as requested to include various other spatial datasets, including socioeconomic and environmental characteristics.

The CONSULTANT will attend one initial workshop to communicate the data and research methodology for the Interactive Growth Model.

Work Task 2.0

The CONSULTANT will develop a **buildout** database with staff assistance. Similar to the current year baseline database, each parcel will be inventoried for **buildout** development such as housing units by type, population characteristics, retail space by building area, office/services by building area, industrial and wholesale by building area, and other data considered relevant. Data will be entered for each zone into the computer program for export to Excel workbooks for analysis. The database can be updated to reflect the changes in zoning or future land uses that add or reduce density/intensity of future development.

The buildout scenario will be developed for each parcel from the following sources:

- Current zoning by land use type and intensity, vested rights and current practices
- Comprehensive Plan, its future land use map overlay, community's vision and current and future trends as well as stakeholder's perceptions
- Approved but not developed planned developments, provided by CLIENT
- Parcel property attributes from CLIENT database
- Simulation models of similar communities

Work Task 3.0

Population and Housing Model: This model produces the forecast for single family and multifamily housing units by parcels per zone including the rate of change for household size and vacancy rates in 5-year increments from the **baseline year** (i.e. 2025) to **buildout** (i.e. 2085) for each of the disaggregated zones. This task also includes the inventory and ground-truthing of current housing units by type and the developed acres of housing for each zone. The demographics of the population by zones are analyzed for forecasting. This task requires an estimate of housing development by type and acreage at **buildout** for each zone (the supply) by estimating the yield according to zoning, the comprehensive plan and other development characteristics. The forecast of household size and vacancy rates to **buildout** are also included. The CONSULTANT will upload the **baseline** and **buildout** data, and the CONSULTANT will process the data in 5-year increments and provide reports of the output data in Excel format in 5-year increments.

Work Task 4.0

Commercial Sub Model: This sub model determines and forecasts the internal demand for commercial building area and land area by disaggregated zones in 5-year increments to **buildout**. This task also includes the inventory of current commercial space by type, ground-truthing with aerial photography and the developed acres of commercial use for each zone. This task requires

an estimate of commercial development by type and acreage at **buildout** for each zone by estimating the yield according to zoning, the comprehensive plan and other variables. When the internal supply of commercial development exceeds internal demand for commercial space, analysis will be conducted to determine the external population required to support the internal supply of developed commercial space. The sub model will forecast the internal demand for neighborhood and community commercial centers by zone and year and the supply of commercial land to meet those needs. The data can also be analyzed for the community's economic objectives. This model also provides a land budget for the area required to meet the needs of the CLIENT residents. The CONSULTANT will process the data in 5-year increments and provide reports of the output data in Excel format in 5-year increments.

Work Task 5.0

Deliverables:

Interactive Growth Model Summary Report

The CONSULTANT will develop a report to summarize the methodology, results, and key findings of the Interactive Growth Model and selected government Submodels. The report will include a description of the methodology, data inputs/research, and key findings. The report will describe the results of the buildout analysis and forecast(s), including spatial housing and population growth, vacant land by type/category, future demand for specific government services, and key land use policy considerations.

Meetings

Meetings with Staff/Department Heads

The CONSULTANT will attend meetings as requested subject to the budget allowance.

Presentation to Town Council

The CONSULTANT will attend one public hearing to present the findings from the update to CLIENT Council and accept the Cape Coral Interactive Growth Model and Final Summary Report.

Additional Meetings

The CONSULTANT will any meeting at the request of the CLIENT subject to the budget allowance.

PHASE TWO

Work Task 6.0

Alternative Development Scenarios

Alternative IGM scenarios gives the CLIENT the ability to test different planning policies and gauge their impact. For example, planning policies can be tested (the Land Development Regulations) for the undeveloped areas near arterials/collectors, etc., to determine which policies are most efficient and reduce traffic in the roadway network. Different scenarios can be tested any time after the population and housing model has been processed.

Work Task 7.0

Park Sub Model: To develop an open space model to determine standards and the needs of the population for develop open spaces (neighborhood, community and regional parks), the timing of facilities and their location as a function of population. This model can be updated every five years for scheduled capital improvement programs. The CONSULTANT will upload the baseline (inventory and location of current facilities) and build out data (future needs for facilities), and build out data, and the CONSULTANT will process the data in 5-year increments and provide reports of the output.

Fire Stations Sub Model: To develop a sub-model to determine the need, service area, and spatial distribution of fire stations (pumper and ladder stations). The CONSULTANT will upload the baseline (inventory and location of current facilities) and build out data (future needs for facilities), process the data in 5-year increments and provide reports of the output data in Excel format in 5-year increments. The criteria are the ISO standards for a Class 1 insurance rating.

Work Task 9.0 (presented as a package)

Interactive Growth Model Maintenance

The CONSULTANT will store, host, and maintain the Interactive Growth Model for the CLIENT. The CONSULTANT will perform one annual update one year after the model is completed. Intermittent updates will be performed using information provided by the CLIENT to update the forecast including, but not limited to, building permits, proposed projects, redevelopment, and plan and policy changes.

Update Report

After the annual update is performed, the CONSULTANT will provide an Update Summary Report. The Update Summary Report will describe the process and methodology of updating the baseline and buildout data, as well as provide a description of key findings and trends. The Update Report will serve as a benchmark to track spatial growth by area, vacant land by type, development trends, and key land use considerations.

Fee Schedule For
The Town of Fort Myers Beach Interactive Growth Model Ver 3 (IGM Ver3)

Metro Forecasting Models LLC proposes a fee of \$150,000 (One hundred Fifty thousand dollars) billable monthly on a percent completed basis. Below are the values attributed for each Work Task. These values and the hours spent will be used to prepare the monthly invoices.

Phase One Scope of Work	Value	% Complete
Work Task 1.0 – Develop Baseline Database & Web App	\$25,000	0%
Work Task 2.0 – Develop Buildout Database	\$15,000	0%
Work Task 3.0 – Develop Population and Housing Model	\$10,000	0%
Work Task 4.0 – Develop Commercial Sub Model	\$10,000	0%
Work Task 5.0 – Deliverables	\$20,000	0%
Meetings and Presentations (T&M)	\$15,000	0%
Work Task 6.0 – IGM Alternative Scenarios (budget)	\$15,000	0%
Work Task 7.0 – Develop Government Sub Models:		
Park Sub Model	\$12,500	0%
Fire Station Sub Model	\$ 7,500	0%
Work Task 8.0 – 2026 Annual Update, Staff Support, Model & Web App Maintenance	\$20,000	0%
Total	\$150,000	0%



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

03/11/2025

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Hiscox Inc. 5 Concourse Parkway Suite 2150 Atlanta GA, 30328	CONTACT NAME: PHONE (A/C, No, Ext): (888) 202-3007 E-MAIL ADDRESS: contact@hiscox.com FAX (A/C, No): INSURER(S) AFFORDING COVERAGE INSURER A: Hiscox Insurance Company Inc INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	NAIC # 10200
INSURED Metro Forecasting Models 9410 Fountain Medical Ct #103 Bonita Springs, FL 34135		

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:		Y	P100.350.535.9	06/24/2024	06/24/2025	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 0 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ S/T Gen. Agg. \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ HIRED AUTOS ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB EXCESS LIAB DED ☐ RETENTION \$ ☐	☐ OCCUR ☐ CLAIMS-MADE					EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	☐ Y ☐ N ☐ N/A					PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Professional Liability		Y	P100.349.072.9	06/24/2024	06/24/2025	Each Claim: \$ 2,000,000 Aggregate: \$ 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

This policy covers the services or work provided or performed by the Metro Forecasting Models, LLC for any and all projects undertaken for the Town of Fort Myers Beach, pursuant to one or more written Professional Services Agreements, or written Supplemental Task Authorizations thereto, and the limit(s) of liability shown shall not be intended or construed as applying to only one project.

CERTIFICATE HOLDER**CANCELLATION**

TOWN OF FORT MYERS BEACH
2731 Oak Street
Fort Myers Beach, FL 33931

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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1. **Request:**

Meeting Date: April 7, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AGREEMENT FOR DEMOLITION SERVICES WITH HONC DESTRUCTION BASED ON PRICING COMPETITIVELY PROCURED BY THE CITY OF BONITA SPRINGS; AUTHORIZING THE MAYOR OR TOWN MANAGER TO SIGN THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

Approval of the resolution is necessary to allow the Town to enter into a contract with Honc Destruction ("Contractor"), for demolition of unsafe structures as determined by the Building Official and general demolition services, which remain following Hurricane Ian.

What the action accomplishes:

The proposed resolution allows the Town to expeditiously contract with the Contractor, by using the Agreement for demolition services with the City of Bonita Springs as a "piggyback" contract and avoiding any additional delay, which may result from competitive bidding.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Joe Onzick, Finance Director

5. **Background:**

The City of Bonita Springs, Florida, entered into a new contract with the Contractor for demolition services, including but not limited to demolition of structures designated for removal and was awarded January 15, 2025. The contract has a 5 year term with a two additional years of renewal if mutually agreed upon. The Town previously utilized the City's previous contract to obtain demolition quotes but that contract expired in the beginning of 2025.

The Town's Building Official has identified several unsafe structures due to damage from Hurricane Ian, which have not been repaired and in some instances appear to be abandoned. Because of the hazardous condition these structures create, the Building Official is proceeding with condemning the structures and thereafter will need the services of a demolition contractor to remove and structure and debris. The Finance Director has confirmed funding is available for payment to the Contractor and that the Town will seek to recover the cost of demolition from the property owner by imposing a lien as provided in Division 3 of Article II of Chapter 6 "Maintenance Codes, Building Codes and Coastal Regulations" in the Town's Code of Ordinances. Use of a "piggyback" agreement, incorporating the contract with the Contractor, will allow the Town to have the needed resource available to complete the demolition once the unsafe structure proceedings have concluded.

This contract can also provide miscellaneous demolition services the Town may need throughout the agreement term.

Attachments:

1. Res. 25-93, Final Demolition Bonita Springs Piggyback
2. BSC-25-02-025 HONC Destruction Demolition Services Contractor RFB 24-16
3. NS Draft Demolition Piggyback Contract - City of Bonita Springs 2025 updated

Financial Impact:

The Finance Director has indicated that adequate funding is available to proceed with contracting for demolition services and that piggybacking on the City Agreement is advantageous to the Town.

6. **Alternative Action**

Do not approve and continue with the one other contracted firm for demolition services.

7. **Management Recommendations:**

Approve

8. **Recommended Approval:**

Jason Freeman, Deputy Town Clerk / Legislative Liaison

Joe Onzick, Finance Director

Frankie Kropacek, Operations & Compliance Director

nancy stuparich, Town Attorney

Amy Baker, Town Clerk

Andy Hyatt, Town Manager

Created/Initiated - 3/20/2025

Approved - 3/20/2025

Approved - 3/20/2025

Approved - 3/20/2025

Approved - 3/25/2025

Final Approval - 3/25/2025

RESOLUTION NUMBER 25-93

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AGREEMENT FOR DEMOLITION SERVICES WITH HONC DESTRUCTION, BASED ON PRICING COMPETITIVELY PROCURED BY THE CITY OF BONITA SPRINGS, FLORIDA THROUGH AN AGREEMENT; AUTHORIZING THE MAYOR OR TOWN MANAGER TO SIGN THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, the City of Bonita Springs and Honc Destruction (“Contractor”) entered into a contract for demolition services on or about February 3, 2025 (hereinafter the “Contract”); and

WHEREAS, pursuant to the Contract, the Contractor has agreed to provide the City of Bonita Springs with demolition services; and

WHEREAS, Section 163.01, Florida Statutes, also referred to as the Florida Interlocal Cooperation Act, permits local governments to cooperate with other localities, including governmental units outside the State of Florida on the basis of mutual advantage; and

WHEREAS, Section 2-480(f) of the Town’s Code of Ordinances provides that when it is in the best interest of the Town, it may cooperatively purchase goods or services from any other government agency, which has competitively bid and awarded a contract for any product or service at the awarded price, if the original bid specifications and award allow it and if the other governmental agency’s procurement complies with the Town’s competitive bid policy; and

WHEREAS, the Town Council finds the City of Bonita Springs RFB-24-16 and the resulting Contract were competitively bid with procedural guarantees of fairness and competitiveness equivalent to those of the Town and the Contractor has agreed to allow the Town to “piggyback” on the competitive pricing provided to the City of Bonita Springs; and

WHEREAS, it is in the best interests of the residents of the Town of Fort Myers Beach to execute an agreement with the Contractor containing similar terms and conditions as contained in the Contract.

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

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

Section 2. The Town Council hereby approves the Agreement to Piggyback a Contract for Demolition Services Procured by the City of Bonita Springs, and authorizes the Mayor or Town Manager to execute the Agreement, which is attached hereto as Exhibit "A."

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

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

ADOPTED this ____ day of _____ 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of _____ 2025.

CITY OF BONITA SPRINGS CONSTRUCTION CONTRACT
DEMOLITION SERVICES CONTRACTOR
RFB 24-16

Contract No.: _____
City Award Date: January 15, 2025

CONTRACT

Made as of the 3rd day of February in year of 2025.

BETWEEN the CITY OF BONITA SPRINGS (hereinafter referred to as "City"), Lee County, Florida, and the CONTRACTOR:

Honc Destruction, Inc. 4630 Elevation Way Fort Myers, FL 33905	Check Appropriate Line: ☐ Individual ☐ Partnership ☐ LLC or Other ☒ Incorporated in the State of Florida
--	---

in consideration of the mutual covenants herein set forth, agree as follows:

Contractor hereby agrees to provide and perform the services as set forth in this Contract.

ARTICLE 1. WORK

The Contractor shall perform all the work required by the Contract Documents for the DEMOLITION SERVICES CONTRACTOR in full accordance with the drawings and as elaborated in the specifications.

PROJECT NAME: Demolition Services Contractor RFB 24-16

LOCATION: TBD

SCOPE OF WORK

The scope of work includes, but is not limited to asbestos and lead-based paint survey and abatement (as applicable), demolition of the structure and any outbuildings located on the property and removal and disposal of concrete pads, sidewalk and driveways, fencing, mailboxes, signs, poles, porches, trash, waste, rubbish, rocks, debris, etc. The finished surface shall be reasonably smooth compacted and free from irregular surface changes.

Demolition will include the cost of "final disposal" of debris in a manner that complies with all local, state, and federal guidelines, and codes. Concrete pads, slabs or driveways will be removed and disposed of properly.

In addition to the general requirements, the following conditions shall also be required:

The pricing will be based on the square footage of the structure. Should the structure be two (2) stories, the square footage will be the total of all floors.

The Contractor shall be responsible for the complete permit process and be responsible for all costs associated with the permit process which shall include federal, state, and local requirements. The City will reimburse the Contractor for permit cost only. A copy of the permit receipt must be attached to the invoice if seeking reimbursement.

BSC-25-02-025

The Contractor is responsible for demolishing the specific structures (wood frame or block) and removing the resulting debris, as well as any associated outbuildings on the properties. Where work is adjacent to the street, the Contractor shall conduct the work in a manner that will avoid the accumulation of debris from its operations on the traffic areas of the adjacent streets or roadways. Contractor shall continuously remove such accumulations and where necessary broom or wet down traffic areas to prevent dust.

All demolition debris shall become the property of the Contractor. It shall be the Contractor's responsibility to remove and dispose of, from the site, all materials in accordance with federal, state, and local guidelines, ordinances, and codes.

The Contractor is responsible for collecting and transporting debris. All truck hauling must comply with Florida State Department of Transportation regulations. After being loaded in the work area, trucks shall have their loads trimmed so that no debris extends horizontally beyond the bed in any direction.

Loading, transporting and disposal of all demolition, vegetative debris and other debris to a legal landfill or disposal site.

The Contractor is responsible for timely removal, transportation and disposal of all debris including concrete slabs and appurtenances, as a result of the demolition services.

The Contractor shall remove all HVAC units following EPA guidelines for the proper disposal of refrigerants.

Completely remove below-grade construction, including foundation walls, footings, driveways, and walkways. The Contractor will be responsible for filling and finish grading of the site to prevent standing water in the demolition area. Below-grade areas and voids resulting from demolition of the structure shall be filled with selected back-fill and restored to grade level. The lot shall be cleaned, smoothed, and seeded in a professional manner. Seed and straw all back-fill areas utilizing a mixture of Rye and Bahia or an appropriate seasonal mix of grass seed.

The Contractor shall contact an underground utilities locator, at its expense, prior to commencing any demolition services. Any existing or abandoned utilities (water and sewer lines) on the site shall be removed and capped to the limits of the site. These service lines shall be fully removed to the extent possible.

As applicable, remove all septic tanks and appurtenances from the site.

As applicable, all wells (irrigation, etc.) should be grouted and deemed unusable.

All relevant street side appurtenance including fire hydrants and street signs shall be left undamaged during demolition and debris removal. Damaged, disconnected and/or out-of-place street side appurtenance, such as fire hydrants, manhole covers and street signs shall not be collected, unless otherwise directed by the City. Locations of previously damaged appurtenance shall be reported to the City prior to beginning work.

Hazardous or toxic waste must be disposed of in accordance with federal and state laws and local ordinances. The Contractor must notify the City immediately of any situation which may cause a health or safety risk to the public.

The use of burning at the project site for the disposal of refuse and debris will not be permitted. The use of explosives will not be permitted.

Limit hours of operation to Monday through Friday during the hours of 7:00AM to 6:00PM. Special hours of operation outside the normal hours must be approved by the City. The Contractor shall make every effort to minimize noise caused by the operations. Equipment shall be equipped with silencers or mufflers designed to operate with the least possible noise in compliance with County, State and Federal Regulations.

Tree clearance/removal is not a part of this project. If a tree or other large mature landscape materials must be removed in order for the Contractor to proceed or complete the demolition process, the Contractor must gain City's approval prior to cutting the tree. All costs associated with the tree removal will be the sole responsibility of the Contractor. Normal landscaping associated with the residential structure shall be removed with the structure.

During progress of the work, the convenience and protection of the public must be provided, and interferences held to a minimum.

The Contractor shall, at all times, conduct the work in such a manner as to insure the least practicable obstruction to public travel. The convenience of the general public and of the residents along and adjacent to the area of the work shall be provided for in a satisfactory manner, consistent with the operation and local conditions. Roads and streets must be kept open at all times, or suitable detours provided. When necessary to close streets, "Streets Closed" signs shall be placed immediately adjacent to the work, at such locations as traffic demands, and the Contractor shall notify the City, law enforcement agencies, fire departments, and parties operating emergency vehicles before the street is closed and again as soon as it opened. Access to fire hydrants and other fire extinguishing equipment shall be provided and maintained at all times.

The Contractor shall be responsible for removing and disposing of any obstructions or obstacles at the site of the work or along the right-of-way to the satisfaction of the City. The Contractor is responsible for damages and repairs to private and public property. Minor obstructions shall be removed and properly disposed of.

Fences at the site or along the right-of-way shall be removed by the Contractor.

Particular attention must be given to traffic safety. While it is incumbent upon the Contractor to provide for safety of Contractor personnel and the general public, particular attention to safety, traffic flow, proper warning signs and direction shall be insisted upon throughout the duration of the work. Competent trained signal people shall be employed and utilized as required to allow safe vehicular traffic movement through the project area at any time there is a potential traffic hazard directly or indirectly from work operations. Although the nature of the project may require that traffic be halted for temporary periods, vehicular accessibility for the public shall be maintained at all times. The Contractor shall provide and be responsible for all barricades, warning light signs, signals, flagmen and all else required to allow safe vehicular movement in the vicinity of the demolition area.

No roadway or street will be permitted to have more than one (1) lane of traffic closed at any time.

The Contractor shall confine demolition operations to the immediate vicinity of the location and in no case shall Contractor encroach beyond the limits of the City's property or rights-of-way. Contractor shall place materials, equipment, supplies, etc., so as to cause the least possible damage to property and interference with traffic. Should the Contractor need to locate materials, equipment, etc. on private property, the Contractor shall provide a permission letter from the private property owner to the City prior to commencing work.

It will be the duty of the Contractor to locate the limits of the rights-of-way, or property lines, prior to beginning demolition. Contractor shall be solely responsible for damage of other property outside the boundaries of the rights-of-way and City owned property and shall make satisfactory settlement for any damage directly with the property owner involved.

The Contractor shall maintain safe conditions at all times. Should the City consider the operations unsafe, the operations shall be suspended until the Contractor has corrected all unsafe conditions to the satisfaction of the City.

The Contractor shall conduct operations to minimize damage by falling debris or other causes to adjacent buildings, structures, utilities, roadways, storm drainage and other facilities including persons, as approved by the City. The Contractor shall provide interior and exterior shoring, bracing, or support to prevent the movement, settlement, or collapse of structure to be demolished.

The Contractor shall provide protection from turbidity runoff at all times by utilizing hay bales, silt fences, and/or turbidity curtains, or any other approved method to control runoff. The City will monitor this activity closely and the Contractor shall be responsible for any violations.

The Contractor is responsible for repair/replacement of any damaged City's sidewalks caused by the Contractor's operations at their expense. The Contractor shall assume full responsibility for the protection of all buildings, structures, and utilities, private or public, including poles, signs, services to buildings, utilities

in the street, gas pipes, water pipes, hydrants, sewers, storm drains, electric and telephone cables. The Contractor shall carefully support and protect all such structures and utilities from injury of any kind. The Contract, at their expense, shall repair any damage resulting from the Contractor's operations.

The Contractor shall remove all excess material and shall clean up and restore the site. All damage, as a result of the work under this proposal, done to existing structures that are not part of the proposal, pavement, driveways, paved areas, curbs and gutters, sidewalks, shrubbery, grass, trees, utility poles, utility pipelines, conduits, drains, catch basins, flagstones, rocks, gravel or stable areas or driveways and including all obstructions not specifically name herein, shall be repaired.

ASBESTOS

In the event the Contractor encounters and/or disturbs any asbestos containing material at the project location, the Contractor must immediately stop work and contact the City to report the encounter and/or disturbance.

It shall be the responsibility of the Contractor to assume any costs associated with cleaning up a disturbance that is caused by the Contractor's work.

The Contractor or authorized agent shall hold harmless and defend the City and its agents and employees from all suits and actions, including attorney's fees and all costs of litigation and judgment of any name and description arising out of or incidental to the performance of the Contractor work performed thereunder. This provision shall also pertain to any claims brought against the City by any employee of the named Contractor, any subcontractor, or anyone directly or indirectly employed by any of them.

Immediately after completion of the work, or any substantial unit or portion of it, the Contractor shall remove all unused material, refuse, and dirt placed by him/her in the vicinity of the work and shall leave the premises in a neat and orderly condition, satisfactory to the City.

Where work is along streets or highways, and dirt has been placed on the pavement, the pavement shall be swept clean or all dirt after back-fill has been completed.

Site: The Contractor shall clean up behind the work as much as is reasonably possible as the work progresses. Upon completion of the work and before acceptance of the Final payment for each property by the City, the contractor shall remove all surplus and discarded materials and excavated material and rubbish from the roadways, sidewalks, parking areas, lawns and all adjacent property; shall restore, in an acceptable manner, all property, both public and private, which has been disturbed or damaged during the prosecution of the works; and shall leave the whole site in a neat and presentable condition.

ARTICLE 2. AMOUNT OF CONTRACT

The City shall pay the Contractor in current funds for the performance of the work, subject to additions and deductions by change order as provided in the Contract Documents, the not-to-exceed unit prices as listed below:

Line Items

Item	Description	Unit of Measurement	Unit Price
1	Demolish Wood Frame Structure – As outlined in the Scope of Work in the RFB	Square Foot	\$ 2.10 /SQ FT
2	Demolish Concrete Block Structure – As outlined in the Scope of Work in the RFB	Square Foot	\$ 2.50 /SQ FT
3	Asbestos Survey	Lump Sum	\$ 2000.00 /LS
4	Asbestos Abatement	Square Foot	\$ 3.75 /SQ FT
5	Installation of Silt Fence	Lineal Foot	\$ 1.50 /LF
6	Concrete and/or Asphalt Flatwork (slabs, footers, foundations, driveway, walkways, etc.)	Cubic Yard	\$ 3.00 /CU YD
7	Septic Tank and Appurtenances Removal	Lump Sum	\$ 600.00 /LS
8	Wells on site – Grouted (unusable)	Lump Sum	\$ 2000.00 /LS
9	Loading, transporting, and disposing of demolition debris at an approved landfill (Tonnage based on individual weight tickets from disposal site)	Ton	\$ 150.00 /Ton
		Cubic Yard	\$ 30.00 /CU YD
10	Restoration of Natural Ground after removal of all debris, appurtenances, and foundation. Restoration shall include fill, grade, furnish and install Rye and Bahia or any seasonal mix	Square Foot	\$ 0.45 /SQ FT

ARTICLE 3. PROGRESS PAYMENTS

Based upon applications for payment submitted to the City's Representative by the Contractor, and Certificates for Payment issued by the City's Representative, the City shall make complete payments on account of the contract price to the Contractor as provided in the Contract Documents as follows:

- 3.1 The City will process final payments for each structure demolished based on the square footage costs outlined in Article 2 above and in accordance with the schedule set forth in Florida Statutes §218.735, timely payment for purchase of construction services, in the Local Government Prompt Payment Act. The City shall make payment to the Contractor, unless the City shall have grounds, such as a good faith dispute with the Contractor, a claim brought against the Contractor, or otherwise the subject of a claim or demand between the City and the Contractor, for withholding the payment of retainage. If applicable, the foregoing provisions shall not apply to any construction services purchased by the City which are paid for, in whole or in part, with Federal funds, such as U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA) and/or

U.S. Housing and Urban Development, Community Development Block Grant Entitlement, Disaster Recovery or Mitigation and is subject to Federal grantor laws and regulations or requirements that are contrary to any provision of the Local Government Prompt Payment Act.

- 3.2 Upon final completion of the work and acceptance of the project, a sum sufficient to increase the total payments to one hundred percent (100%) of the contract price, less such amounts as the City shall determine for all incomplete work, unsettled claims or unused units as provided in the Contract Documents.

ARTICLE 4. CONTRACT DOCUMENTS

This Contract entered into this date by the City of Bonita Springs, Florida, and the Contractor. The parties hereto do mutually agree as follows:

The Contractor shall furnish all labor, equipment, and materials and perform the work above described for the amount stated above in strict accordance with the General Conditions, Supplemental Conditions, Plans and Specifications and other Contract Documents, all of which are made a part hereof and enumerated as follows:

CONSTRUCTION CONTRACT

- 4.1 City of Bonita Springs Construction Contract and Sample Documents
 - 4.1.1 Request for Bids
 - 4.1.2 Notice to Bidders
 - 4.1.3 Instruction to Bidders
 - 4.1.4 Contractor's Bid Proposal
- 4.2 Project and FDOT Technical Specifications
- 4.3 Certificate of Insurance
 - 4.3.1 The following which may be delivered or issued after the effective date of the Contract and are not attached hereto: All written amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to the Supplemental Conditions of the RFB.

ARTICLE 5. TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

- 5.1 Work to be started on the date specified in the Official Notice to Proceed.
- 5.2 This Contract is effective as of the date both parties have fully executed the document and shall remain in effect a period of five (5) years with the option to renew for two (2) additional years, upon mutual agreement.

5.3 LIQUIDATED DAMAGES

The City and Contractor recognize that time is of the essence to this agreement and that the City will suffer financial loss if the work is not completed within the times specified in the above, plus any extensions thereof allowed by change order. The City also recognizes the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by the City if the work is not completed on time. Accordingly, instead of requiring any such proof, City and Contractor agree that as Liquidated Damages for delay (but not as a penalty) the sum of \$200.00 per day shall be deducted from monies due the Contractor or paid by the Contractor to the City for each calendar day that expires after the time specified for substantial completion until the project achieves substantial completion. The City shall have the right to deduct all damages due from the final payment request as well as retainage. However, prior to deducting liquidated

damages, the City shall give the Contractor seven (7) calendar days' notice prior to submitting the adjusted amount due to the City's Finance Department for payment. The City reserves the right to effect repairs itself as may be required to remedy any deficiency or to achieve final completion and to charge the Contractor for such costs.

ARTICLE 6. MISCELLANEOUS PROVISIONS

- 6.1 Terms used in the Contract which are defined in the Supplemental Conditions of the RFB shall have the meaning designated in those conditions.
- 6.2 The City and Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.
- 6.3 The Contractor shall not assign or transfer any of its rights, benefits, or obligations, except for transfer that result from transfer or consolidation with a third party, without the prior written approval of the City. The Contractor shall have the right to employ other persons and/or firms to serve as sub-contractors in connection with the requirements of the Contract Documents.
- 6.4 To the fullest extent permitted by Florida law, the Contractor shall be liable and agrees to be liable for and shall defend, indemnify and hold harmless the City, its officers and employees from any and all liabilities, damages, losses and costs, to person or property including, but not limited to, reasonable attorneys' fees arising out of or caused in whole or in part by any act omission, error or default by the Contractor, its subcontractors, materialmen, or agents of any tier or their employees arising out of this agreement or its performance. This indemnification obligation shall not be construed to negate, abridge, or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph. This section does not pertain to any incident arising from the sole negligence of the City.

The Contractor shall assume all risk and bear any loss or injury to property or persons occasioned by neglect or accident during the progress of work until the same shall have been completed and accepted. The Contractor agrees to repair restore or rebuild any damages he causes to any property of the City. He shall also assume all blame or loss by reason of neglect or violation of any state or federal law or municipal rule, regulation, or order. The contractor shall give to the proper authorities all required notices relating to the work, obtain all official permits and licenses and pay all proper fees. He shall repair any damage that may have occurred to any adjoining building, structure, utility, or private property in the course of this work.

- 6.5 In any action or proceeding arising between the parties relating to the terms of this Contract, the prevailing party shall be entitled to recover its reasonable attorney fees, expenses, and all court costs, including fees and costs incurred through any appeal, from the non-prevailing party.

ARTICLE 7. COMPLIANCE WITH PUBLIC RECORDS LAW

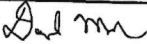
The Consultant will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to the requirements of this Agreement. Said records and documentation will be retained by the Consultant for a minimum of five (5) years from the date of termination of this Agreement.

The City and its authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the City deems necessary during the period of this Agreement, and during the period five (5) years thereafter; provided, however, such activity shall be conducted only during normal business hours and at the expense of the City, and provided further that to the extent provided by law the City shall retain all such records confidential.

Any contractor acting on behalf of the City of Bonita Springs must comply with Florida public records laws, specifically to:

- 7.1 Keep and maintain public records required by the City to perform the service.
- 7.2 Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statutes §119 or as otherwise provided by law.
- 7.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Contract if the Contractor does not transfer the records to the City.
- 7.4 Upon completion of the Contract, transfer, at no cost, to the City of Bonita Springs all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
- 7.5 The City will consider it a breach of contract should the Contractor fail to comply with any public records request.
- 7.6 A Contractor who fails to provide the public records to the City within a reasonable time may be subject to penalties under Florida Statutes §119.10.
- 7.7 **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS (CITY CLERK) AT: 239-949-6262, CITY OF BONITA SPRINGS, 9101 BONITA BEACH ROAD, BONITA SPRINGS, FL 34135, michael.sheffield@cityofbonitasprings.org.**
- 7.8 If the Contractor is not providing the requested public records, the burden of proof is on the Contractor to show why they did not comply with the request.

In witness whereof, City and Contractor have signed this Contract in quadruple. One counterpart has been retained by the City Clerk, one part has been delivered to the City Public Works Department and two parts have been delivered to the Contractor. All portions of the Contract Document have been signed or identified by City and Contractor on their behalf.

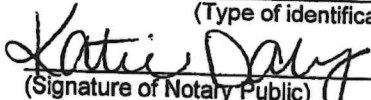
By (printed): David Mulicka
By (signature): 
Title: President
Honc Destruction, Inc.
Company Name

(CORPORATE SEAL)

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 4th day of February, 2025 by
David Mulicka. He/she is personally known to me or who
has
(Name of person acknowledged)

produced _____ as identification.
(Type of identification)


(Signature of Notary Public)



(Name typed, printed, or stamped)

CITY OF BONITA SPRINGS

ATTEST:

By: 
Mayor

By: 
City Clerk

APPROVED AS TO FORM

Date: Feb. 19, 2025

By: 
City Attorney's Office

**AGREEMENT TO PIGGYBACK A CONTRACT FOR
DEMOLITION SERVICES COMPETITIVELY PROCURED BY
THE CITY OF BONITA SPRINGS, FLORIDA**

THIS AGREEMENT is made and entered into this ____ day of _____, 2025, by and between the Town of Fort Myers Beach, Florida (the “Town”), a Florida municipal corporation whose principal place of business is 2525 Estero Blvd., Ft. Myers Beach, FL 33391 and Hone Destruction, a Florida corporation authorized to do business in the State of Florida, (“Contractor”) whose principal place of business is 7490 Mainline Parkway, Fort Myers, FL 33912 (“Agreement”). The Town and the Contractor may also be referred to collectively as the “Parties.”

WHEREAS, the City of Bonita Springs, Florida competitively procured a contract for demolition services (“RFB24-16 or RFP”) and thereafter awarded and executed the Agreement for Demolition Services to the City of Bonita Springs (“Agreement”) to Contractor on February 3, 2025; and

WHEREAS, the Agreement has a term of 5 years with optional renewals; and

WHEREAS, the Town is in immediate need of general demolition services and demolition services to remove privately owned buildings and structures, which have been determined to be unsafe by the Fort Myers Beach Building Official pursuant to Division 3, of Article 1 of Chapter 6 “Maintenance Codes, Building Codes and Coastal Regulations,” due to a lack of repair or demolition following Hurricane Ian; and

WHEREAS, the Town desires Contractor provide needed demolition services, and under the Town Code, the purchase of services under a contract awarded by another governmental entity is authorized provided the finance department director makes a written determination that time and expense factors make it financially advantageous for the Town to do so; and

WHEREAS, the finance department director has made such a written determination and the Contractor is willing to provide demolition services to the Town, subject to the terms and conditions of the Agreement, with the specific modifications set forth herein; and

WHEREAS, approval of this Agreement is in the best interest of the health, safety and welfare of the residents of the Town.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties do mutually agree as follows:

1. **INCORPORATION OF THE CITY OF BONITA SPRINGS.** This Agreement incorporates by reference, the Agreement, a true and accurate copy of which is attached hereto as Exhibit “A.”
2. **SCOPE OF SERVICES.** During the Term of this Agreement, the Contractor will provide demolition services as requested by the Town.

3. **PRICING.** The Town will pay Contractor for such services as provided in the Agreement. This sum will be the Contractor's sole compensation for the services provided by Contractor under this Agreement.
4. **DURATION OF THE AGREEMENT.** The Term of this Agreement shall begin on the last signed by a party and continue for the duration of the term, and any renewals, specified in the Agreement and agreed to by the parties.
5. **DESIGNATED REPRESENTATIVE.** The Town Manager, or designee, shall be the Town's Designated Representative in matters arising under this Agreement.

TOWN MANAGER
Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, FL 33931
andy@fmbgov.com

6. **MODIFICATIONS TO AGREEMENT.** Notwithstanding the incorporation of the Agreement into this Agreement as referenced, the Parties hereby agree to certain modifications to the Agreement, as follows:
 - a. All references in the Agreement to terms such as "City" will be deemed to refer to the Town. In addition, all references within the Agreement to specific officers/departments/divisions, or to specific locations (such as for delivery of goods/services, receipt of Contractor invoicing, etc.), if not specifically addressed in this Agreement, will be deemed to refer to the equivalent Town officers/departments/divisions, and Town locations, as hereafter designated by the Town's Designated Representative. The Town shall be added as an additional insured to Contractor's Certificate of Insurance.
 - b. The Town's performance and obligation to pay under the Agreement is contingent upon an annual appropriation by the Town Council.
 - c. The Contractor (and its subcontractors) have an obligation to utilize the U.S. Department of Homeland Security's (DHS) E-Verify system for all newly hired employees. By executing this Agreement, the Contractor certifies that it is registered with, and uses, the E-Verify system for all newly hired employees. The Contractor must obtain an affidavit from its subcontractors in accordance with paragraph (2)(b) of §448.095, Fla. Stat., and maintain a copy of such affidavit for the duration of the Agreement.
 - d. This section serves as notice to the Contractor regarding the requirements of §448.095, Fla. Stat., specifically sub-paragraph (2)(c), and the Town's obligation to terminate the Agreement if it has a good faith belief that the Contractor has knowingly violated §448.09(1), Fla. Stat. If terminated for such reason, the Contractor will not be eligible for award of a public contract for at least one year

after the date of such termination. The Town reserves the right to order the immediate termination of any contract between the Contractor and a subcontractor performing work on its behalf should the Town develop a good faith belief that the subcontractor has knowingly violated §448.095(1), Fla. Stat.

- e. By execution of this Agreement, in accordance with the requirements of §§287.135 and 215.473, Fla. Stat., the Contractor certifies that the Contractor is not participating in a boycott of Israel. The Contractor further certifies that the Contractor is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has Contractor been engaged in business operations in Cuba or Syria. Subject to limited exceptions provided in state law, the Town will not contract for the provision of goods or services with any scrutinized company referred to above. Submitting a false certification shall be deemed a material breach of this Agreement. The Town shall provide notice, in writing, to the Contractor of the Town's determination concerning the false certification. The Contractor shall have five (5) days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active Agreement term, the Contractor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the Contractor does not demonstrate that the Town's determination of false certification was made in error then the Town shall have the right to terminate the Agreement and seek civil remedies pursuant to §287.135, Fla. Stat., as amended from time to time.
- f. The following provisions are required by §119.0701, Fla. Stat., and may not be amended. The Contractor shall keep and maintain public records required by the Town to perform the services required under this Agreement. Upon request from Town's custodian of public records, the Contractor shall provide the Town with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. The Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if Contractor does not transfer the public records to the Town. Upon completion of the Agreement, the Contractor may transfer, at no cost, to the Town all public records in possession of the Contractor or keep and maintain public records required by the Town to perform the services required under the Agreement. If the Contractor transfers all public records to the Town upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Town, upon request from the Town's custodian of public records, in a format

that is compatible with the Town's information technology systems. Contractor's failure to comply with the provisions set forth in this Section shall constitute a Default and Breach of this Agreement, for which, the Town may terminate the Agreement.

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

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.
- (e) Pursuant to Section 119.0701(2)(a), Fla. Stat.,

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**TOWN HALL
2731 OAK STREET
FORT MYERS BEACH, FL. 33931
(239)765-0202
FMBPUBLICRECORDS@FMBGOV.COM**

- g. **Public Records Compliance Indemnification.** Contractor agrees to indemnify and hold the Town harmless against any and all claims, damage awards, and causes of action arising from the contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.
- h. **Compliance/Consistency with Section 768.28, Fla. Stat.** Any indemnification or agreement to defend or hold harmless by Town specified in the Agreement shall not be construed as a waiver of Town's sovereign immunity and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Fla. Stat. and subject to the procedural requirements set forth therein. Any other purported indemnification by Town in the Agreement in derogation hereof shall be void and of no force or effect.
- i. **Non-appropriation.** Town's performance and obligation to pay under this Agreement is contingent upon an appropriation during the Town's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by memorandum from the Town Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year end shall be without penalty or expense to the Town subject to the Town paying all invoices for services rendered during the period the Agreement was funded by appropriations.
- j. **E-Verify Compliance.** By entering into this Agreement, the Contractor is obligated to comply with the provisions of Section 448.095, Florida Statutes "Employment Eligibility," as amended from time to time. This includes but is not limited to

register with and use the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Contractor attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Contractor agrees to maintain a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Florida Statutes, as amended and Contractor will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Contractor will also be liable for any additional costs to the Town as a result of the termination of this Agreement in accordance with this paragraph. Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Florida Statutes, Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Florida Statutes.

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

boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of Town if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

- l. **Disclosure Requirements for “Foreign Countries of Concern.”** Contractor shall comply with the disclosure requirements set forth in Section 286.101(3)(a), Florida Statutes, which requires “Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a “foreign country of concern” if such interest, contract, grant or gift received from a “foreign country of concern” if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable “foreign country of concern” and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services”. Pursuant to section 268.101(7), Florida Statutes: “In addition to any fine assessed under [section 286.101(7)(a), Florida Statutes], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause.”
- m. **Venue and Jurisdiction.** Notwithstanding any of other provision to the contrary, this Agreement and the parties’ actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally consents to submit and does submit to the jurisdiction of the Circuit Court in and for Lee County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement. Both parties waive any right to file an action, suit or proceeding in Federal Court or remove any action, suit or proceeding to Federal Court.
- n. **Attorneys’ Fees and Costs.** Notwithstanding any of other provision to the contrary, if litigation ensues regarding this Agreement, each party hereto shall bear its own attorneys’ fees and costs.

- o. **Public Entities Crime or Convicted Vendor List.** Contractor agrees and assumes a continuous duty to disclose to the Town if the Contractor or any of its affiliates as defined by Section 287.133(1)(a), Florida Statutes are placed on the Convicted Vendor List or the Antitrust Violator Vendor List maintained by the Florida Department of Management Services.
- p. **Data Management; Notice of Breach.** Contractor shall cooperate with the Town and provide timely incident reporting, response activities/fact gathering, public and agency notification, severity level assessment, after-action reports, etc., which the Town must report in accordance with Sections 282.3185(5) & (6), Florida Statutes in the event of a data breach.
- q. **Environmental and Social Government and Corporate Activism.** The Town has not given preference or requested documentation from the Contractor based on Contractor's social, political or ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor's social, political or ideological interests.
- r. **Taxes.** The Town shall not be liable for any taxes and assessments imposed by a federal, state or local governmental agency to the extent that the Town is exempt from same by Florida law, including but not limited to any sales or use tax.
- s. **No coercion for labor or services.** The Contractor swears under penalty of perjury that the Contractor does not use coercion for labor or services as defined as follows:

“Coercion” means:

- 1. Using or threatening to use physical force against any person;
- 2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
- 3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;

4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
5. Causing or threatening to cause financial harm to any person;
6. Enticing or luring any person by fraud or deceit; or
7. Providing a controlled substance as outlined in Schedule I or Schedule II of Sec. 893.03, Fla. Stat. to any person for the purpose of exploitation of that person.
- t. **Force Majeure.** The Town reserves the right to suspend, modify or terminate this contract in the event of an act of god or act of man beyond the control of the parties, including but not limited to a hurricane, tropical storm, tornado, or other destructive weather event, flooding, pandemic, plague, war, armed conflict, domestic or foreign terrorism, riot, labor condition, state or federal governmental action, and catastrophic internet disturbance, making performance inadvisable, economically impracticable, illegal, or impossible

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as below.

TOWN OF FORT MYERS BEACH:

CONTRACTOR:

Dan Allers, Fort Myers Beach Mayor

Print Name: _____
Print Title: _____

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

1. **Request:**

Meeting Date: April 7, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, APPROVING AMENDMENT NO. 1 TO AGREEMENT 23LE1 BETWEEN THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION AND TOWN OF FORT MYERS BEACH FOR DESIGN, PERMITTING, CONSTRUCTION AND MONITORING OF THE ESTERO ISLAND SHORE PROTECTION PROJECT; AND AUTHORIZES THE TOWN MANAGER TO EXECUTE THE AGREEMENT AND RELATED DOCUMENTS AND TO EXPEND BUDGETED LOCAL MATCHING FUNDS TO MATCH FUNDING RECEIVED FROM THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

What the action accomplishes:

The total amount of State's funding from the Agreement is increased by \$2,907,176.50 to \$16,920,522.50.

The Agreement is extended for a twelve (12) month period to begin January 1, 2026, and remain in effect until December 31, 2026.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Chadd Chustz, Environmental
Projects Manager

5. **Background:**

The Department of Environmental Protection entered into Agreement 23LE1 with the Grantee for the Estero Island Shore Protection Project effective March 16, 2023

The Town was awarded additional funds to complete the project from the fiscal year 2024/2025 legislative appropriation to the Beach Management Funding Assistance Program (GAA Line Item #1856).

The Town requested that unencumbered funds from Agreement No. 22LE3, Lee County Shore Protection Project – Estero Island Segment, funded by the Fiscal Year 2021/2022 legislative appropriation to the Beach Management Funding Assistance Program (Land Acquisition Trust Fund, GAA Line Item #1647), in the amount of \$150,000.00 be included in Agreement No. 23LE1.

The Project is located between Department of Environmental Protection (Department or DEP) reference monuments R175-400' to R198 and R203 to R207 along the Gulf of Mexico in the Town of Fort Myers Beach in Lee County, Florida.

PROJECT BACKGROUND: The project's northern 1.3 miles of project shoreline was restored in 2011 and included the construction of Matanzas Pass terminal groin on the north end of the beach fill. In 2016 and 2020, the USACE placed dredged sand from Matanzas Pass between R182 and R187. In 2017, the West Coast Inland Navigation District and Lee County Nourished between R203 and R206 using dredged sand from Big Carlos Pass. In 2017 and 2020, Lee County used upland sand to repair storm damages at R180 and R181 from Hurricane Irma and Tropical Storm Eta, respectively. In 2020, the Town of Fort Myers Beach took over local

sponsorship from Lee County. Following additional storm damages along Estero Island in 2020 and 2021, the Town plans to extend the project nourishment length.

PROJECT TASKS:

Task 1: Design and Permitting

Task Description: The Local Sponsor will acquire professional services for the engineering and design of the Project such as coastal engineering analyses, preparation of plans and specifications, physical and environmental surveys, cultural resource surveys, design-level geotechnical services, sediment studies, inlet studies, environmental analyses, orthophotography, plan formulations and for obtaining environmental permits and other Project-related authorizations.

Task 2.1: Construction (North: R175-400' - R198)

Task Description: This task includes work performed and costs incurred associated with the placement of fill material and/or the construction of erosion control structures within the Project area. Project costs associated with eligible beach and inlet construction activities include work approved through construction bids and/or construction-phase engineering and monitoring services contracts. Eligible costs may include mobilization, demobilization, construction observation or inspection services, physical and environmental surveys, beach fill, tilling and scarp removal, erosion control structures, mitigation reefs, dune stabilization measures and native beach-dune vegetation.

Task 2.2: Construction (CWA: R203 - R207)

Task Description: This task includes work performed and costs incurred associated with the placement of fill material and/or the construction of erosion control structures within the Project area. Project costs associated with eligible beach and inlet construction activities include work approved through construction bids and/or construction-phase engineering and monitoring services contracts. Eligible costs may include mobilization, demobilization, construction observation or inspection services, physical and environmental surveys, beach fill, tilling and scarp removal, erosion control structures, mitigation reefs, dune stabilization measures and native beach-dune vegetation.

Task 3: Monitoring

This task includes activities associated with permit-required monitoring conducted in accordance with the conditions specified by state or federal regulatory agencies. All monitoring tasks must be located within or adjacent to the Project area and follow the Department's Regional Coastal Monitoring Program and FWC's marine turtle and shorebird monitoring programs. Guidance for monitoring of nearshore resources is available in the Department's Standard Operation. Environmental monitoring includes hardbottom, seagrass, and mangrove resources.

Attachments:

1. 25-122; FDEP LGFR 23LE1A1 Beach Project
2. Estero Island Shore Protection Project FY24_25 LGFR Beach Project Assessment - FINAL
3. TFMB EI FY24_25_LGFR_Beach_Application 20230728
4. 25-XX; FDEP LGFR 23LE1A1 Beach Project

Financial Impact:

The total amount of funding of the Agreement is increased by \$2,907,176.50 to \$16,920,522.50. This amount is the State's cost share for the Project.

The Department has determined that 86 percent of the non-federal Project cost for Tasks 1 and 3, 83.4 percent of the non-federal Project cost for Task 2.1, and 100 percent of the non-federal Project cost for Task 2.2 is eligible for state cost sharing. Therefore, the Department's financial

obligation shall not exceed the sum of \$16,920,522.50 for this Project or up to 43 percent of the non-federal Project cost for Tasks 1 and 3, 41.7 percent of the non-federal Project cost for Task 2.1, and 100 percent of the non-federal Project cost for Task 2.2, if applicable, for the specific eligible Project items listed, whichever is less. To the extent applicable, it is understood and agreed that for portions of the Project which are located within lands owned by the State of Florida, no cost share for construction activities shall be required of the Local Sponsor, and the Project costs for such portions shall be paid by the Department. Any indicated federal cost sharing percentage is an estimate and shall not affect the cost sharing percentages of the non-federal share. The parties agree that eligibility for cost sharing purposes will be maintained pursuant to 62B-36, Florida Administrative Code (F.A.C.).

Estimated Eligible Project Cost

Task #	Eligible Project Tasks	State Cost Share (%)	Federal Estimated Project Costs	DEP	Local	Total
1	Design and Permitting	43.00%		\$185,260.00	\$245,577.21	\$430,837.21
2.1	Construction (North)	41.70%		\$6,952,432.50	\$9,720,067.50	\$16,672,500.00
2.2	Construction (CWA)	100.00%		\$9,640,500.00	\$0.00	\$9,640,500.00
3	Monitoring	43.00%		\$142,330.00	\$188,670.00	\$331,000.00
	TOTAL PROJECT COSTS			\$16,920,522.50	\$10,154,314.71	\$27,074,837.21

6. **Alternative Action**

DO NOT AUTHORIZE EXECUTION OF AMENDMENT 1 to 23LE1 AND DO NOT AUTHORIZE EXPENDITURE OF MATCHING FUNDS FOR FUNDING RECEIVED FROM FDEP.

7. **Management Recommendations:**

8. **Recommended Approval:**

Chadd Chustz, Environmental Projects Manager
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 3/24/2025
Approved - 3/24/2025
Approved - 3/26/2025
Approved - 3/27/2025
Final Approval - 3/27/2025

RESOLUTION NUMBER 25-122

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, APPROVING AMENDMENT NO. 1 TO AGREEMENT 23LE1 BETWEEN THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION AND TOWN OF FORT MYERS BEACH FOR DESIGN, PERMITTING, CONSTRUCTION AND MONITORING OF THE ESTERO ISLAND SHORE PROTECTION PROJECT; AND AUTHORIZES THE TOWN MANAGER TO EXECUTE THE AGREEMENT AND RELATED DOCUMENTS AND TO EXPEND BUDGETED LOCAL MATCHING FUNDS TO MATCH FUNDING RECEIVED FROM THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION; AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, Estero Island’s coastal beach, which is among the Town most important ecological, economic, and recreational assets, is subject to erosion that results in detrimental impacts to nesting and wintering areas for wildlife species such as sea turtles and shorebirds; loss of outdoor recreational opportunities for the Town’s residents and visitors; and damage to and loss of public and private property; and

WHEREAS, beach erosion control and restoration projects are an effective tool for preventing and offsetting some of the negative impacts of beach erosion, including loss of habitat, loss of recreational opportunities, and endangerment of public and private property; and

WHEREAS, the Department of Environmental Protection (“Department”) entered into the Agreement with the Town of Fort Myers Beach for the Estero Island Shore Protection Project effective March 16, 2023; and

WHEREAS, the Town was awarded additional funds to complete the project from the fiscal year 2024/2025 legislative appropriation to the Beach Management Funding Assistance Program; and

WHEREAS, the Town requested that unencumbered funds from Agreement No. 22LE3, Lee County Shore Protection Project – Estero Island Segment, funded by the Fiscal Year 2021/2022 legislative appropriation to the Beach Management Funding Assistance Program, in the amount of \$150,000.00 be included in Agreement No. 23LE1; and

WHEREAS, Amendment No. 1 of Agreement 23LE1 increases the total amount of funding from the Department to the Town by \$2,907,176.50 for a total of \$16,920,522.50; and

WHEREAS, the Town Council finds that beach erosion control and restoration projects are in the public interest and in the best interest of the health, safety, and welfare of the residents, property owners and visitors of the Town of Fort Myers Beach.

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

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

Section 2. The Town Council authorizes the Town Manager to execute Amendment No. 1 of Agreement 23LE1, described in Exhibit “A”, a copy of which is attached hereto and made a part of this Resolution.

Section 3. The Town Council authorizes the Town Manager to expend budgeted local matching funds for funding received from Amendment No. 1 to Agreement 23LE1 with the Florida Department of Environmental Protection; and

Section 4. The Town authorizes Town staff to take all necessary actions to request and obtain funds from the Florida Department of Environmental Protection for the Project and will provide matching funds/local cost share for the Project and serve as local sponsor for the Project including matching funds from the Town Beach Restoration Reserves and Lee County Tourist Development Council.

Section 5. This Resolution shall become effective immediately upon its adoption.

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

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

ADOPTED this __ day of _____ 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of _____
2025.

FY2024/2025 Local Government Funding Request
Final Beach Project Assessment

Project Name	Estero Island Shore Protection Project
Local Sponsor	Town of Ft. Myers Beach

Initial Assessment	7/26/2023
Group Assessment	8/23/2023
Draft Assessment	9/1/2023
Final Review	10/6/2023

Project Description
The Estero Island Shore Protection Project is located between DEP monuments R175-400' to R198 and R203 to R207 in Lee County. The requested funds are for Construction and 1st year Monitoring. Staff have determined that 83.4% of the project is eligible for state cost sharing in the North and Central fill locations (R175-400' to R198) and 100% of the project is eligible for state cost sharing in the South fill location (R203 to R207).

Funds will be used for (list project phase, specify which phase is reimbursement, if applicable)
Construction and 1st year monitoring

State cost share %	41.70%
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Project Budget Table					
	State %	Federal	State	Local	Total
Feasibility	0.00%	\$0	\$0	\$0	\$0
Design	0.00%	\$0	\$0	\$0	\$0
Construction	41.70%	\$0.00	\$790,006.50	\$1,104,493.50	\$1,894,500.00
Construction (CWA)	100.00%	\$0.00	\$1,894,500.00	\$0.00	\$1,894,500.00
Year 1 Monitoring	43.00%	\$0.00	\$72,670.00	\$96,330.00	\$169,000.00
Total Project Costs		\$0.00	\$2,757,176.50	\$1,200,823.50	\$3,958,000.00

Federal cost share %	0.00%
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Federal agency and description	N/A
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TOTAL PROJECT SCORE (100 points)	54.5
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Tier 1

Tourism-related impacts		
Return on investment (10 points)	Score	6.9

Local Sponsor: Project is requesting construction funds.

Department: Verified
Construction + Year 1 Monitoring Cost: \$2,757,176.50
Value:

Economic impact (10 points)	Score	6.9
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Local Sponsor: N/A

Department: Lee County, 2022 data. Tourism-related sales tax data = \$145,777,633.49. County sales tax collections = \$1,340,193,047

Value: 0.018774

Tier 2

Federal involvement

Federal authorization (5 points)	Score	5
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Local Sponsor: Project is not federally authorized

Department: Verified - project is federally authorized

Federal cost share (5 points)	Score	0
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Local Sponsor: Project has no federal cost share

Department: Verified - project has not federal cost share

Federal funds available (5 points)	Score	0
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Local Sponsor: Project has no federal cost associated

Department: Verified - project has not federal cost associated

Storm damage reduction benefits

Current conditions (8 points)	Score	5.2
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Local Sponsor: No up-to-date monitoring data

Department: Current Volume = 98,663.4 cy; Volume Advanced Nourishment = 160,521.9 cy;
Volume Advanced Nourishment Lost = 124,432.35 cy; % Loss = 77.52%

CEG calculated value: 5.2

Threat to upland development (2 points)	Score	2
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Local Sponsor: N/A

Department: Due to hurricane full points awarded

CEG calculated value: 2

Value of upland property (5 points)	Score	4.2
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Local Sponsor: N/A

Department: \$3,684,068,600

Total value: \$3,684,068,600

Cost-effectiveness

Cost/volume/mile/year (10 points)	Score	10
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Local Sponsor: Construction cost = \$3,789,000, volume = 905,000 cy, length = 5.453 mi,
nourishment interval = 10 yrs

Department: Construction cost = \$3,789,000, volume = 905,000 cy, length = 5.63 mi,
nourishment interval = 10 yrs

Value: 0.0744

Enhanced longevity, dune addition, innovative technology, and regionalization (5 points)	Score	3
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Local Sponsor: Dune addition

Department: Verified

Tier 3

Previous state commitment

Previously funded phases (1 point)	Score	1
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Local Sponsor: Estero Island has received cost share on feasibility or design

Department: Verified

Total amount of previous funding (3 points)	Score	2.6
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Local Sponsor: N/A

Department: Fiscal year 2014/2015 through 2023/2024

Total funds: \$16,054,681.00

Previous partial appropriation (1 point)	Score	0
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Local Sponsor: No previous partial appropriations

Department: Verified

Recreational benefits

Accessible beach area (2 points)	Score	0.7
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Local Sponsor: 2,159,250 sq ft

Department: 1,857,343 sq ft

Total area: 1,857,343 sq ft

Recreational benefits (3 points)	Score	2.5
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Local Sponsor: 83.4% zoned for recreational or open space

Department: Verified

Percentage: 83.40%

Mitigation of inlet effects (5 points)	Score	0
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Local Sponsor: N/A

Department: No IMP

CEG calculated value: 0

Volume/mile/year (5 points)	Score	2.5
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Local Sponsor: N/A

Department: 905,000 cy / 5.63 mi / 10

CEG calculated value: 16,074.28

Tier 4

Successive unfunded requests (5 points)	Score	0
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Local Sponsor: No unfunded requests

Department: Verified

Environmental habitat enhancement (5 points)	Score	0
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Local Sponsor: Project is within a Critical Wildlife Area

Department: 21.9% armored

Overall readiness to proceed

Readiness to construct (1 point)	Score	0
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Local Sponsor: N/A

Department: Received no point for completion of remaining 4 criteria

Active permits (1 point)	Score	0
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Local Sponsor: Permit #0413684-001-JC exp. 01/18/2038

Department: No federal permit

Easements acquired (1 point)	Score	0
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Local Sponsor: All easements have not been acquired - date of assumed acquisition August 31, 2023

Department: Verified

Local funds secured (1 point)	Score	1
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Local Sponsor: Resoution received

Department: Draft Resolution was submitted by application deadline.

Erosion Control Line established (1 point)	Score	1
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Local Sponsor: ECL established

Department: Verified



Beach Management Funding Assistance Program
Local Government Funding Request
Fiscal Year 2024/2025
Beach Projects Application

PART I: GENERAL INFORMATION

Local Sponsor	Town of Fort Myers Beach		
Federal ID Number (FEID)	65-0632342		
Primary Contact Name	Chadd Chustz	Title	Environmental Project Manager
Mailing Address Line 1	2525 Estero Boulevard		
Mailing Address Line 2			
City	Fort Myers Beach	Zip Code	33931
		Telephone Number	(239) 765-0202 x13
Email Address	Chadd@fmbgov.com		

Additional Contact Information

PART II: CERTIFICATION

I hereby certify that all information provided with this application is true and complete to the best of my knowledge.

Signature of Local Sponsor	Chadd Chustz	Digitally signed by Chadd Chustz Date: 2023.07.28 16:11:49 -04'00'
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Electronic or scanned signatures accepted.

Printed Name	Chadd Chustz	Date	July 28, 2023
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Beach Management Funding Assistance Program
Local Government Funding Request
Fiscal Year 2024/2025
Beach Projects Application

PART III: EVALUATION CRITERIA

1. Project Name: (as listed in the Strategic Beach Management Plan)

Estero Island Beach Nourishment

2. Project Description: Include county, location with reference to DEP range monuments, brief project history, and description of proposed activities.

The project is to periodically nourish approximately 5.45 miles of critically eroding gulf shoreline and offset impacts from Hurricane Ian along Estero Island in Lee County. The project includes sand placement in three different segments: North Fill Segment (Terminal Groin- R-187), which is contiguous with the Central Fill Segment (R-187 – R-198), and the initial restoration and subsequent nourishment of the South Fill Segment (R-203 – R- 207); utilizing offshore sand sources. Additionally, a one-time sand placement event on previously unrestored shoreline on the southern end of Estero Island (R-208.8 to R-210) utilizing offshore sand sources is authorized in conjunction with the initial nourishment of the North, Central, and South fill segments. Upland sand sources may also be used for hot-spot maintenance and post-storm recovery and to maintain and repair the dune and beach berm as needed. This permit also authorizes beach management activities consistent with the approved Dune Management Plan.



Beach Management Funding Assistance Program
Local Government Funding Request
Fiscal Year 2024/2025
Beach Projects Application

3. Use of Requested Program Funds: Provide a brief description of tasks to be completed in each requested phase (Feasibility, Design, Construction, Monitoring, or USACE Multiphase). Indicate which tasks are cost reimbursement from previous fiscal years.

Physical and Biological Monitoring for First Annual Monitoring Period.

Request Reimbursement for Increased Costs for Beach Nourishment. Engineer's Updated Opinion of Probable Construction Cost is \$439,000 more than the FY22-23 Funding Application Request.

Request funds to restore beach and dune areas (e.g. scour holes, beach access points, berms) within the permitted fill limits to address Hurricane Ian erosion.

4. Map: Provide as an attachment. The map(s) of the project area must be formatted at a minimum of 1" = 200' scale and include a compass rose and legend.

Map elements must include:

1. **Project boundary:** DEP reference monuments and shoreline designated as critically eroded
2. **Eligibility:** Indicate lengths of eligible shoreline based on criteria outlined in Chapter 62B-36.007, F.A.C.
 - a. Beach access locations: indicate primary or secondary access, and include the shoreline length, number and location of auto parking spaces, mass transit stops, bike parking spaces, and public restroom facilities within 1/4 mile walking distance of each access
 - b. Public lodging establishments: include the length fronting the project shoreline, and include the length of street-side frontage for lodging within 1/4 mile walking distance of a secondary beach access location
3. **Recreational benefits:** Comprehensive list of current land use designations of properties fronting the project shoreline
4. **Value of upland property:** Include one-quarter mile buffer and provide a comprehensive list of the values of properties (data from year 2022) that are enclosed or intersected by the buffer. The 2022 property value tax roll data and ArcGIS shapefiles can be obtained from the Department of Revenue website: https://floridarevenue.com/property/Pages/DataPortal_RequestAssessmentRollGISData.aspx. See Guidance Document for more information.

5. Project length: Total restored project length (in feet) of the critically eroded area (as listed in the Strategic Beach Management Plan).

28,790 feet



Beach Management Funding Assistance Program
Local Government Funding Request
Fiscal Year 2024/2025
Beach Projects Application

- 6. Eligibility:** Required for all beach projects pursuant to Chapter 62B-36.007, F.A.C. Provide as a separate attachment, if needed.
- **Location/Access Name:** Use the official name of the park or road that is associated with the public access.
 - **DEP Reference Monument:** Use the DEP monument that is closest to the main public access location.
 - **Type of Access:** Indicate Primary or Secondary beach access in accordance with the definitions in Chapter 62B-36, F.A.C.
 - **Width of Access/Frontage:** The length of the legal boundary (in feet) of the public access or lodging along the beach project shoreline. For public lodging establishments that do not front the beach, indicate the street-side length of the legal property boundary (in feet) that is used as the main access to the establishment.
 - **Number of Eligible Units:** A unit is defined as one automobile parking space, one rental unit in a public lodging establishment, one mass transit stop, or four bicycle parking spots.
 - **Additional Width from Eligible Units:** Total distance (feet) added to the Width of Access/Frontage. If there are multiple types of eligibility units used for this calculation, show the calculation separately for each.
 - **Total Eligible Shoreline:** Sum of the Width of Access/Frontage and Additional Width from Eligible Units columns. Eligible shorelines cannot overlap.
 - **Website Link for DBPR License:** Provide the link to the Department of Business and Professional Regulation (DBPR) website for proof of licensure for any public lodging establishments used for eligibility or the Recreational Benefits ranking criteria.

Location/ Access Name	DEP Reference Monument	Type of Access	Width of Access/ Frontage (ft)	Number of Eligible Units	Additional Width from Eligible Units (ft)	Total Eligible Shoreline (ft)	Website Link for DBPR License
Maps (Att 4)							
State Cost Share=41.7%	C174.5-R198						
State Cost Share=100%	R203-R207						



Beach Management Funding Assistance Program
Local Government Funding Request
Fiscal Year 2024/2025
Beach Projects Application

7. Schedule and Budget: Provide as a separate attachment, if needed. Clearly indicate project phase: Feasibility (F), Design (D), Construction (C), Monitoring (M), or USACE Multiphase (USACE). Include the year of post-construction monitoring in the description.

- **Cost Reimbursement:** Specify eligible costs incurred during the three years prior to the current application's fiscal year that are not in a current DEP agreement and have not been reimbursed (this includes fiscal years 21/22, 22/23, and 23/24). Eligible costs will be added to the current funding request.
- **Current and Future Costs:** Specify eligible costs for the current application's fiscal year that are not in a current DEP agreement and have not been reimbursed as well as the estimated costs for the next 4 years. Note: If Construction costs are requested in the current fiscal year, then the Year 1 Post-Construction Monitoring costs will be added to the current funding request

Fiscal Year	Project Phase	Description	Federal Cost	State Cost	Local Cost	Total Cost
21/22						
21/22						
21/22						
22/23						
22/23						
22/23						
23/24						
23/24						
23/24						
24/25	Construction	Reimbursement for Beach Nourishment		\$188,770	\$250,230	\$439,000
24/25	Monitoring	First Annual Bio & Physical Mon		\$72,670	\$96,330	\$169,000
24/25	Construction	Hurricane Ian Impacts		\$1,396,950	\$1,953,050	\$3,350,000
25/26	Design	Hot Spot Maintenance		\$10,750	\$14,250	\$25,000
25/26	Construction	Hot Spot Maintenance		\$1,731,610	\$2,295,390	\$4,027,000
25/26	Monitoring	Second Annual Bio & Physical Mon		\$76,110	\$100,890	\$177,000



Beach Management Funding Assistance Program
Local Government Funding Request
Fiscal Year 2024/2025
Beach Projects Application

Fiscal Year	Project Phase	Description	Federal Cost	State Cost	Local Cost	Total Cost
26/27						
26/27	Monitoring	Third Annual Bio & Physical Mon		\$75,680	\$100,320	\$176,000
26/27						
27/28	Design	Hot Spot Maintenance		\$11,610	\$15,390	\$27,000
27/28	Construction	Hot Spot Maintenance		\$1,838,680	\$2,437,320	\$4,276,000
27/28	Monitoring	Fourth Annual Bio & Physical Mon		\$39,130	\$51,870	\$91,000
28/29						
28/29	Monitoring	Fifth Annual Bio & Physical Mon		\$40,850	\$54,150	\$95,000
28/29						

8. Tourism-related impacts: Criteria is calculated by the Department using 2022 data. For reference, tax data can be obtained from the Department of Revenue website: <https://floridarevenue.com/DataPortal/Pages/TaxResearch.aspx> See Guidance Document for more information.

- ☒ Current funding request includes construction and year one post-construction monitoring
☐ Project is managed by two or more counties

Additional comments

Construction Funding was originally approved based on FY23-24 application. The FY24-25 application includes reimbursement construction dollars based on updated project costs. This application requests funding for Hurricane Ian

9. Federal involvement: The documentation to verify authorization, federal cost share percentage, and status of funding award must be provided with the application materials for the award of points.

Is the project Federally authorized by the USACE?

No

Authorization Year:

Expiration Year:

Does this project have a signed USACE Chief's report or Civil Works Congressional authorization for the requested phase?

No

USACE federal cost share percentage for this project (excluding FCCE):



Beach Management Funding Assistance Program
Local Government Funding Request
Fiscal Year 2024/2025
Beach Projects Application

Select all that apply for the requested project phase(s) and include documentation with application materials.

- ☐ Executed USACE project agreement
- ☐ Included in USACE work plan
- ☐ Approved FEMA Project Worksheet
- ☐ Included in Congressional Appropriations Act

☒ Other documentation:

Town is pursuing FEMA Category G Funding. Approvals are anticipated by end of August, 2023.

10. Storm damage reduction benefits: Criteria is calculated by the Department.

What is the volume (cy) of advanced nourishment lost since the last sand placement event of a beach restoration or nourishment project as measured above the Mean High Water contour? Data should be consistent with the annual post-construction monitoring reports.

CEC will be providing the 2023 monitoring survey to the Department.

For restoration projects, what is the historical erosion rate?

11. Cost effectiveness: Criteria is calculated by the Department. A project design analysis and supporting documentation must be provided with the application materials for the award of points. See Guidance Document for more information.

What is the proposed sand placement volume (cy)?

905,000 exclusive of FEMA Cat G request; 961,845 inclusive of FEMA Cat G request

What is the nourishment interval (years)?

10

Select all that apply for the current project funding request:

- ☒ Enhanced longevity: Propose structural or design components that could extend the beach nourishment interval
- ☒ Dune addition: Incorporate new or enhanced dune structures or new or existing dune restoration and revegetation projects
- ☐ Innovative technology: Propose innovative technologies designed to reduce project costs
- ☒ Regionalization: Two or more local sponsors manage projects together or projects propose regional sediment management strategies to conserve sand resources or reduce project costs

Additional comments
for storm damage
reduction benefits and
cost effectiveness

The Town of Fort Myers Beach has expanded the original 2011 Shore Protection Project to include the designated critically eroded shoreline along the ECL and/or Critical Wildlife Area (state owned land on Estero Island). At grade dune plantings will be installed upon completion of construction consistent with the Fort Myers Beach Dune Management Plan.

Beach Fill template was designed for the Central Segment to account for the USACE Maintenance Dredging of Matanzas Pass and placement of 130,000 CY of sand in nearshore disposal between R182 to R186.



Beach Management Funding Assistance Program
Local Government Funding Request
Fiscal Year 2024/2025
Beach Projects Application

12. Previous state commitment

Has the Department previously reviewed, approved, and cost-shared on a feasibility or design phase for this project? Yes

Has the current proposed project phase(s) received a partial state appropriation within 3 years of phase completion? Yes

Additional comments

13. Accessible beach area: Criteria is calculated by the Department. Provide additional information for consideration.

Describe the landward and seaward edge of the accessible beach width

75ft wide design beach width plus advanced nourishment width (varies from 10ft to 110ft), plus equilibrium profile adjustment width of 60ft

Provide the project boundaries (R-monuments)

North Fill Segment (Terminal Groin- R-187), which is contiguous with the Central Fill Segment (R-187 – R-198), and the initial restoration and subsequent nourishment of the South Fill Segment (R-203 – R- 207). Total length = 5.45 miles.

Provide citations of reference sources

Project Permits. CEC Design Report.

Total accessible beach area = 28,790 ft * 75 ft = 2,159,250 sq ft.

14. Recreational benefits: Provide the percentage of linear footage within the project boundaries which is zoned recreational or open space; for commercial use; or to allow for public lodging establishment, or the equivalent. Provide additional documentation and DBPR website link in a separate attachment, if needed.

100%, Beachfront Properties including parks, hotels, condos, and residential lots are Zoned Environmentally Critical which is a recreation and open space zoning classification; or are within the Little Estero Island Critical Wildlife Area. Refer to Attachment 4-3.

15. Mitigation of inlet effects: Criteria is calculated by the Department.

Additional comments

N/A

16. Successive unfunded requests

Is the current proposed project phase(s) a successive, unfunded request? If so, how many years of successive request(s) is the current application?

Does the successive request add the construction phase?



Beach Management Funding Assistance Program
Local Government Funding Request
Fiscal Year 2024/2025
Beach Projects Application

17. Environmental habitat enhancement: Criteria is calculated by the Department. See Guidance Document for more information.

Is the project within a designated critical habitat area for threatened or endangered species that is subject to extensive shoreline armoring?

Yes

Is the project within a non-designated area where extensive shoreline armoring threatens the habitat of threatened or endangered species?

If yes to either of the above, does the project exceed best management practices to incorporate turtle-friendly designs and management strategies to protect resources or benefit critical habitat preservation?

Yes

Provide an explanation and supporting documentation for the strategies which exceed best management practices

Due to significant beach erosion properties at R-204 have installed seawall to protect upland property within the Critical Wildlife Area. Project proposes to restore and sustain beach habitat along designated critically eroded South Fill Segment. Further, design template was modified to lower the beach berm elevation to match habitat type and existing conditions within the Critical Wildlife Area. For example, berm elevation was lowered from +3.2 ft NAVD88 to +1.3 ft NAVD88 along the sub-segment between R205 to R207.

18. Readiness to construct

Does the project have an active state permit?

Yes

Does the project have an active federal permit?

No

Permit number

0413684-001-JC

Permit number

Authorization date

Jan 18, 2023

Authorization date

Expiration date

Jan 18, 2038

Expiration date

Have all necessary easements been acquired for the upcoming or proposed construction phase?

No

Has the necessary local funding been secured for the proposed project? If so, provide a copy of the draft Resolution. The signed Resolution is due by September 21, 2023.

Yes

Is an Erosion Control Line established along the project length?

Yes

Additional comments for readiness to construct

Town has secured majority of easements necessary for fall construction. Outstanding easements will be obtained by August 31, 2023.



Beach Management Funding Assistance Program
Local Government Funding Request
Fiscal Year 2024/2025
Beach Projects Application

Provide additional information and comments below or attach supporting documents.

RESOLUTION NUMBER 25-XX

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, AUTHORIZING TOWN MANAGER EXECUTE AMENDMENT NO. 1 TO AGREEMENT 23LE1 BETWEEN THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION AND TOWN OF FORT MYERS BEACH FOR DESIGN, PERMITTING, CONSTRUCTION AND MONITORING OF THE ESTERO ISLAND SHORE PROTECTION PROJECT; AND AUTHORIZES THE TOWN MANAGER TO EXPEND BUDGETED LOCAL MATCHING FUNDS FOR FUNDING RECEIVED FROM THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION; AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, Estero Island’s coastal beach, which is among the Town most important ecological, economic, and recreational assets, is subject to erosion that results in detrimental impacts to nesting and wintering areas for wildlife species such as sea turtles and shorebirds; loss of outdoor recreational opportunities for the Town’s residents and visitors; and damage to and loss of public and private property; and

WHEREAS, beach erosion control and restoration projects are an effective tool for preventing and offsetting some of the negative impacts of beach erosion, including loss of habitat, loss of recreational opportunities, and endangerment of public and private property; and

WHEREAS, the Department of Environmental Protection (“Department”) entered into the Agreement with the Town of Fort Myers Beach for the Estero Island Shore Protection Project effective March 16, 2023; and

WHEREAS, the Town was awarded additional funds to complete the project from the fiscal year 2024/2025 legislative appropriation to the Beach Management Funding Assistance Program; and

WHEREAS, the Town requested that unencumbered funds from Agreement No. 22LE3, Lee County Shore Protection Project – Estero Island Segment, funded by the Fiscal Year 2021/2022 legislative appropriation to the Beach Management Funding Assistance Program, in the amount of \$150,000.00 be included in Agreement No. 23LE1; and

WHEREAS, Amendment No. 1 of Agreement 23LE1 increases the total amount of funding from the Department to the Town by \$2,907,176.50 for a total of \$16,920,522.50; and

WHEREAS, the Town Council finds that beach erosion control and restoration projects are in the public interest and in the best interest of the health, safety, and welfare of the residents, property owners and visitors of the Town of Fort Myers Beach.

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

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

Section 2. The Town Council authorizes the Town Manager to execute Amendment No. 1 of Agreement 23LE1, described in Exhibit “A”, a copy of which is attached hereto and made a part of this Resolution.

Section 3. The Town Council authorizes the Town Manager to expend budgeted local matching funds for funding received from Amendment No. 1 to Agreement 23LE1 with the Florida Department of Environmental Protection; and

Section 4. The Town authorizes Town staff to take all necessary actions to request and obtain funds from the Florida Department of Environmental Protection for the Project and will provide matching funds/local cost share for the Project and serve as local sponsor for the Project including matching funds from the Town Beach Restoration Reserves and Lee County Tourist Development Council.

Section 5. This Resolution shall become effective immediately upon its adoption.

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

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

ADOPTED this ___ day of _____ 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

_____, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of _____
2025.

1. **Request:**

Meeting Date: April 7, 2025

Approval of DiBiasi Settlement Agreement to conclude litigation concerning the Town's placement of stormwater infrastructure on DiBiasi property without an easement as previously directed by the Town Council.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

TOWN ATTORNEY'S ITEMS

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Nancy Stuparich, Town
Attorney

5. **Background:**

At the December 16, 2024 Town Council meeting, the Town Council approved proposed terms of a formal settlement agreement with Mr. DiBiasi regarding litigation that occurred after the Town removed his boat ramp and installed some stormwater infrastructure. One of the terms of the settlement agreement is that Mr. DiBiasi would give the Town an easement to allow its infrastructure to remain in place. Approval is requested of the final settlement agreement in accordance with the terms previously approved by Town Council.

Attachments:

1. April 7, 2025 Settlement Agreement KAJ revisions (2)

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

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

Created/Initiated - 3/28/2025
Approved - 3/28/2025
Approved - 3/28/2025
Final Approval - 3/28/2025

Settlement Agreement

LEO J. DIBIASI, TRUSTEE OF THE LEO J. DIBIASI and VALERI J. DIBIASI REVOCABLE LIVING TRUST, dated August 19, 2014 (collectively “Dibiasi”), and the TOWN OF FORT MYERS BEACH, hereby enter into this Settlement Agreement to formalize the agreements reached by the parties as resolution of Case No. 23-CA-005377 filed in the Circuit Court in the 20th Judicial Circuit in and for Lee County, Florida as follows:

1. The undersigned have agreed to settle all claims upon the following terms:

- (a) The Town will pay Dibiasi the total sum of \$85,0000 which includes compensation to Dibiasi and all attorney’s fees and costs (inclusive of expert costs) following recording of the easement further described in Paragraph 1(b) below.
- (b) Dibiasi will grant the Town an easement for the drainage structures and an easement for the pipe which currently runs through the property together with rights to access the easement area. The Town shall be responsible for maintenance of the easement area. Prior to delivery, the easement shall be released from any and all existing encumbrances, unless otherwise accepted by the Town, with the exception of any existing mortgage(s), which will be subordinated to the Town’s easement. The easement will be prepared by the Town and subject to review and approval by the Dibiasi’s Attorney. The Town will be

responsible and pay for the cost of a survey identifying the easement area. The Town shall be responsible for obtaining a title report prior to delivery of the easement. Thereafter, the easement shall be presented to the Town Council for acceptance into the Town's records and recorded in the Official Records of Lee County, Florida at the Town's expense.

- (c) The Town will pay the mediator costs. Each party shall pay their own attorney fees.
- (d) Dibiasi will execute a specific release of any and all claims against the Town emanating from the inverse claim which shall be provided prior to recording of the easement. Such release shall be drafted by the Town and subject to the review of Dibiasi's attorney.

2. Upon execution of this Settlement Agreement and the Town's receipt of the specific release, the parties shall file a joint dismissal of this lawsuit with prejudice.

3. The parties agree and acknowledge that the foregoing terms of settlement are acceptable and have been approved the Town Council at a public meeting on the 17th day of March, 2025.

Signed, sealed, and delivered in the presence of:

Print Name: _____
Witness

Print Name: _____

LEO J. DIBIASI, as TRUSTEE OF THE
LEO J. DIBIASI and VALERI J. DIBIASI
REVOCABLE LIVING TRUST, dated
August 19, 2014

Witness

Date: _____

TOWN COUNCIL OF FORT MYERS
BEACH, FLORIDA

ATTEST:

BY: _____
Town Clerk

Date: _____

BY: _____
Dan Allers, Mayor

Date: _____

APPROVED AS TO FORM

BY: _____
Town Attorney

