



Fort Myers Beach Town Council

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

Agenda

Monday, April 21, 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. PRESENTATION**

- A. Donation - Road to Paradise
Restore Fort Myers Beach Arches, Inc.
Steven Ray McDonald and Earl Morgan
Presentation of Arches painting
- B. Florida Department of Transportation (FDOT)
Bridge Construction updates

IX. APPROVAL OF MINUTES

- A. Approval of Minutes - April 7, 2025
- B. Management & Planning Session - April 9, 2025

X. CONSENT AGENDA - NO ITEMS

XI. ITEMS REMOVED FROM CONSENT AGENDA

XII. PUBLIC HEARINGS

- A. Request for Lien Reduction - 8124 Estero Blvd.
Request for Reduction and Forgiveness of a Code Enforcement
Lien/Fine for Property Located at 8124 Estero Blvd, Fort Myers Beach,
Fl. by Dennis Prock, represented by Attorney Noel Davies
- B. Appeal of 213191 Widgeon Terrace
Administrative Appeal of Building Permit # 242333 / 234477

(Construction of Swimming Pool)
Appellant: Himmelstein Associates, LLC
Property Owner: Todd R. Plaisted
Property Address: 21391 Widgeon Terrace

XIII. ADMINISTRATIVE AGENDA

- A. Extension of Town Manager's Employment Contract
Approve an amendment to the Town Manager's contract, extending the term for additional 30 day periods as needed with a \$1,000 pay adjustment for each 30 day period extension.
- B. Resolution 25-125, Ratification of Task Orders 3 & 4 CDBG-DR Administration
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, TO RATIFY AND APPROVE TASK ORDERS 3 & 4 WITH TIDAL BASIN FOR CDBG-DR GRANT ADMINISTRATION SERVICES IN THE AMOUNTS OF \$163,864.57 AND \$291,785.90; AND PROVIDING FOR AN EFFECTIVE DATE.

XIV. FINAL PUBLIC COMMENT

XV. TOWN MANAGER'S ITEMS

XVI. TOWN ATTORNEY'S ITEMS

- A. Resolution 25-123, Community Redevelopment Agency (CRA)

XVII. COUNCILMEMBERS ITEMS AND REPORTS

XVIII. ADJOURNMENT

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

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



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

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



Fort Myers Beach Town Council

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

Minutes

Monday, April 7, 2025

9:00 AM

DRAFT

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

Town Attorney Nancy Stuparich explained that C. under Public Hearings had to be continued to June 7, 2025, to allow staff more time to work with the county.

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

The motion continued unanimously.

V. PUBLIC COMMENT

Tom Brady, resident and President of Protect FMB, opposed the Seagate development agreement. He clarified that those who opposed the project were not a small group and were not anti-development. He requested that the public be involved like they were promised. He asked why they allowed testimony from non-residents about density at Red Coconut when residents refuted their comments.

Fran Myers was quoted as telling residents they would not see giant towers.

Ed Rood, resident, stated that Anita Cereceda, Chair of the Local Planning Agency, donated funds to Protect FMB and thought it was unethical. He asked that Ms. Cereceda be temporarily relieved of her position while the council considered the legal ramifications. He continued to voice his opinion.

Philip Miglioratti, resident, appreciated Operations & Compliance Director Frankie Kropacek and others for working with him over the weekend regarding the demolition on 8211 Estero.

Paula Kiker, resident, agreed with Mr. Rood. She stated that Ms. Cereceda was also lobbying others to donate to Protect FMB. She felt it was unethical and elected officials should be held to a higher standard. She referred to an email she

sent to all council members. She said her actions would cause conflict on the island. She continued to express her opinion.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Operations & Compliance Manager Thomas Yozzo recognized Rangers and Code Officers for assisting with a medical emergency on the beach. The victim survived and was recovering in the hospital. Roxanne Tucci could not make the meeting, but the following were recognized: Bob Monahan, Tim Hoffman and Mike Mayhan.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

No items.

VIII. APPROVAL OF MINUTES

A. Management & Planning Session - March 13, 2025

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

The motion carried unanimously.

B. Town Council - March 17, 2025

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

The motion carried unanimously.

IX. CONSENT AGENDA

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

The motion carried unanimously.

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.

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

The motion carried unanimously.

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.

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

The motion carried unanimously.

- 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.

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

The motion carried unanimously.

- 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.

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

The motion carried unanimously.

- 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.

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

The motion carried unanimously.

X. ITEMS REMOVED FROM CONSENT AGENDA

XI. PUBLIC HEARINGS

Town Attorney Stuparich explained the quasi-judicial procedures. Town Clerk Baker confirmed that all agenda items were properly advertised and noticed. She swore in those providing testimony.

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.

Mayor Allers read the title of the ordinance. Ex parte communications: Council Member King received emails and a phone call from Mr. Gallander at the Neighborhood Company, Vice Mayor Atterholt received emails and had conversations with the applicant and those against the project, Mayor Allers received emails, Council Member Woodson received emails and had conversations with the applicant and Council Member Safford received emails and a phone call from Mr. Gallander. The property owner confirmed receipt of the agenda and background materials.

Principal Planner Judith Frankel reviewed the background of the request as stated on the blue sheet. The LPA voted unanimously to recommend approval.

Attorney Katie Berkey from Becker & Poliakoff represented the intervenors and requested Intervenor Status for both items.

Mayor Allers moved to grant Attorney Berkey Intervenor Status for both hearings, seconded by Council Member Woodson.

The motion carried unanimously.

Mayor Allers stated that intervenors were allowed five minutes per person. Attorney Berkey requested 20 minutes collectively for this hearing and 35 for the next hearing. All council members agreed.

Attorney Noel Davies asked that the record from the first reading be incorporated into this second reading. He did not have anything else to add. Attorney Berkey represented Pelican Watch, Tom and Deb Danford and Ed French. The intrusion of the expanded commercial use was problematic and would impact the neighborhood. She requested that they deny expansion or

pause this item until comments are heard at the second hearing.

Ed French was not interested in seeing more commercial in his neighborhood because it would cause traffic and other problems.

Randy Briesath, HOA President of Pelican Watch, thanked everyone for letting him participate remotely. This project squeezed two other properties and would probably lower their property values, making them more likely to sell and amenable for future purchase by the applicant.

Attorney Berkey submitted her resume, a supplemental letter from Matt Simmons and a supplemental letter from Mohsen Salehi into the record. David Tezak, resident, requested intervenor status.

Mayor Allers moved to grant Mr. Tezak five minutes as an intervenor, seconded by Council Member King.

The motion carried unanimously.

All council members received Mr. Tezak's email. Mr. Tezak referred to his email and explained that FL case law did not support spot zoning. He stated that the most extreme use was next to the residential neighborhood and would depreciate the value of properties. He discussed the increase in pedestrian and vehicular traffic and calls he made to the Sheriff's Department. He has called beach patrol almost daily due to illegal parking on his driveway. He felt they needed to consider the residents and asked that they not approve the project.

Attorney Davies noted testimony from the first hearing addressed Mr. Tezak's concerns.

Town Attorney Stuparich did not think this was spot zoning in her opinion. Public comment:

Susan Bonfigli, resident, explained why she thought it was spot zoning and expanding commercial entities into her neighborhood did not soothe her.

Sandy Spitzer, resident, described how a food truck park ten feet from her property would not allow her to relax.

David Tezak commented on spot zoning in Jacksonville Beach. He stated that the town did not even have an ordinance for food trucks.

Sally Goldberg, resident, commented that the commercial use would be ten feet from her property.

Public comment closed.

Attorney Davies noted that the request was consistent with the comprehensive plan.

Principal Planner Frankel read the findings and conclusions. Staff found that the CPD (Commercial Planned Development) amendment met the criteria and recommended approval. She noted that the LPA unanimously recommended approval.

Attorney Davies indicated his clients did not care whether the rezoning vote was before or after the vote to expand the uses.

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

The motion carried unanimously by roll call vote.

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.

Mayor Allers read the title of the ordinance. Ex parte communications: All council members disclosed the same communications as in the previous item. The applicant confirmed receipt of the agenda and background materials.

Principal Planner Frankel reviewed the background of the request as stated on the blue sheet. Changes made included a larger support structure to enclose the live music area and another deviation to increase the buffer on Pelican Watch. She described changes in the order of the conditions to make them more cohesive. She requested that they use the second version if the project is approved. She also included the exhibit provided by the applicant. The applicant requested the hours of operation to be 7:00 a.m. to 10:00 p.m. and the staff suggested an end time of 9:00 p.m. Principal Planner Frankel asked whether the town council wanted to limit the number of special event permits to specific days like holidays. She noted there was another discussion regarding limiting the maximum number of hours for music after the first hearing. Although it was discussed extensively, the council did not vote on limiting music to three hours for two days of the week.

Attorney Davies noted changes would be discussed; however, they could not satisfy every request, especially the hours of the music.

Ken Gallander with the Neighborhood Company represented the applicant and reviewed the request. Slides included Request, Town Council Directives, 4/7/25 Master Concept Plan, Master Concept Plan w/Green Space/Buffers & Aerial Overlay, Concept View: Overall Site, South/Southwest, Corner of Estero & Chapel, Chapel St., North/Northeast along Cottage Ave., Corner of Chapel & Cottage, Southwest from Estero, Estero Blvd. Pathway, Southeast from Parking Area, West from Parking Area, Southeast from Estero Pathway, Southwest from Estero Pathway, Parking - Revised, Proposed Conditions/Commitments and Findings &

Conclusions. An additional 500 square feet of the building will be added to the second story. A security gate for Pelican Watch will not be considered. They acknowledged that people and vehicles could drive through their parking lots, but they would not provide security.

The recording skipped to Vice Mayor Atterholt mentioning a position based on negotiations with the opposition. Mr. Gallander replied that they respected their position that music was not critical, but it was an element many other businesses relied on. He thought they provided a significant compromise.

Council Member King clarified that six special events would be held per year. The public restrooms were outside to be closer to the beach, but facilities would be inside the building for employees. Mr. Gallander said they would consider installing a digital sign to indicate whether parking was available.

Attorney Berkey stated that the evidence presented by experts supported the denial of the application because it was incompatible with the surrounding residential neighborhood. According to expert Matt Simmons, the underlying proposed use was an open-air food truck park with live music close to existing residential uses, likely impacting property values. The intervenors requested that the proposed conditions on page 581 be incorporated. Other concerns were related to noise, hours of operation, aesthetics and security. She summarized comments on the applicant's revised proposed conditions on page 185. Attorney Berkey will clarify whether the request for live and ambient music will be limited to three days per week, no more than six hours per day, between 12 and 8 p.m. Her clients requested a maximum of four special event permits for one day per event. She asked for clarification regarding a right exit-only on Chapel St. and a right exit-only sign in addition to the pork chop design. She referred to page 591 concerning a security gate at Pelican Watch, a dead-end sign, a no-trespassing sign and holding \$7,500.00 in escrow. She continued to review the conditions. Town Clerk Baker will print the applicants' and Ms. Berkey's proposals for conditions so council members can compare them.

Ed French appreciated all efforts to compromise. He asked how deliveries would get up and down their narrow street and to make sure that the development stays with the current owner.

Deb Danford stated that the Neighborhood Group has not contacted the neighbors. She was not opposed to commercial development, but not when it intruded into residential neighborhoods. She discussed the threat to her home after investing hundreds of thousands of dollars to protect their property.

Randy Briesath, HOA President of Pelican Watch, noted they have never been against development on the site, but they wanted an enclosed structure with specific use parking. They opposed the proposed development because it intruded on their neighborhood and negatively affected the property value of their building. He thought it was important that Mr. Simmons could not find one food truck park adjacent to residential properties in the country. He indicated that Lee County guidelines mentioned a 50-foot buffer off residential areas and local food truck parks provided at least an 80-foot

buffer; most were greater than a 100-foot buffer. Mr. Briesath asked them to consider that Fort Myers Beach would be the only one in the U.S. with immediate adjacency to a food truck court with live amplified music. If they were still compelled to vote yes, the conditions were essential to mitigate the residents' issues. He appreciated the constructive discussions but noted that the applicants had not asked how they could make the intervenors drop their opposition. He indicated there were enforcement problems on the beach and described the illegal parking situation at Mom's food truck on the weekends. Mr. Briesath said nothing had been done and that it would get worse. He asked what the town would do about the illegal parking and the noise. He reviewed some of the conditions that Ms. Berkey discussed earlier. He concluded by asking the town council to vote no. However, if they voted yes, they should fully consider the requested conditions because they did not unduly burden the applicant and did not affect their commercial viability.

David Tezak revealed there was a food truck park close to a residential area in Oregon, but it ended up being detrimental to the area. He did not want the project unless they closed the access to his house. He noted that a pedestrian study had never been done and asked whether the town council wanted a food truck park next to their house. He discussed how the proposed rezoning violated the town charter, Florida Statutes and potential legal consequences and liabilities. He said they were trying to put a square peg in a round hole. Mr. Tezak indicated that he filed a Freedom of Information request and has never received the information.

Principal Planner Frankel explained that the town clerk printed out three working versions of conditions. The staff reordering versions were on page 174, the applicants' version starts on page 185 and the intervenors' version began on page 592.

Attorney Davies suggested they hear staff and public comments and then take a break to meet and clarify issues before reporting back.

Principal Planner Frankel reviewed the seven deviations starting on page 193. Deviation seven was discussed. Principal Planner Frankel continued by reading the findings and conclusions.

Public comment:

Susan Bonfigli, resident, noted that she emailed town council members and reviewed her concerns. She stated that vehicles would be on the residential streets and people blocked her driveway access because they did not use the Mango parking lot. She described the narrow road and felt it would be a significant congestion point. She asked the town council to consider restricting the parking lot to sunrise and sunset like the Mango lot.

Sandy Spitzer, resident, noted that the idea that they had to create so many conditions proved that it was an intrusion on the neighborhood.

Monica Tezak, resident, reiterated that the applicants never contacted them. She discussed her concerns with parking on Chapel St. and stated she called the town every day because she could not get out of the road because people were parking on both sides. Beach patrol did not address the current situation and it was going to get worse. She asked why they would even

consider putting the project in a residential neighborhood. She concluded that it was shameful that they did not care about the residents.

David Tezak, resident, stated they were bending over backward for the developer, who reached a \$750,000.00 legal settlement with the Fair Housing Center of Central Indiana in March 2023. They were accused of running a predatory rent-to-own housing scheme. He stated that Bay Oaks or Times Square would be a better spot for the food truck park.

Carolyn McKeown, resident, commented that the request for the security gate at Pelican Watch was because of the volume of traffic coming into their area. Public comment closed.

The hearing was recessed until 1:30 p.m.

Parick Vanasse with the Neighborhood Group stated that there were food truck parks locally next to residential neighborhoods. He noted that Pelican Watch had traffic issues well before Ian and felt it set a dangerous precedent to expect the applicants to rectify it. He added that uses go with the land, not the owners.

Mr. Gallander reviewed their handout with the star of revised conditions. The music will be four days per week, four hours per day between noon and eight. They want the hours of operation to end at 10:00 p.m. Instead of setting a specific number of events per year, every special event permit request would go before the town council.

Principal Planner Frankel reviewed the same handout and clarified that amplified live music would be restricted to four days a week for four hours per day. She noted that ambient music could be played for the remainder of the time unless they chose to restrict it. The decibel level of ambient music was less than required by code. The staff had the close time at 9:00 p.m. The parking operation plan and sunshade sails were not included in the latest Master Concept Plan.

Attorney Berkey utilized the same handout for her discussion. She stated that it was agreed that a wall or fence would be installed on the east boundary next to Pelican Watch. Mr. Gallander forgot to add that item and noted it would be a four-foot decorative fence. Attorney Berkey felt that the hours of operation should be 9:00 p.m. but would compromise to 10:00 p.m. in the summer (daylight savings time). The applicant agreed with the compromise. The intervenors were open to ambient music seven days a week from noon to 8:00 p.m. and live amplified music three days per week, six hours maximum from noon to 8:00 p.m. No music was allowed outside of noon to 8:00 p.m. The noise ordinance would govern the live music and the ambient music would be limited to 60 decibels. They asked for four individual special events permits on single days, with an opportunity for the council to approve them with public input instead of a blank check. They requested a traffic impact statement (TIS) and asked that the TIS account for the 2008 error.

A discussion was held regarding where the dead-end and no thru traffic signs should be installed. Attorney Berkey requested that the signs that were there before Ian be replaced.

Attorney Davies thought the town council had the final language and asked for approval. Mr. Gallander said they would do a traffic impact study if the trip generation study showed an impact. Principal Planner Frankel questioned the reason for a traffic impact study since it would not impact the design or development of the site. Mr. Vanasse explained the 2008 study and agreed they would do another one if there was an impact.

Attorney Berkey explained the error in the 2008 TIS.

Council Member Safford thought the compromise on the hours was good; he was glad the short-term parking was addressed, questioned the hours of the music and agreed the music should not start earlier than noon. He agreed with the traffic study and did not think the applicant should be responsible for the security gate.

Council Member Woodson appreciated the adjustment of buffers and agreed the music had to be settled. She suggested allowing music on Thursday, Friday, Saturday and Sunday, with the hours to be determined. She supported replacing the signs that were there pre-lan.

Vice Mayor Atterholt noted that initially, the intervenors asked for two days, three hours per day for the amplified music. The applicants countered with four days per week, six hours per day. Splitting the difference would be three days with four and a half hours per day. The intervenors came back with three days, six hours per day between noon and 8:00 p.m., which seemed like a good compromise.

Council Member King agreed with members Safford and Woodson and noted there was currently a lack of traffic enforcement on Cottage and Chapel. He thought a sunshade sail should also be installed above the parking area.

Mayor Allers did not think the applicant should install a security gate at Pelican Watch. He was fine with not setting a specific number of special events permits. He agreed with the ambient music hours and preferred four days and four hours for amplified music.

Council Member King agreed that the applicants should not be responsible for the security gate. He wondered whether the town could help alert people that they could not turn around in that area by possibly installing speed bumps. Mayor Allers agreed that the town needed to step up enforcement and suggested involving the fire department regarding right-of-way issues and parking. Vice Mayor Atterholt was concerned with live music for four days and four hours and felt three days was a reasonable compromise.

Council Member Woodson stated that only duos with no percussion would perform and the music faced away from residents. She supported Thursday through Sunday in season. Dan Myers described holding entertainment events without music and wanted the fourth day for bingo or another event. He clarified that amplified sound did not necessarily mean live music. He agreed with amending the language.

After a short recess, four days a week, four hours per day for live entertainment for three days was agreed upon. The fourth day would be amplification for activities without music. They disagreed on regulating ambient music. The other outstanding issue was the threat of litigation if the

project was approved.

Attorney Berkey requested that the ambient music be seven days a week from noon to eight.

Mayor Allers moved to approve the ordinance with the conditions agreed upon by both sides through discussions today. The music will be allowed four days a week, four hours a day, with one day being no music performances. There will be no conditions on the hours of operation for ambient music, but it will not exceed 60 decibels. The special events permit language will change from temporary use and will state that a special event permit must be obtained when additional vendors of any type or an increase in visitor numbers occurs. The pork chop and right turn only on Chapel will be included along with the parking operation plan. The trip generation will be done first. All sound generated will be in compliance except where noted, seconded by Council Member King.

The motion carried unanimously by roll call vote.

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.

Mayor Allers read the title of the ordinance.

Public comment:

Debbie DePauw asked whether markings on the sidewalk would be allowed. Town Attorney Stuparich replied that they had to talk to the county. Debbie DePauw asked whether e-bikes would be allowed on the beach and Mayor Allers responded that the ordinance only addressed sidewalks.

Debbie DePauw asked what helper motors meant. Town Attorney Stuparich thought the language was outdated and would review it.

Debbie DePauw asked whether segways were allowed. Town Attorney Stuparich will look at the language.

Public comment closed.

Mayor Allers moved to continue on June 2, 2025, seconded by Council Member King.

The motion carried unanimously by roll call vote.

XII. ADMINISTRATIVE AGENDA

A. Town Manager Selection Process

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

Human Resources Director Talissa Oliveira noted the town received 66 applications. The council will vote on which ones they want to interview on April 18, 2025. Council members previously received all candidates' resumes and seventeen were identified as meeting the qualifications. Five candidates and two alternates were selected from the pool as potential fits for the role. The five candidates and two alternates are Michael Brillhart, William Lawrence, William McKannay, Scott Moye and Jeremy Shaffer, with Patrick Jordan and John Trew as alternates.

Mayor Allers, Vice Mayor Atterholt and Council Member King voted for the top five and the two alternates listed.

Council Member Safford voted for Michael Brillhart, William McKannay, Scott Moye and Jeremy Shaffer with no alternates.

Council Member Woodson voted for William McKannay and Jeremy Shaffer, with Patrick Jordan and John Trew as alternates.

Michael Brillhart, William Lawrence, William McKannay, Scott Moye and Jeremy Shaffer will be invited for interviews.

Patrick Jordan and John Trew are the alternates.

Vice Mayor Atterholt moved to interview the candidates selected above on April 18, 2025, at 9:30 a.m. and 1:00 p.m., seconded by Mayor Allers.

The motion carried unanimously.

B. Resolution 25-95, Authorizing Adoption of Policies Required by HUD for CDBG-DR

Adopt CDBG-DR Policies

Finance Director Joe Onzick noted the policies were provided by HUD (Department of Housing and Urban Development) and had to be completed to receive the CDBG-DR grant. Dr. Tracy Kohler was designated as the Accessibility Coordinator and the Fair Housing Coordinator.

A citizen complaint policy, financial management policies and a fair housing compliant policy had to be adopted overall.

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

The motion carried unanimously by roll call vote.

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.

Mayor Allers read the title of the resolution. Director Onzick explained that they had cash set aside, but those funds were earmarked to be spent. The town has \$10.3 million of expenditures incurred that FEMA will reimburse (Federal Emergency Management Agency). The emergency fund has \$4.1 million in unallocated cash and the insurance proceeds were already allocated. He proposed an \$8 million loan from the bridge loan fund to the emergency fund, with \$4 million transferred now. As much as another \$4 million would be transferred into the bridge loan fund after they receive the revenue replacement loan.

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

The motion carried unanimously.

- 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.

Mayor Allers read the title of the resolution. Principal Planner Frankel noted that Dave Farmer made a presentation a couple of months ago. She felt he would provide them with more information to make better decisions regarding the comprehensive plan and the LDC (Land Development Code), along with future development proposals. She felt it was a very valuable resource.

Director Onzick stated that funds were in the budget to cover the cost. Director Kropacek expanded on the reasons the metrics would be invaluable to staff.

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

The motion carried unanimously by roll call vote.

- 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.

Mayor Allers read the title of the resolution. Deputy Clerk Jason Freeman explained the previous piggyback contract and stated the Honc contract had expired. The City of Bonita Springs rebid it out and this was an opportunity to piggyback on the contract again.

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

Member Safford.

The motion carried unanimously by roll call vote.

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.

Mayor Allers read the title of the resolution. Environmental Projects Manager Chadd Chustz explained how the agreement expanded the area to the entire project area, so the permitting and design costs are eligible for reimbursement from FDEP (Florida Department of Environmental Protection). The contract was still valid and if the beach was obliterated this year, they would still have the funding available to the town. A separate funding request was made for Helene and Milton impacts, which will hopefully be picked up by the legislature to appropriate funds for local governments.

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

The motion carried unanimously by roll call vote.

XIII. FINAL PUBLIC COMMENT

No public comment.

XIV. TOWN MANAGER'S ITEMS

Town Manager Hyatt has another in-person meeting this week with FEMA about the National Flood Insurance Program regarding the town's status to get off probation next year.

Community Services Director Jeff Hauge commented that the Easter egg hunt will be at Bay Oaks on Saturday, April 12, 2025, from 9:00 a.m. to 11:00 a.m. The Bay Oaks pickle ball, basketball and tennis area will be closed tomorrow and Wednesday to install the air handling units on risers. Details were posted on the Facebook page and the town's website. Today, they started the prep work to apply the epoxy, which should be poured in three to four weeks. Bay Oaks should be ready to open shortly after that.

Approximately 80 properties were identified as needing attention and listed on a handout. Assistant to the Town Manager, Traci Kohler, noted code cases were created on 20% of the properties. Every property on the list has had action taken and they will keep monitoring the list for progress. Operations & Compliance Manager Thomas Yozzo explained that individual properties can be tracked on the town's website through iWork. He said people should call the town about rats so

they can start a case and the Health Department would come out and write citations.

Assistant Kohler clarified that the other 80% of properties already had cases with the building official or code enforcement. Town Manager Hyatt noted that a big part of the problem was that the realtors were not telling their clients to clean up their property.

Director Kropacek explained the details surrounding the property on 8211 Estero Blvd. The deadline to apply for the demolition permit was today and if that did not happen, the town would demolish the structure in 15 days.

Legislative Liaison Freeman will submit an appropriation request for stormwater, utility improvements, equipment and infrastructure repair. A letter of community support was required for those requests in case the funding does not come through from last year's request. A similar letter with new dates was drafted and he requested that the mayor sign it. Mayor Allers added that the request had to be resubmitted because the new administration had eliminated all the requests from last year.

Council Member King moved to authorize Mayor Allers to sign the community support letter to Congressman Donalds for the fiscal year 26 appropriations, seconded by Vice Mayor Atterholt.

The motion carried unanimously.

Town Manager Hyatt stated that he would work with the town attorney to extend his employment for 30 days.

XV. TOWN ATTORNEY'S ITEMS

Town Attorney Stuparich reviewed the DOAH (Division of Administrative Hearings) cases last week regarding the property on 131/133 Estero Blvd. A demolition permit was applied for and will be issued after payment. She was informed today that the Special Magistrate ordered them to come into compliance by May 9, 2025. The town will monitor the case and if they do not comply, a fine of \$250.00 will accrue daily and the town has the authority to demolish it themselves.

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.

Town Attorney Stuparich noted the settlement agreement was negotiated in December and they finally had a signed copy. She reviewed the history of the case. The town will pay him \$85,000.00 for an easement to keep the infrastructure in place.

Mayor Allers moved to approve the settlement agreement, seconded by Council Member Safford.

The motion carried unanimously.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Safford asked Town Attorney Stuparich for her feedback regarding the donation by the LPA Chair to Protect FMB. Town Attorney Stuparich replied that she had a constitutional right to her views on policies and to associate with whomever she wanted. She read and discussed the first part of 2-96 from the code of ordinances. She did not know that there was a conflict of interest under Chapter 112 and she cautioned them to rely on the code, which may be unenforceable for reasons under the constitution. When her term comes up, they would have to decide if they want her to continue participating in the LPA. She reminded them that she asked members if they could be impartial in the matters under ex parte disclosures and that the applicant had an opportunity to question them regarding bias. She did not think there was a risk.

Council Member Woodson thought donating money if one was appointed was a conflict of interest.

Vice Mayor Atterholt felt the accused should be able to defend herself in an open conversation.

Council Member King thought the optics did not look good. He agreed they needed to hear from her.

Mayor Allers agreed with the optics, but it was up to her to decide whether she could be impartial. Town Attorney Stuparich noted they could ask her if she wanted to resign, but they could not force her out.

Council Member Woodson did not think the Arches project would get a fair shake tomorrow. Town Attorney Stuparich repeated that the applicant could probe whether anyone was biased.

Vice Mayor Atterholt stated that the residents on St. Peters Dr. would like to turn over the jurisdiction of their street to the town. Town Attorney Stuparich asked the purpose of turning over the road and what kind of condition it was in. It could be deeded to the town at a public hearing and added to the list of roads the town owned. Vice Mayor Atterholt will invite Mr. Boan to a meeting to explain why they want to give it to the town. After replacing all the fire hydrants, people who live at Waterside want to transfer operational and maintenance control of their private road to the town. Director Hauge will talk to Mark about adding the hydrants to the town's inspection list. Vice Mayor Atterholt indicated that the school district assessed the beach school and provided five options to bring to the school board. All options would take between 7 and 18 months. He asked whether they could use the existing trailers at the existing location for the beach school pupils for six to eight months. Director Hauge replied that he could ask for an extension, but an answer would probably take several months.

Council Member King noted that a fire department official responsible for permitting took time off and asked whether that affected permits. Town Manager Hyatt had not heard anything but would follow up.

Council Member Safford said the Community Foundation had about 20 tickets left for their Vegas night event at 6:30 p.m. at Diamondhead on Saturday.

Mayor Allers noted that a risk management professional had offered to do a free risk management assessment of the island. Town Attorney Stuparich commented that once they knew of a known hazard, they had to correct it. She added that they could target specific areas to focus on.

Mayor Allers will let the person know they should contact the town.

XVII. ADJOURNMENT

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

The meeting was adjourned at 5:04 PM

DRAFT



Fort Myers Beach Management & Planning Session

Town Hall Council Chambers
2731 Oak Street
Fort Myers Beach, FL 33931
Wednesday, April 9, 2025

Minutes

9:00 AM

DRAFT

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. PRESENTATION- Wave Mitigation Wall

Elizabeth Fountain, P.E., CFM

Director of Floodplain Management and Stormwater Design

J.R. Evans Engineering, P.A.

Elizabeth Fountain from J.R. Evans Engineering reviewed her experience on the beach. She described wave mitigation walls as three to three and a half feet above grade and they disrupted the wave action during hurricanes. The walls have been successfully installed throughout coastal Florida. She utilized PowerPoint in her presentation. Slides included a Map, Wave Dissipation Wall at the Hyatt in Clearwater Beach, Wave Dissipation Wall Plan View, Wyndham Grand Wave Dissipation Wall Plan View, Street View of Clearwater Hyatt Wall, and the Clearwater Wyndham Grande Wall. She suggested that the walls could be used in Times Square and noted they were adding them to the Outrigger property. Mayor Allers was familiar with the walls and indicated it would be great to have them along the length of the beach. He added that lights were built in and drinking fountains with water stations were installed along the way.

Ms. Fountain indicated that the wave walls were built to disrupt the wave action, while sea walls were designed for stability. She noted that boardwalks were not linked to the wave walls. The cost ranges from \$500.00 to \$750.00 per linear foot. The 300-foot wall installed at the Bonita Beach Club cost approximately \$240,000.00. They would run coastal models to determine the parameters for the design and provide a rendering.

Mayor Allers commented that Grand Resorts provided modeling for them to review. The wall at Wyndham was completed in 30 days, but it was a short wall. She discussed potential permits and FEMA (Federal Emergency Management Agency) involvement. She estimated it could take a year to complete the process, including construction. Ms. Fountain described the pending grant funding for the Bonita Beach Club wall. The wall is constructed behind the dunes and the coastal construction control line.

Council Member Woodson felt this was probably the most important thing they could do for the island and supported moving forward. She suggested adding the topic to the next agenda. Mayor Allers agreed it should be discussed further and would be valuable, especially if grants were secured. He encouraged people to go to Clearwater to see their wall. Ms. Fountain added that they could check out the wall at the condominiums on Bonita Beach.

Ms. Fountain described the people working for J.R. Evans Engineering. She believed that dune restoration plus vegetation was the one thing every coastal community should look at doing first. She will return with more information, including grant sources. She described how the walls would benefit properties across the street from the Outrigger.

B. FY25/26 Budget Hearing Dates

Set FY25/26 budget hearing dates

Council Member Safford will be out of the country until September 9, 2025. Finance Director Joe Onzick stated that the budget must be approved by September 30, 2025. The evening and regular council meetings will be on September 11, 2025, and September 24, 2025. The regular meetings will begin at 9:00 a.m. and the evening meetings at 5:01 p.m. There will not be an M&P meeting in September.

Director Onzick noted they could wait until August 4, 2025, to set the maximum millage rate. Council members agreed. Director Onzick expressed his opinion about whether the millage rate could stay the same, but there were factors involved.

IV. AGENDA MANAGEMENT

A. April 2025

No agenda items. Mayor Allers received consent to sign a letter to the TDC (Tourist Development Council) asking for help with the Fourth of July fireworks. Town Clerk Baker announced a Sunshine Laws training session for all the advisory committees on April 22, 2025, at 1:30 p.m. Council members were invited to attend.

V. ADJOURNMENT

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

The meeting was adjourned at 10:06 AM.

1. **Request:**

Meeting Date: April 21, 2025

Request for Reduction and Forgiveness of a Code Enforcement Lien/Fine for Property Located at 8124 Estero Blvd, Fort Myers Beach, Fl. by Dennis Prock, represented by Attorney Noel Davies

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

4. **Submitter of Information:**

Thomas Yozzo, Emergency
Services Director

5. **Background:**

A request for reduction of a code enforcement lien/fine was received from Attorney Noel Davis on behalf of his client, Dennis Prock. The reasons for the request are set forth in detail in the request. Town staff has been researching the matter and will provide additional information to the Town Council prior to, or at the hearing on April 21, 2025 regarding its findings OR request a continuance of the matter to the May 5, 2025 Town Council public meeting.

Attachments:

1. Code Enforcement Lien Reducation Request Application and supporting documentation 3.19.25
2. Draft Satisfaction of Lien - Prock
3. DIVISION_4.____REDUCTION_AND_OR_RELEASE_OF_CODE_ENFORCEMENT_LIENS
4. Warranty Deed
5. Property Data

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

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

Created/Initiated - 4/11/2025
Approved - 4/15/2025
Approved - 4/16/2025
Final Approval - 4/16/2025



Town of Fort Myers Beach

CODE ENFORCEMENT LIEN REDUCTION REQUEST APPLICATION (LDC Sec. 2-432)

A copy of the order imposing the lien must be submitted with this application. A non-refundable \$200.00 application fee will be due at the time the application is submitted.

Code Enforcement Case Number: 20230476

Date: March 17, 2025

Date Subject Property was brought into Compliance with Town Code: January 15, 2020

Reasoning for reduction (factual):

As indicated by Officer Marcio Chavez in his October 23, 2024, inspection of the property, a violation of Permit #181910 never existed, and I have been in compliance with the Permit requirements since the above-referenced date. Furthermore, a notice of violation was never issued to me, and so the code enforcement proceeding against me was unlawful.

Reasoning compliance not accomplished by time lien was recorded:

As indicated above, no non-compliance ever existed.

Amount of reduction requested: \$46,900.00

Outstanding Mortgage Information. Please include date(s) recorded and whether currently in default.

Recorded on January 16, 2025, Instrument #2025000015439. Not in default.

Recorded on April 19, 2019, Instrument #2019000089369. Not in default.

All documents or other evidence that supports reduction request must be included in the application.

Applicant Signature: [Signature]

Date: 3/17/2025

Applicant Printed Name: Dennis Prock

STATE OF FLORIDA, COUNTY OF LEE

The foregoing instrument was certified and subscribed before me by means of physical presence OR online notarization, this 17th day of MARCH, 2025 by Dennis Prock who is personally known to me OR ☒ who has produced Drivers license as identification.

[Signature]
(SEAL) Notary Public Signature

My Commission Expires:



AFFIDAVIT

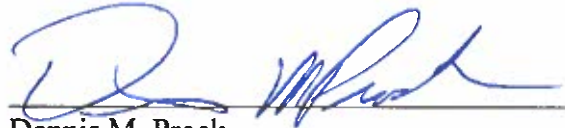
I, Dennis M. Prock, the undersigned Affiant, after being duly sworn, depose and say the following:

1. I am the fee simple owner of the real property (hereinafter the "Property") located at 8124 Estero Boulevard, Fort Myers Beach, FL 33931.
2. In 2018, a permit was issued by the Town of Fort Myers Beach, Permit #181910 and the Property was renovated and the lower level was enclosed. The final inspection was completed and passed on January 13, 2020, by Mark Keohane.
3. In September of 2022, Hurricane Ian damaged the lower level of the Property. To minimize the damage to the Property, I placed durarock in three parts of the lower level and applied for a permit, Permit #23429, to enclose the garages as I had in 2020. Thereafter, I decided to leave the garages open to look more like a carport and never enclosed the garages. The permit was thereafter voided.
4. Subsequently, and unbeknownst to me, the Town of Fort Myers Beach brought forth a code enforcement proceeding against the Property.
5. However, the Town of Fort Myers Beach never issued a notice of violation for the Property. In fact, the Notice of Violation associated with the code enforcement proceeding against the Property was issued to Tyler Flora, the owner of real property located at 8214 Estero Boulevard, Fort Myers Beach, Florida 33931, for code enforcement violations applicable to his property, on March 6, 2023.
6. Thereafter, the Town of Fort Myers Beach issued a Notice of Code Enforcement Hearing for the code enforcement proceeding against the Property on May 15, 2023. However, the Notice of Violation attached to the Notice of Code Enforcement Hearing was the violation addressed to Mr. Flora's property, and made no mention of the Property.
7. The Town of Fort Myers Beach sent a certified letter regarding the Notice of Code Enforcement Hearing which I neither received nor signed for.
8. Notwithstanding, the Code Enforcement Board issued an Order on June 16, 2023, finding that I had violated the code provisions cited in the Notice of Violation to Mr. Flora. Additionally, the Order found a violation of Town of Fort Myers Beach LDC Sec. 6-441, which was neither cited as a violated provision in the Notice of Violation to Mr. Flora nor is it applicable to the Property.
9. Pursuant to the order, a lien was placed on the Property on December 15, 2023 (the "Lien"). I discovered the Lien when I was applying for a loan on the Property and immediately drove down to City Hall and met with Tom Yozzo, the Code Compliance Manager.
10. Mr. Yozzo sent Code Enforcement Officer Marcio Chavez to the Property for an inspection on October 23, 2024 who indicated that I was in compliance with Permit #181910. This permit was finalized on January 15, 2020, and there were no violations. As indicated above, a notice of violation was never issued for the Property. Therefore, the Order should never have been issued against the Property.

11. Affiant further states that Affiant is familiar with the nature of an oath, and with the penalties as provided by the laws of the State of Florida for falsely swearing to statements made in an instrument of this nature. Affiant further certifies that Affiant has read the full facts of this affidavit and understands its context.

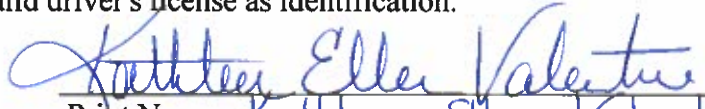
[Affiant's signature on next page]

FURTHER AFFIANT SAYETH NAUGHT.


Dennis M. Prock

STATE OF FLORIDA
COUNTY OF Lee

The foregoing instrument was sworn to and subscribed before me by means of X physical presence or _____ online notarization, on this 17th day of March, 2025, by Dennis M. Prock, who _____ is personally known to me or X produced a valid driver's license as identification.


Print Name: Kathleen Ellen Valentine
My commission expires:

(PLACE NOTARIAL SEAL)





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

March 06, 2023

CASE NUMBER:	20230293
CERTIFIED MAIL:	7022 2410 0002 8638 6223

TYLER FLORA
8214 ESTERO BLVD
FORT MYERS BEACH, FL 33931

SITE ADDRESS: 8214 ESTERO BLVD
PARCEL STRAP NO: 034724W3003000230

NOTICE OF VIOLATION

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

Work Without a Permit- Installation of Additional Structure and Electrical Panel.

Sec. 6-111, Adopting FBC 105.1 The Florida Building Code is hereby adopted by reference and made a part of this article, including all revisions and amendments approved in accordance with state law.

FBC 105.1 Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any required impact-resistant coverings, electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.

The Violation(s) can be brought into compliance by obtaining a proper permit. You are hereby directed to bring these violations into compliance within 10 days of receipt of this notice.

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

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

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

Please contact the Town of Fort Myers Beach Code Enforcement Division at (239) 765-0202 or code@fmbgov.com if you have any questions concerning this Notice of Violation.

Respectfully,

James Campbell

Code Enforcement Officer
Town of Fort Myers Beach



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

May 15, 2023

TOWN OF FORT MYERS BEACH,
Petitioner,

vs.

PROCK DENNIS M
8124 ESTERO BLVD
FORT MYERS BEACH, FL 33931,

Respondent.

Case Number:	20230476
Certified Mail:	7022 3330 0000 8180 5808
Regular Mail:	5/15/2023

SITE ADDRESS: 8124 ESTERO BLVD
PARCEL STRAP NO: 034724W3003000180

NOTICE OF CODE ENFORCEMENT HEARING

YOU ARE HEREBY NOTIFIED that, pursuant to Chapter 2, Article V of the Town of Fort Myers Beach Land Development Code, the undersigned Code Enforcement Officer has documented that (an) uncorrected violation(s) of one or more codes of the Town of Fort Myers Beach, as described in the **NOTICE OF VIOLATION**, previously provided to you, exists on the above-described property. A hearing before the Town's Code Enforcement Special Magistrate concerning the violation(s) has been scheduled for:

06/15/2023 at 11:00 A.M. at Diamondhead Beach Resort, located at 2000 Estero Boulevard, Fort Myers Beach, Florida.

NO ADDITIONAL NOTICE OF THE HEARING WILL BE PROVIDED TO YOU. If you fail to attend this hearing, the Code Enforcement Special Magistrate will consider the case, even though you are not present, and may assess fines or take other actions that will affect your rights. If you believe you have come into compliance, it is **your** responsibility to contact the Code Enforcement Division so that an inspection can be performed to determine compliance.

Patrick Morris

Code Enforcement Officer
Town of Fort Myers Beach

IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE SPECIAL MAGISTRATE WITH RESPECT TO ANY MATTER CONSIDERED AT HEARING, SUCH PERSON WILL NEED A RECORD OF THE PROCEEDINGS, AND, FOR SUCH PURPOSE MAY NEED TO ENSURE AT THEIR OWN EXPENSE FOR THE TAKING AND PREPARATION OF A VERBATIM RECORD OF ALL TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

NOTE: IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS ANY ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE TOWN CLERK FOR THE TOWN OF FORT MYERS BEACH, 2525 ESTERO BLVD. FORT MYERS BEACH, FL 33931; TELEPHONE NUMBER (239) 765-0202 EXT 1400, WITHIN 2 WORKING DAYS PRIOR TO THE MEETING DATE.



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

March 06, 2023

CASE NUMBER:	20230293
CERTIFIED MAIL:	7022 2410 0002 8638 6223

TYLER FLORA
8214 ESTERO BLVD
FORT MYERS BEACH, FL 33931

SITE ADDRESS: 8214 ESTERO BLVD
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FBC 105.1 Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any required impact-resistant coverings, electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.

The Violation(s) can be brought into compliance by obtaining a proper permit. You are hereby directed to bring these violations into compliance within 10 days of receipt of this notice.

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

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

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

Please contact the Town of Fort Myers Beach Code Enforcement Division at (239) 765-0202 or code@fmbgov.com if you have any questions concerning this Notice of Violation.

Respectfully,

James Campbell

Code Enforcement Officer
Town of Fort Myers Beach

PARCEL #: 03-47-24-W3-00300.0180

This Document Prepared By and Return To:

Town of Fort Myers Beach Code Enforcement Department

2525 Estero Blvd.

Fort Myers Beach, FL 33931

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

TOWN OF FORT MYERS BEACH, FLORIDA,

Petitioner.

vs.

CASE NO. 20230476

PROCK, DENNIS,

Respondent.

CODE ENFORCEMENT ORDER

THIS CAUSE came on for public hearing on June 15, 2023, before the undersigned Special Magistrate for the Town of Fort Myers Beach, with the Respondent, Dennis Prock, not present. Having considered the sworn testimony, evidence and arguments presented, the Special Magistrate finds and orders as follows:

A. FINDINGS OF FACT:

1. The Respondent, Dennis Prock ("Respondent"), is the owner, lessee, responsible entity or otherwise in charge of or responsible for the subject property located at 8124 Estero Blvd., Fort Myers Beach, FL, 33931 ("Property"), legally described as:

Lot 18, of that certain subdivision known as Grand Ole' Man, according to the map plat thereof recorded at Plat Book 29, Pages 26 and 27, in the Public Records of Lee County, Florida.

2. The Respondent was served with a Notice of Violation ("NOV") alleging the existence of a violation of the Town of Fort Myers Beach Code of Ordinances ("Town Code") on the Property.

3. The NOV specified that Respondent was required to correct the violation by a specified amount of time, but Respondent failed to do so.
4. The Respondent was served with a Notice of Hearing as a result of non-compliance with the NOV, and therefore, this case is properly before the Special Magistrate.
5. The following violation exists on the Property:

LOWER-LEVEL ENCLOSURE WITHOUT PERMIT

B. CONCLUSION OF LAW:

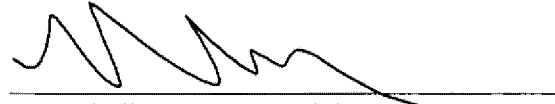
1. Respondent, by reason of the foregoing facts, is in violation of Town Code LDC Sec. 6-111, Adopting FBC 105.1- Permit required; LDC Sec 6-441- Permits; inspections.
2. Based upon the competent substantial evidence presented at the hearing, the Special Magistrate of the Town of Fort Myers Beach has determined that this Order of Enforcement is hereby warranted.

C. ORDER/IMPOSITION OF FINE:

1. The Special Magistrate has considered the gravity of the violation(s), any actions by the Respondent to correct the violation(s); and any previous violations committed by the Respondent and hereby orders the aforementioned violation(s) occurred.
2. Respondent is assessed \$100.00 in administrative costs and fees.
3. Respondent is ordered to come into compliance within six (6) months.
4. If the violation has been corrected, the amount ordered by the Special Magistrate for administrative costs and fees in the amount of \$100.00 is still ordered.
5. In the event that the said violation is not corrected **PRIOR TO DECEMBER 15, 2023**, a fine of **\$150.00 per day** shall be imposed against Respondent and the Property, beginning on that date and continuing for each day that the aforesaid violation continues to exist.
6. In the event that the violation is not corrected by the above-mentioned date and/or the costs ordered herein have not been paid, a hearing to impose a lien against all real and personal property of Respondent for the amount ordered will be held before the Special Magistrate on **a date, time, and location to be determined**, and could result in litigation in Circuit Court.

7. **The Respondent is ordered to contact the Town of Fort Myers Beach Code Enforcement Department to re-inspect the property to verify compliance. A COMPLIANCE RE-INSPECTION WILL NOT be conducted unless the Respondent contacts the Town of Fort Myers Beach Code Enforcement Department.**

ORDERED this 15th day of June 2023, and executed this 16 day of June 2023.


Myrnabelle Roche, Special Magistrate

APPEAL: An aggrieved party may appeal an Order of the Special Magistrate of the Town of Fort Myers Beach to the Lee County Circuit Court. The appeal shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within thirty (30) days of the execution of the Order to be appealed.

Pursuant to Chapter 162.09 (3), Florida Statutes, A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon and other real or personal property owned by the violator.

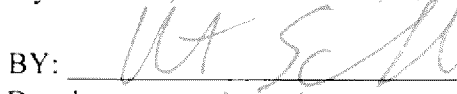
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that true and correct copy of the Order was sent by U.S. Mail on the 20 day of June 2023 to:

Dennis Prock
8124 Estero Blvd.
Fort Myers Beach, FL 33931


Code Compliance Coordinator

I certify this document to a be true and correct copy of the original on file in Town Hall, Fort Myers Beach, State of Florida, County of Lee.

BY: 
Dated 6/20/23

This instrument was prepared by:

Noel J. Davies, Esq.
Davies Duke, PLLC
1415 Panther Lane, Suite 442
Naples, FL 34109
239-216-2792

**SATISFACTION, RELEASE AND DISCHARGE OF LIEN
(CODE ENFORCEMENT ORDER)**

STATE OF FLORIDA
COUNTY OF LEE

WHEREAS, the undersigned, Andy Hyatt, as Town Manager of the lienor herein, Town of Fort Myers Beach, Florida, a municipal corporation of the State of Florida, having recorded a Code Enforcement Order, Case No. 20230476, against the property of Dennis Prock on the 20th day of June, 2023, under Instrument No. 2023000213895, Public Records of Lee County, Florida, described as:

Lot 18, of that subdivision known as Grand Ole' Man, according to the map plat thereof recorded at Plat Book 29, Pages 26 and 27, in the Public Records of Lee County, Florida.

(8124 Estero Blvd, Fort Myers Beach, FL 33931)

NOW, THEREFORE, the undersigned, does hereby acknowledge that the code enforcement lien, which is the subject of the Code Enforcement Order, is cancelled, satisfied, released and discharged in accordance with Florida Statute §713.21(2).

Signed, sealed, and delivered this ____ day of _____, 2025.

**Town of Fort Myers Beach, Florida, a municipal
corporation of the State of Florida**

By: _____

Printed Name: Andy Hyatt

Its: Town Manager

STATE OF _____
COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____ 2025, by Andy Hyatt as Town Manager of Town of Fort Myers Beach, a municipal corporation of the State of Florida, on behalf of the Town. He ☐ is personally known to me or ☐ has produced a driver's license as identification.

Notary Seal:

Notary Public
Printed Name: _____
My Commission Expires: _____

Sec. 2-432. Procedure to obtain reduction and/or release of a code enforcement lien.

- (a) Where a certified copy of an order imposing a penalty or fine for a code enforcement violation has been recorded in the public records and has become a lien against the land and/or property of the violator/property owner, such violator/property owner may apply for a release of such lien as follows:
- (1) Upon full payment by the violator/property owner of the fine or penalty imposed as a result of a code enforcement action, the town manager or designee is hereby authorized to execute and record, at the property owner's expense, a release of lien.
 - (2) Upon request for a reduction or forgiveness of a fine or penalty that constitutes a lien resulting from a code enforcement action, the violator/property owner shall submit a written application to the town manager or designee. The application shall include the following:
 - a. A copy of the order imposing a lien upon the property;
 - b. The code enforcement case number;
 - c. The date upon which the violator/property owner brought the subject property into compliance with the requirements of the town Code;
 - d. The factual basis upon which the violator/property owner believes the application for reduction or forgiveness of the lien should be granted;
 - e. The specific terms upon which the violator/property owner believes a satisfaction or release of lien should be granted;
 - f. The reasons, if any, compliance was not accomplished by the violator/property owner prior to the time the order of lien was recorded;
 - g. The amount of the reduction in penalty or fine requested by the violator/property owner;
 - h. Information concerning any outstanding mortgages on the property, including the date such mortgage or mortgages were recorded and whether the mortgage or mortgages are currently in default;
 - i. All documents or other evidence that support the applicant's request for a reduction or forgiveness of the lien, which must be included with the application at the time of submittal; and
 - j. The application shall be executed under oath and sworn to in the presence of a notary public and delivered to the town manager designee.
 - (3) The violator/property owner shall submit, at the time of application, an application fee in the amount of \$200.00 to reimburse the town for its administrative costs associated with handling the application and recording the order imposing a penalty or fine and the requested release of lien. The application cost is non-refundable, without regard to the final disposition of the application for reduction, forgiveness and release of lien.
 - (4) Upon receipt of the application for release of lien and the payment provided above, the town manager, or designee, shall confirm through the code enforcement division that the violation which resulted in the order imposing the penalty or fine has been brought into full compliance.
 - (5) The town manager, or designee, shall then review and consider the status of the application for release of lien with respect to the following:
 - a. If a property owner acquired the property after the code enforcement lien was recorded, a waiver or reduction of lien may not be granted because the lien should have been identified and satisfied by the property owner at the time of purchase of the property.

-
- b. If a title insurance policy was issued at the time the property was purchased and the title insurance policy failed to identify or consider the lien, a waiver or reduction in lien may not be granted. In such cases, the lien should have been discovered by the title insurer and providing a reduction or waiver would place the town in the position of indemnifying the title insurer against its losses, which losses are the result of negligent examination of title by the title insurer.
 - c. A request for waiver or reduction in lien may not be granted if the town council has previously reduced the amount of the lien. This statement applies whether or not the request is received from the original applicant for reduction or from a subsequent applicant who acquired the property.
- (6) If the town manager or designee determines that the request falls within any one of the above factual situations, the town manager or designee shall issue a written denial of the request for reduction or forgiveness. If the applicant desires to appeal the town manager's decision to the town council, the applicant may do so by filing a written appeal with the town manager stating the reason(s) why the town council should make an exception to its established guidelines and consider a reduction or forgiveness of the lien. Upon filing of a proper appeal, the town manager shall present the information to the town council at a regular meeting for their consideration and final determination.
- (7) If the town manager or designee determines that the request does not fall within any of the above factual situations and therefore qualifies for possible reduction or forgiveness, the town manager or designee shall review the request further. The town manager or designee, in formulating a recommendation on whether to reduce the amount of the lien or forgive the lien entirely, shall consider the following factors:
- a. The gravity of the violation(s);
 - b. The amount of time it took the violator/property owner to come into compliance;
 - c. The accrued amount of the code enforcement lien as compared to the market value of the property;
 - d. Whether there is a prior recorded mortgage on the property and, if so, whether such mortgage is in default and/or whether the principal amount of the mortgage is of such a magnitude that it would not be practical for the town to institute a lien foreclosure action;
 - e. Any previous code violation(s) of applicant/owner;
 - f. Consideration for the future or proposed use of the property for public purpose; and
 - g. The number and status of all other properties owned by the applicant/owner in Lee County, Florida.
- (8) The town manager or designee shall place the application for satisfaction or release of lien upon the agenda of a regularly scheduled town council meeting. The town council may take action based solely upon the sworn application, recommendation of the town manager or designee and the applicant shall have opportunity to address the town council as to the factors he or she believes warrant reduction or waiver of lien in considering the application for satisfaction or release of lien.
- (9) The town council may reduce the amount of the lien, waive the full amount of the lien or continue the lien in its full amount and may accept, modify or reject the recommendations of the town manager or designee.
- (10) Town council approval of a reduction in the amount of the lien shall be contingent upon payment in full of the reduced amount within 30 days of the town council approval date. If the reduced amount is not paid in full within the 30-day period, the reduction shall be come null and void and the full amount of the lien shall be due and payable.

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- (11) When a lien is satisfied as a result of full payment, reduced payment or waiver as ordered by the town council, the town shall record the satisfaction/release of lien in the public records of Lee County, Florida and provide a copy to the property owner.

(Ord. No. 12-05, § 3, 6-18-2012)

Secs. 2-433—2-459. Reserved.

ARTICLE VI. IMPLEMENTING PUBLIC CAPITAL IMPROVEMENTS

10.00
9810.00
9810.00

THIS INSTRUMENT PREPARED BY AND RETURN TO:
WILLIAM E. SHENKO, JR.
WILLIAM E. SHENKO, JR., P.A.
1661 ESTERO BOULEVARD, SUITE 24
FORT MYERS BEACH, FL 33931

Property Appraisers Parcel Identification (Folio) Numbers: 03-47-24-W3-00300.0180

SPACE ABOVE THIS LINE FOR RECORDING DATA

THIS WARRANTY DEED, made the 30th day of August, 2018 by

JANEL GOMEZ, a single woman, Individually and as Trustee of the Janel Gomez Revocable Trust dated March 20, 1998, and restated January 3, 2018, herein called the grantor, to

DENNIS M. PROCK, whose post office address is 8010 Estero Boulevard, Fort Myers Beach, FL 33931, hereinafter called the Grantee:

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

WITNESSETH: That the grantor, for and in consideration of the sum of TEN AND 00/100'S (\$10.00) Dollars and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the grantee all that certain land situate in Lee County, State of Florida, viz.:

Lot 18, of that certain subdivision known as Grand Ole' Man, according to the map plat thereof recorded at Plat Book 29, Pages 26 and 27, in the Public Records of Lee County, Florida.

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

TO HAVE AND TO HOLD, the same in fee simple forever.

AND, the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land, and hereby warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 2017.

IN WITNESS WHEREOF, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:

1. T. R.
Witness #1 Signature for Janel Gomez
Thomas Rossiky
Witness #1 Printed Name
2. Ana L. Ferreira
Witness #2 Signature for Janel Gomez
Ana L. Ferreira
Witness #2 Printed Name

Janel Gomez
JANEL GOMEZ, Individually and as
Trustee of the Janel Gomez Revocable
Trust dated March 20, 1998, and restated
January 3, 2018
1051 Oakpoint Circle, Apopka, FL 32712

STATE OF FLORIDA
COUNTY OF Seminole

The foregoing instrument was acknowledged before me this 30th day of August, 2018 by JANEL GOMEZ, who () is personally known to me or (X) has produced Florida Driver License as identification.

Signature of Notary Janet C Thompson
Type/Print Name of Notary Janet C Thompson
Commission Number 1666091022
Commission Expiration Date April 06, 2021



**Property Data**

STRAP: 03-47-24-W3-00300.0180 Folio ID: 10234194

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

Generated on 4/9/2025 9:04 AM

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

PROCK DENNIS M
8124 ESTERO BLVD
FORT MYERS BEACH FL 33931

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

8124 ESTERO BLVD
FORT MYERS BEACH FL 33931

Property Description

Do not use for legal documents!



GRAND OLE MAN PB 29 PG 27 LOT 18

[View Recorded Plat at LeeClerk.org](#) - Use this link to do an Official Records search on the Lee County Clerk of Courts website, using 29 and 27 for the book and page numbers.

Attributes and Location Details

Total Bedrooms / Bathrooms	3 / 3.0
Gross Living Area	2,584
1st Year Building on Tax Roll	1987
Historic Designation	No

Township	Range	Section	Block	Lot
47	24E	03	00300	0180
Municipality	Latitude	Longitude		
Town of Fort Myers Beach	26.40405	-81.89003		

[View Parcel on Google Maps](#)[\[Tax Map Viewer \]](#) [\[View Comparables \]](#)[\[Pictometry Aerial Viewer \]](#)**Image of Structure**[◀ Photo Date December of 2020 ▶](#) ☐ [View other photos](#)

Last Inspection Date: 12/09/2020

Property Values / Exemptions / TRIM Notices

Generated on 4/9/2025 9:04 AM

Property Details (Current as of 4/8/2025)

Generated on 4/9/2025 9:04 AM

**Property Details (2024 Tax Roll)**

Generated on 4/9/2025 9:04 AM

Taxing Authorities

Generated on 4/9/2025 9:04 AM

Sales / Transactions ⓘ

Generated on 4/9/2025 9:04 AM

Building / Construction Permit Data

Generated on 4/9/2025 9:04 AM

Parcel Numbering History ⓘ

Generated on 4/9/2025 9:04 AM

Solid Waste (Garbage) Roll Data

Generated on 4/9/2025 9:04 AM

Flood and Storm Information

Generated on 4/9/2025 9:04 AM

Generated on 4/9/2025 9:04 AM

[Previous Parcel Number](#) [Next Parcel Number](#) [New Query](#) [Search Results](#) [Home](#)

1. **Request:**

Meeting Date: April 21, 2025

Administrative Appeal of Building Permit # 242333 / 234477 (Construction of Swimming Pool)
Appellant: Himmelstein Associates, LLC
Property Owner: Todd R. Plaisted
Property Address: 21391 Widgeon Terrace

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Attachments:

1. Notice of Administrative Appeal
2. Part 1 Renewed Appeal Public Hearing Application
3. Part 2 to Renewed Appeal Public Hearing Application
4. Town of Fort Myers Beach's Response
5. Exhibit A to the Town's Response (Approval letter for Building Permit 242333)
6. Exhibit B to Town's Response
7. Warranty Deed - Plaisted
8. Declaration of Condominium
9. Sec. 34-86 Administrative Appeals
10. Permit 234477
11. Permit 242333

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

nancy stuparich, Town Attorney
Traci Kohler, Assistant to the Town manager
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Lizzette Roman, Town Clerk Administrative Coordinator
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 3/14/2025
Approved - 3/14/2025
Approved - 3/18/2025
Approved - 4/15/2025
Approved - 4/15/2025
Approved - 4/15/2025
Final Approval - 4/15/2025

NOTICE OF ADMINISTRATIVE APPEAL with

[RENEWED] ADMINISTRATIVE APPEAL dated September 30, 2034

BUILDING PERMIT # 242333 / #234477 (213191 Widgeon Terrace)

Appellants hereby give notice of appeal and file this administrative appeal of the Town of Fort Myers Beach Building Permit #242333 / #234477 pursuant to Fort Myers Beach Code Section 34-86 (Appeals from administrative action) the building permit and site plan issued for 213191 Widgeon Terrace, Fort Myers Beach, Florida (subject property).

The Appellants are HIMMELSTEIN ASSOCIATES, LLC, 21381 Widgeon Terrace, Fort Myers Beach, Florida that owns real property with a single-family dwelling and ROBERT HIMMELSTEIN and STEPHANIE HIMMELSTEIN who are principles in the LLC and reside in the home at 21381 Widgeon Terrace, Fort Myers Beach, Florida.

The Appellants own adjacent property and share a common property boundary with the subject property located immediately next door. Appellants first found out about, and obtained a copy of, the Building Permit #242333 issued on September 8, 2024 (which relies upon information submitted with #234477 that was issued on July 1, 2024, on July 8, 2024), and files this appeal within 30 days of September 8th on October 1, 2024.

The grounds for the appeal are set forth as follows:

The basis of our appeal is that the homeowner is using property boundaries that are not correct. They are using condominium "common area" land square footage to increase their private lot size square footage to improperly make their impervious surface calculation sheet appear to be less than .67 of their lot size.¹

The condominium plat states that limited common elements are: "All those lands lying East of the platted unit line and West of the Mean High Tide Line along Estero Bay".

I also attached copy of the engineer's plan along with the survey from Land tec that is referenced by the engineer on his plan. Importantly, the survey is incorrect because the survey incorrectly states that: *"record data indicates ownership to the edge of water. Estero bay is tidally influenced and requires a mean high-water determination to establish the property boundary"*. Importantly, the survey also states *"this survey is based upon recorded information provided by client. No specific search of the public records has been made by this office unless otherwise noted."*

The condominium plat states that limited common elements are: "All those lands lying East of the platted unit line and West of the Mean High Tide Line along Estero Bay" the

¹ Please note surveyor Stephen Shawless actually has Scott Whitaker's survey on auto-CAD and has measured the overall area of the property to be 8,063 and calculates the property at over 71 percent impervious surface ratio.

private property owner of this lot does not own the common area, which is separately owned by the land Condominium Association.

The reason for our appeal is that the applicant is using the incorrect boundaries of their property. They did not disclose on the community development department application for public hearing that there are deed restrictions and covenants on the subject property (please see exhibit 1 page 8 of 11 of community development department application for public hearing). Importantly, this property is a condominium.

The property with the street address of 21391 Widgeon Terrace is Unit M-1 of Flamingo Harbor Condominium. The property data from Lee County submitted for permit number 234477 shows that the land unit of measure is UT. UT stands for the unit measure. The unit measure is the unit as depicted in the Condominium Plat. The Condominium Plat shows the unit boundaries does not include the lands lying East of the platted unit line and West of the Mean High Tide Line along the Estero Bay.

The Applicant has submitted a boundary survey that was on permit number 234477. This was submitted part of variance app - 21391 widgeon - pool.pdf. The boundary survey properly referred to the Condominium Plat. There is also a handwritten note on the upper right-hand side of the boundary survey that says 67% lot coverage. This boundary survey that was done correctly per the Condominium Plat has the existing property already exceeding the 67% impervious surface calculation.

https://iworg-upload.s3.amazonaws.com/FORTMYERSBEACH/701/7b5cc6ac3ab4aee4c965ab7386dbed95_variance_app_-_21391_widgeon_-_pool.pdf

The multiple surveys since submitted by the Applicant do not properly represent the boundaries. These surveys are incorrectly using Mean High Water as the unit boundary. The surveys from Land tech state have a convenient disclaimer listed below:

GENERAL NOTES:

1.THIS SURVEY IS BASED UPON RECORD INFORMATION PROVIDED BY CLIENT. NO SPECIFIC SEARCH OF THE PUBLIC RECORD HAS BEEN MADE BY THIS OFFICE UNLESS OTHERWISE NOTED.

Therefore, the drainage plan from LIS is wrong since it is using incorrect boundary information from Land Tech. There is no room for the required drainage plan or landscape plan. The drainage plan from LIS engineering both state that they were provided upon information by the client and no research of public records was made by LIS. LIS is showing the bay side set back of 14.39 feet from the MHWL (mean high water line). The setback should be from the unit boundary and not the MHWL. Importantly, the applicant has also misled FMB with the same improper information.

I. Survey Incorrect.

The building permit and site plan relies upon a survey is incorrect since they are not using the correct unit boundary to calculate the applicant's lot size.

We have confirmation from our Surveyor and the HOA that the strip of land between unit ownership and the mean high water is condominium association property, not unit ownership. However, the applicant's survey is using this strip of condominium common area land as part of the unit land area to increase their square footage to get past the 67 percent impervious lot coverage.

The condominium land area is noted on the condominium plat as limited common elements. The strip of land between unit ownership and the mean high water is condominium association property, not unit ownership. The condominium land area is noted on the condominium plat as a limited common element. The applicant's survey is using the condominium common area land as part of the unit land area to increase their square footage to get past the 67 percent impervious lot coverage.

II. Impervious Surface Calculation Sheet is incorrect.

The survey as prepared by Landtec shows the side lot lines of Unit M-1 as being the limits of the plat on the west side boundary and shows the mean high water along the eastern side boundary.

The amended condominium plat of Flamingo Harbour Condominium as shown in Condominium Plat Book 7 at Page 104 shows that there is a parcel of land described as Limited Common Elements lying between the Condominium Units and the mean high water. Therefore, the square footage of the parcel as shown in the survey is incorrect. The parcel square footage is further used as the base to determine the existing impervious area percentage.

III. Survey Not Signed

The survey (bates pages #14, 44) is not signed.

IV. Survey Reveals Front Setback Violation

The same survey (bates page # 44) was modified to show the proposed addition and one additional measurement. This measurement is 23.28' which does not meet the minimum front yard setback and falls within the 25' front yard prohibited setback for which no variance was requested or obtained.

V. Applicant's Engineer relied upon Survey and was not provided Condominium Plat.

The Applicant's engineer based his information on what he got from the owner. The owner provided him a survey, but not the condominium plat. The drainage plan the Applicant's Engineer submitted to the town did not reference the survey.

Exhibit 1- Building Permit



Residential PERMIT

To check the status of your permit or schedule inspections go to the website below.
<http://www.fortmyersbeachfl.gov/971/Building-Services>

Permit Number:
242333

DATE ISSUED:
09/09/2024
EXPIRES
03/09/2025

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

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

JOB LOCATION: 21391 WIDGEON TER		Strap #: 344624W1022M00010
PROPERTY OWNER: PLAISTED TODD R TR FOR TODD R PLAISTED TRUST 15781 ANDRIE ST NW RAMSEY MN 55303	CONTRACTOR: Big Gator Pools and Spas LLC 1749 NE 10th Ter Unit 6 Cape Coral FL 33909	PERMIT TYPE: Residential SUBTYPE: Pool- Below Ground
DESCRIPTION OF WORK: ELEVATED POOL		
NOTES		
DATE BY	DATE BY	DATE BY

POL - 101 Foundation/Stem Wall
POL - 108 Shell Steel
POL - 109 Pool Deck
POL - 119 Final Pool
POL - 142 SWP3 - Silt Fence
POL - 116 Deck Bonding
POL - 118 Shell Bonding

WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT.

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

NOTICE: IN ADDITION TO THE REQUIREMENTS OF THIS PERMIT THERE MAY BE ADDITIONAL RESTRICTIONS APPLICABLE TO THIS PROPERTY THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THIS COUNTY, AND THERE MAY BE ADDITIONAL PERMITS REQUIRED FROM OTHER GOVERNMENTAL ENTITIES SUCH AS WATER MANAGEMENT DISTRICTS, STATE AGENCY, OR FEDERAL AGENCIES. THIS PERMIT IS VOID IF THE FIRST INSPECTION IS NOT MADE WITH SIX (6) MONTHS FROM THE DATE ISSUED OR IF NO INSPECTION HAS BEEN MADE FOR A PERIOD OF SIX (6) MONTHS FROM THE MOST RECENT PASSED INSPECTION. BUILDING PLANS MUST BE ON JOB AT TIME OF INSPECTION. REINSPECTION FEE \$50.00.

← Back

Permit Information

Permit Number:	242333	Proposed Use:	R
Permit Date:	08/26/2024	Scope of Work:	ELEVATED POOL
Sub Type:	Pool- Below Ground	Project Cost:	150,000
Type of Construction:		Square Feet:	547
Type of Occupancy / Use:	Residential	Issued Date:	09/09/2024
Contractor Business:	BIG GATOR POOLS AND SPAS	Expiration Date:	03/09/2025
Name/Applicant:		Final Date:	
Contractor/Applicant Email:	office@biggatorpoolsandspas.com/ Permits@thebiggator.com	Repair Damage Due To:	
Contractor/Applicant Phone #:	239-770-8543	Assigned To:	
Current Use:	R	Status:	ISSUED

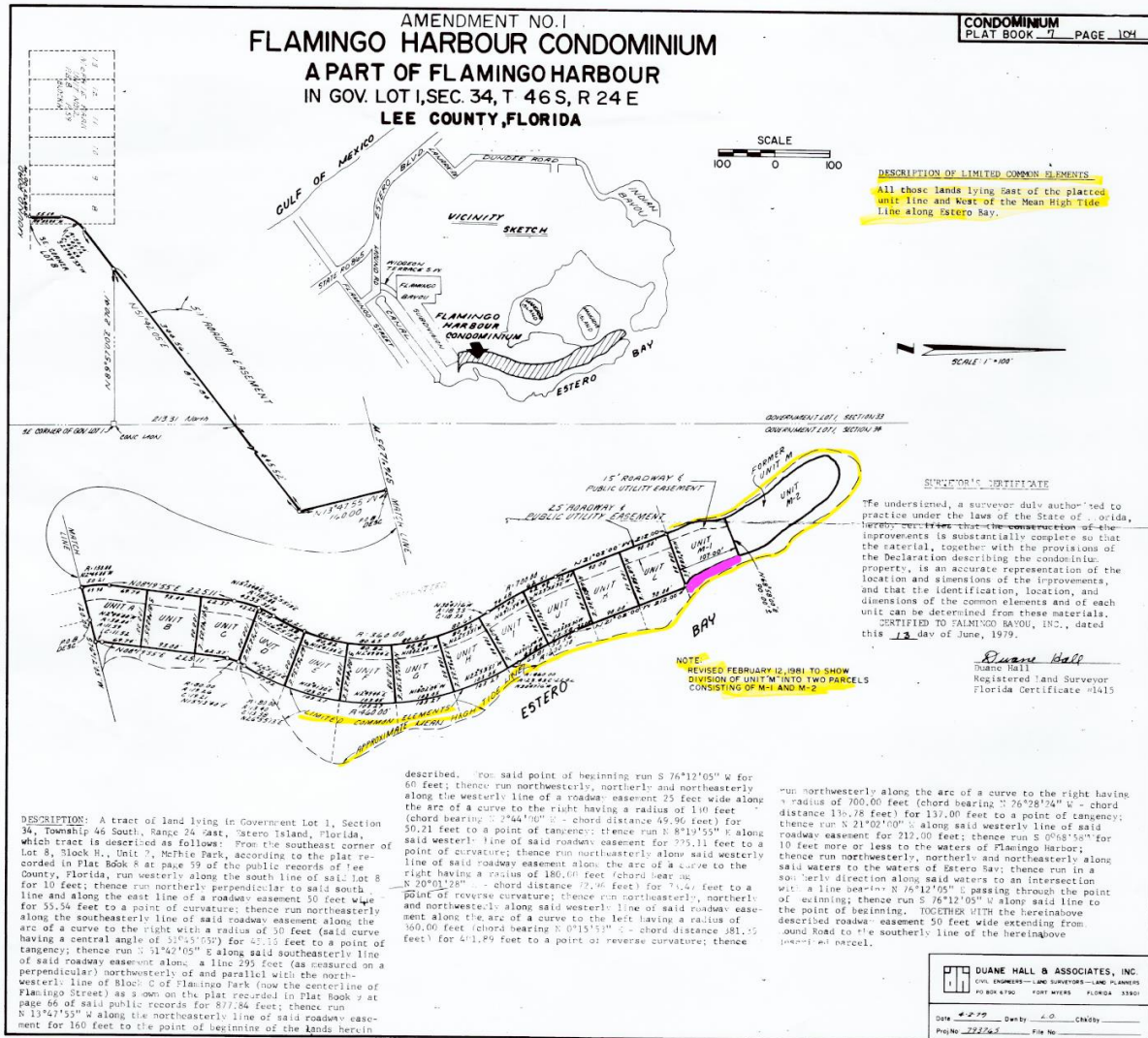
Contractors

Big Gator Pools and Spas LLC - Certified Pool/Spa Servicing Contractor, 1749 NE 10th Ter Unit 6 Cape Coral FL 33909
Primary Contact: Kristin Riddle
FAVAZZA ELECTRIC INC - Certified Electrical, 1320 SE 2ND TER CAPE CORAL FL 33990
Primary Contact: VINCENT J FAVAZZA JR

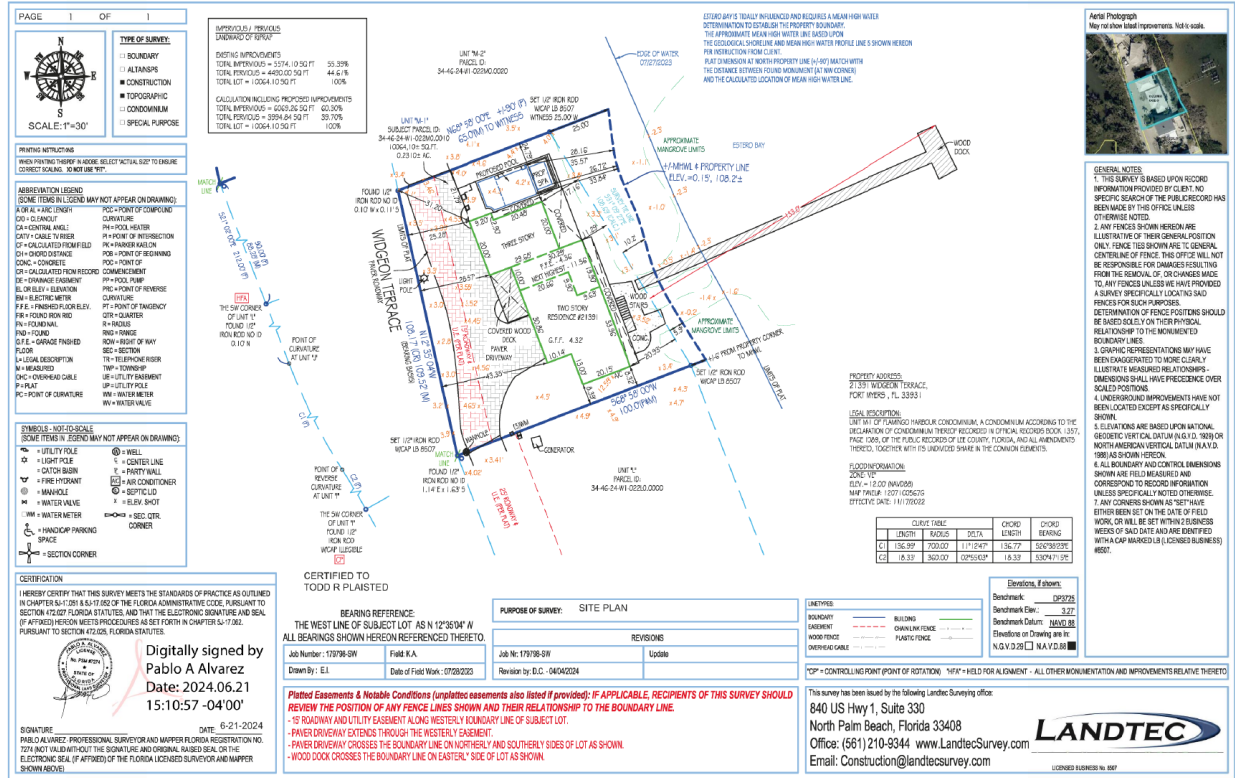
Property Information

Parcel #: 344624W1022M00010
21391 WIDGEON TER
FORT MYERS BEACH, 33931

Exhibit 2- Flamingo Harbour Condominium Plat with Lot Boundaries



Applicant's Incorrect Survey / Site Plan



Respectfully filed this September 30, 2024

/s/ Ralf Brookes Attorney

Attorney for Appellants HIMMELSTEIN ASSOCIATES, LLC

Fla Bar No. 0778362

1217 E Cape Coral Parkway #107

Cape Coral, FL 33904

Phone (239) 910-5464;

ralf@ralfbrookesattorney.com

RalfBrookes@gmail.com



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.

SUBJECT PROPERTY Site Address: 21391 Widgeon Ter Ft Myers Beach 33931

SUBJECT STRAP Number: 34-46-24-W1-022M0-0010

APPELLANT - Applicant: HIMMELSTEIN ASSOCIATES, LLC Phone: 6096654004

Contact Name: ROBERT HIMMELSTEIN Phone: 6096654004

Email: roberthim@icloud.com Fax: _____

Current Zoning District: Residential Conservation (RC)

Future Land Use Map (FLUM) Category: Mixed Residential

FLUM Density Range: 1 unit Platted Overlay: ☒ YES ☐ NO

ACTION REQUESTED

SUPPLEMENTAL FORM REQUIRED

- | | |
|---|--------------------------|
| ☐ Special Exception | PH-A |
| ☐ Variance | PH-B |
| ☐ Conventional Rezoning | PH-C |
| ☐ Planned Development ☐ Commercial ☐ Residential | PH-D |
| ☐ Master Concept Plan Extension | PH-E |
| ☒ Appeal of Administrative Action | PH-F |
| ☐ Vacation of Platted Right-of-way and Easement | PH-G |
| ☐ Other - cite LDC Section: _____ | attach on separate sheet |

ADJOINING LANDOWNER

PART I - General Information

APPELLANT
A. Applicant*: HIMMELSTEIN ASSOCIATES, LLC Phone: 6096654004

**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: 21381 Widgeon Terrace, Fort Myers Beach, Florida 33931

Email: roberthim@icloud.com Fax: _____

Contact Name: ROBERT HIMMELSTEIN Phone: 6096654004



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) <u>ADJACENT LANDOWNER</u> | |

**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: RALF BROOKES ATTORNEY Phone: 2399105464
Address: PO BOX 100238 CAPE CORAL FL 33910
Email: ralfbrookes@gmail.com 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: _____
- ☐ Extension/reinstatement of Master Concept Plan. List project number: _____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

☒ Appeal of Administrative Action SEE ATTACHED APPEAL

☐ Vacation ☐ Right-of-Way ☐ Easement

☐ Other. Please Explain: _____

PART III - Waivers

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

Code Section: _____ Description: _____

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV - Property Ownership (Single Owner)

☒ Single Owner (individual or husband and wife)

Name: HIMMELSTEIN ASSOCIATES, LLC Phone: 6096654004

Mailing Address: 21381 Widgeon Terrace, Fort Myers Beach, Florida 33931

Email: roberthim@icloud.com Fax: _____

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, Robert Himmestein for HIMMELSTEIN ASSOCIATES, LLC 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

APPELLANT AS DJOINING PROPERTY OWNER : 21381 Widgeon Terrace, Fort Myers Beach, Florida

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 21381 Widgeon Ter Fort Myers Beach Fl 33931
The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Robert Himmelstein
Signature

Robert Himmelstein for HIMMELSTEIN ASSOCIATES, LLC

Printed Name

STATE OF New Jersey COUNTY OF Atlantic

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

presence OR ☐ online notarization, this 13th day of August, 2024, by

Robert Himmelstein, ☐ who is personally known to me OR ☒ who has produced

NJ Drivers Lic. as identification.

[SEAL]

Notary Public Signature

PART V

Property Ownership (Multiple Owners)

DONNA C SCHMIDT

Notary Public

State of New Jersey

My commission expires August 28, 2028

☐ 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

ROBERT HIMMELSTEIN and STEPHANIE HIMMELSTEIN 21381 Widgeon Terrace, Fort Myers Beach, Florida

Percentage Ownership

100



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

_____	_____
_____	_____
_____	_____
_____	_____

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

Name and Address

Percentage of Ownership

_____	_____
_____	_____
_____	_____
_____	_____

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

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Date of Contract: _____

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

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

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

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

_____	_____
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, Robert Himmestein (name), as Principle / Member (title) of for HIMMELSTEIN ASSOCIATES, LLC (company), swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

- with regard to adjoining property at 21381 Widgeon Terrace, Fort Myers Beach, Florida
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

HIMMELSTEIN ASSOCIATES, LLC

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

Signature

Robert Himmelstein for HIMMELSTEIN ASSOCIATES, LLC

Typed or Printed Name

Principle / Member

Title

Date

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 VI- Property Information

A. Legal Description:

STRAP: **34-46-24-W1-022M0-0010**
SUBJECT
Property Address: **21391 Widgeon Ter Ft Myers Beach 33931**

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

☒ Yes. Property identified in subdivision: Amended Flamingo Harbour Condominium Plat Book 7 at Page 104

Book: **7** Page: **104** Unit: _____ Block: _____ Lot(s): _____

See Appeal

B. Boundary Survey: See attached - SURVEY USED FOR OPEN SPACE CALCULATIONS/LOT SIZE INCORRECT

☐ 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) Survey Incorrect feet
Depth (please provide an average width if irregular in shape) Survey Incorrect feet
Frontage on street: Survey Incorrect feet. Frontage on waterbody: Survey Incorrect feet
Total land area: Survey Incorrect ☐ acres ☐ square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):
21391 Widgeon Ter Ft Myers Beach 33931

☒ 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. SEE ATTACHED APPEAL

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.

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-F

Additional Required Information for an Appeal of an Administrative Action

This is the second part of a two-part application. This part requests specific information for an appeal of an administrative action. Include this form with the Request for Public Hearing form.

Fees: Appeals going to Council \$1000.00

Project Name: Appeal of Open Space Calc/Lot Area - Elevated Pool 21391 Widgeon Ter Ft Myers Beach 33931
Authorized Applicant: Appellant is adjoining landowner: HIMMELSTEIN ASSOCIATES, LLC
STRAP Number(s): Subject Property 34-46-24-W1-022M0-0010
Applicant/Owner: Todd Plaisted

Reissued September 9, 2024 - **BUILDING PERMIT # 242333 / #234477 (213191 Widgeon Terrace)**

Current Property Status: Vacant/Rebuild
Current Zoning: Residential Conservation (RC)
Future Land Use Map (FLUM) Category: Mixed Residential
Platted Overlay? ☒ yes ☐ no FLUM Density Range: 1 unit

Requested Action:

☐	Appeal interpretation of LDC Section(s) _____
☒	Appeal other administrative action (Explain: <u>Open Space Calculation/Lot Size</u>)
☐	Appeal development permit (must be authorized by property owner)
☐	Appeal decision of LPA (Explain: _____)

Date of decision: Issued 7 1 2024; revoked 8 12 24; reissued 8 13 24

Reissued September 9, 2024 - **BUILDING PERMIT # 242333 / #234477 (213191 Widgeon Terrace)**

Submittal Requirements

Narratives

On separate sheets, address the following questions as applicable to the specific type of action you are appealing:

LDC Interpretation SEE ATTACHED

1. What is the interpretation that you are appealing?

Also attach copies of the request for an interpretation, and the written response by the Town, as "Exhibit 1." SEE ATTACHED

2. Describe what interpretation, in your opinion, should have been given. Explain the basis for your opinion. SEE ATTACHED

Other administrative action SEE ATTACHED

1. What administrative action are you appealing? (summarize) SEE ATTACHED

Also attached copies of your application for administrative action and the written response by the Town, as "Exhibit 1." SEE ATTACHED

2. Describe what action, in your opinion, should have been taken. Explain the basis for your opinion.

Appeal of development permit SEE ATTACHED

1. What specific development permit application are you appealing? Include as much information as is necessary to make clear the nature of the proposed development, including site plans, elevations, construction plans, or any other relevant plans or designs. Attach these items and a copy of the written response by the Town or designee as "Exhibit 1" SEE ATTACHED

2. Describe what action should have been taken, in your opinion, on the development permit being appealed. Explain the basis for your opinion. SEE ATTACHED

Appeal of LPA decision

1. What specific LPA decision are you appealing? Indicate the context of the LPA decision (Historic Preservation Board decision, landmark sign request, MUD hearing, Comprehensive Plan interpretation) and attach a copy of the LPA resolution constituting the decision you are appealing.

2. Describe what decision the LPA (or LPA acting as Historic Preservation Board) should have made, in your opinion. Explain the basis for your opinion.

LDC Section 34-86 governs appeals of administrative actions unless other procedures are specifically provided in the LDC in a particular context. Note that an appeal is appropriate where it is alleged that there is an *error* in the administration and enforcement of the provisions of the LDC or any other ordinance.

SEE ATTACHED

MEMORANDUM

TO: Mayor Allers, Vice-Mayor Atterholt, Council Members King, Woodson & Safford

FROM: Nancy Stuparich, Town Attorney

RE: *[SECOND RENEWED] ADMINISTRATIVE APPEAL
BUILDING PERMIT # 242333 / #234477 (21391 Widgeon Terrace)
FILED BY HIMMELSTEIN ASSOCIATES, LLC, ROBERT
HIMMELSTEIN, AND STEPHANIE HIMMELSTEIN*

DATE: March 3, 2025

The TOWN OF FORT MYERS BEACH (“the Town”) files this Response to the Administrative Appeal of a decision by the Town’s Building Official, which was filed by HIMMELSTEIN ASSOCIATES, LLC, ROBERT HIMMELSTEIN, and STEPHANIE HIMMELSTEIN (collectively referred to as “Appellant”) on December 13, 2024.

The appeal is of Building Permit #242333/#234477 issued for construction of an enclosed elevated pool at property located at 21391 Widgeon Terrace, Fort Myers Beach, Florida, and owned by Todd R. Plaisted as Trustee for the Todd R. Plaisted Trust (“Plaisted”). Building Permit #242333 was issued on November 15, 2024. A copy of the permit is attached as Exhibit A.

Appellants claim “Plaisted is using incorrect property boundaries according to the recorded survey. Specifically, Plaisted is using condominium “common area” land square footage to increase his private lot size square footage in order to improperly and inappropriately decrease his impervious surface calculation sheet, to appear to be less than .67 of their lot size.” Appellants seek review of an administrative decision pursuant to Section 34-86 of the Land Development Code. Appellants’ argument is substantively and procedurally flawed. For these reasons, the appeal should be denied with prejudice.

DISCUSSION: Section 34-86 of the Land Development Code provides for the Town Council to review appeals of administrative decisions as follows:

(a) Function. The town council will hear and decide appeals where it is alleged there is an error in any order, requirement, decision, interpretation, determination, or action of any administrative official charged with the administration and enforcement of the provisions of this code, or any other ordinance or portion of this code which provides for similar review; provided, however, that:

(1)No appeal to the town council shall lie from any act by such administrative official pursuant to:

a.An order, resolution, or directive of the town council directing him to perform such act; or

b.Any ordinance or other regulation or provision in this code which provides a different appellate procedure.

(2) The appeal to the town council shall be in writing on forms provided by the director, and shall be duly filed within 30 calendar days, but not thereafter, after such act or decision by the administrative official. The appeal shall specify the grounds for the appeal.

(3) No appeal shall be considered by the town council where it appears to be a circumvention of an established or required procedure. Specifically, in no case may an appeal be heard when the town council determines that the case should more appropriately be heard on a request for a variance.

(4) Appeals from administrative action do not require a public hearing before the local planning agency.

(b) Considerations.

(1) In reaching its decision, the town council shall consider the following criteria, as well as any other issues which are pertinent and reasonable:

a. Whether the appeal is of a nature properly brought for decision, or whether there is an established procedure for handling the request other than through the appeal process (i.e., a variance or special exception, etc.).

b.The intent of the ordinance which is being applied or interpreted.

c. The effect the ruling will have when applied generally to this code.

(2) Staff recommendations, the testimony of the appellant, and testimony of the general public shall also be considered.

(c) Authority. In exercising its authority, the town council may reverse, affirm, or modify any decision or action of any administrative official charged with the administration or enforcement of this chapter.

Substantive Defect. As provided in Section 34-86(a), Appellants' allege that the Town's Building Official erred in the approval of Building Permit #242333/#234477. Building Permit #234477 was revoked on or about 6/28/2024 due to the inclusion of incorrect survey information in the Town's permit database known as IWorks.

Building Permit#242333 permitted construction of an elevated swimming pool and accessory uses based on a survey that included in its calculation the area associated with the real property as described in the deed transferring title to the property to Plaisted. A copy of the deed was included in the building permit application and provides that Plaisted owns:

Unit M-1 of FLAMINGO HARBOUR CONDOMINIUM, a Condominium according to the Declaration of Condominium thereof recorded in Official Records Book 1357, page 1089, of the Public Records of Lee County, Florida, and all amendments thereto, together with its undivided share in the common elements.

The Declaration of Condominium contains definitions for "common elements" and "limited common elements." A "limited common element" (area) is defined on page 2 of the Declaration of Condominium as meaning and including those portions of the common elements which are reserved for the use of a certain unit or units to the exclusion of other units. In other words, an area identified as a limited common element can only be used by the owner of the lot located adjacent to it, subject to any limitations and restrictions imposed by the Declaration for the benefit of the other condominium owners.

The Declaration does not itself restrict Plaisted from using the limited common area for purposes such as the calculation of impervious area. Because there was no such restriction in the Declaration and because only Plaisted could use the limited common area property, it was proper for the surveyor to include, and Town staff to rely on the surveyor's calculation of impervious area to include Plaisted's limited common element for purposes of construction of the Plaisted swimming pool. There is no error in the engineer's review of the building permit based on the survey that shows and included, the limited common area as part of the calculation of impervious area, as required by the Land Development Code.

Therefore, the Town's Building Official did not err in his administrative duty to administer Building Permit # 242333 since it was reasonable to rely on the engineer's analysis of

impervious area based on the surveyor's calculation. For this reason, the administrative appeal should be denied.

Procedural Defect. In addition to no substantive basis to approve the appeal as stated above, based on Section 34-86(a)(1)(b), the administrative appeal should be denied on procedural grounds. Any appeal of a decision by the Fort Myers Beach Building Official must be subject to review as provided in Ordinance 24-30 by one of the Town's Special Magistrates. A copy of Ordinance 24-30 is attached as Exhibit C. Ordinance 24-30 provides a different appellate procedure for review of decisions by the Building Official, and therefore is not proper for review by the Town Council.

Moreover, Appellant claims a miscalculation of impervious surface area as required by Section 6-14 of the Land Development Code based on an erroneous survey that includes a portion of condominium common area not owned by Plaisted, as well as an adverse impact to its property as a result of the miscalculation. Appellant's claims are not subject to review by the Town Council since the claims are based on calculations associated with issuance of Building Permit 242333, which is subject to review by one of the Town's Special Magistrates within 30 days of issuance of Building Permit 242333. Moreover, any claim of a miscalculation of impervious surface area related to Building Permit 234477 is moot since that building permit was revoked.

Attachments:

Exhibit A – Approval Letter for Building Permit 242333

Exhibit B - Copy of Ordinance 24-30

ADD A COPY OF THE PERMIT THAT IS THE SUBJECT OF THE APPEAL

ORDINANCE NO. 24-30

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING: 1) DIVISION 3 “UNSAFE BUILDING ABATEMENT CODE” OF ARTICLE I “PROPERTY MAINTENANCE CODES”; AND 2) DIVISION 2 “LEE COUNTY’S BOARDS OF ADJUSTMENT AND APPEALS” OF ARTICLE II “BUILDING CODES” OF CHAPTER 6 “MAINTENANCE CODES, BUILDING CODES AND COASTAL REGULATIONS” OF THE LAND DEVELOPMENT CODE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, TO AMEND EXISTING PROVISIONS RELATED TO APPEALS OF THE BUILDING OFFICIAL’S DECISIONS; DIVESTING THE LEE COUNTY’S CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS OF THE RESPONSIBILITY FOR REVIEW OF APPEALS OF THE TOWN BUILDING OFFICIAL’S DECISIONS REGARDING UNSAFE BUILDINGS; AUTHORIZING THE TOWN OF FORT MYERS BEACH SPECIAL MAGISTRATES TO HEAR APPEALS OF THE TOWN’S BUILDING OFFICIAL’S DECISIONS; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

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

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

WHEREAS, on September 28, 2022, residences and businesses in the Town of Fort Myers Beach were destroyed by Hurricane Ian, resulting in the loss of lives, the displacement of lives and catastrophic financial losses; and

WHEREAS, although the Town, residents and businesses have engaged in recovery efforts to repair and rebuild structures in existence prior to Hurricane Ian, the Building Official has identified structures that have sustained significant damage and remain in an unsafe condition; and

WHEREAS, the Town’s “Unsafe Building Abatement Code” incorporates the 1985 Standard Unsafe Building Abatement Code to provide a procedure for the Building Official to follow if a structure is determined to be unsafe and requires demolition, with exceptions; and

WHEREAS, the Unsafe Building Abatement Code currently provides that any appeals of the Building Official decision would be reviewed by the Lee County's Construction Board of Adjustment and Appeals (the “Board”); and

WHEREAS, the Interlocal Agreement between the Town and the Lee County Board of County Commissioners related to the Board’s appellate review of the Town’s Building Official’s decisions has expired; and

WHEREAS, it is in the Town’s best interest to reassign the responsibility of appellate review of the Town’s Building Official’s decisions to the Town of Fort Myers Beach Special Magistrate; and

WHEREAS, on the 9th day of September 2024, the Town Council held a first reading of the Ordinance and gave full and complete consideration to the request of the proposed ordinance to amend the Unsafe Building Abatement Code as provided herein; and

WHEREAS, a second reading was scheduled for October 28, 2024 and was continued to November 18, 2024; and

WHEREAS, a Business Impact Estimate was prepared and posted on the City’s website as required by Section 166.041(4), Florida Statutes; and

WHEREAS, an advertisement of the public hearing for adoption of the Ordinance was published 10 days prior to the second reading of the proposed Ordinance as required by Section 166.041, Florida Statutes; and

WHEREAS, on the 18th day of November 2024, the Town Council held a second and final reading of the Ordinance; and

WHEREAS, the Town Council determined that adoption of the Ordinance as provided herein is in the best interest of the health, safety and welfare of the public.

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

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

Section 2. That Section 6-37 of Division 3 “Unsafe Building Abatement Code” of Article I “Property Maintenance Codes,” is hereby amended to read as follows:

DIVISION 3. - UNSAFE BUILDING ABATEMENT CODE

Sec. 6-37. - Exceptions and revisions.

a) Section 105 of Chapter I, Administration is hereby amended as follows:

Section 105, relating to the board of adjustment and appeals, is deleted, and replaced by the procedures set forth for the delegation of authority to the Town of Fort Myers Beach Special

Magistrates Lee County's Construction Board of Adjustment and Appeals found in division 2 of article II of this chapter. Any reference to the board of adjustment and appeal as may be in other Chapters shall be amended as provided herein by reference.

b) Sections 302.1.1(4) and 302.1.2-302.1.4 in Chapter III, Inspection and Notice of Noncompliance are hereby amended as follows:

302.1.1(4) A statement advising that any person having any legal interest in the property may appeal the notice by the Building Official to the Town of Fort Myers Beach Special Magistrates Lee County Board of Adjustment and Appeals; and that such appeal shall be in writing and shall be filed with the Building Official within 30 days from the date of the notice in accordance with Division 2 of Article II of Chapter 6 of the Fort Myers Beach Code of Ordinances and that failure to appeal in the time specified will constitute a waiver of all rights to an administrative hearing.

302.1.2 The notice and all attachments thereto shall be served upon the property owner as identified on the records of the Lee County Property Appraiser and posted on the property. Failure of the building official to serve any person or entity other than the owner of record shall not invalidate any proceedings hereunder nor shall it relieve any other person or entity served from any obligation imposed on that person or entity.

302.1.3 The notice shall be served either personally by hand delivery by Town staff or a process server or by certified mail, postage prepaid, return receipt requested, to the owner of record at the address shown for the owner on the Lee County Property Appraiser's website. Notice shall also be mailed to the address of the building or structure involved in the proceedings. The failure of any person or entity to receive notice, either actual or constructive, other than the owner of record, shall not invalidate any proceedings under this section. Service by certified or registered mail as herein described shall be effective on the date the notice was received as indicated on the return receipt.

302.1.4 Proof of service of the notice shall be by written affidavit indicating the date, time and manner in which service was made. In the event service is not perfected by certified mailing or hand delivery, the property owner shall be subject to constructive service using the methods as provided in Chapter 49, Florida Statutes.

c) *Chapter VI, Implementation* is hereby amended as follows:

601.2.2 Subsequent to posting the building, the building official may cause the building to be repaired to the extent required to render it safe or if the notice required demolition, to cause the building or structure to be demolished and all debris removed from the premise. The cost of repair or demolition, and all reasonable attorney's fees and costs, and costs of notices related thereto, and all collection costs and expenses and the administrative fee as provided hereinafter, shall constitute a lien on the property and shall be collected in a manner provided by law.

d) *Chapter VII, Recovery of Cost of Repair or Demolition* is hereby amended as follows:

If the building official proceeds to demolish the building or structure as set forth herein, the town council shall, by proper resolution, assess the entire cost of such demolition and removal, and all reasonable attorney's fees and costs, and costs of notices related thereto, and all collection costs and expenses plus an administrative fee in an amount as adopted by the town council by resolution, against the real property upon which such cost and fee was incurred, which assessment, when made, shall constitute a lien upon the property superior to all others except taxes. The lien shall be filed in the public land records of the county. The resolution of assessment and lien must indicate the nature of the assessment and lien, the lien amount, and an accurate description of the property affected. The lien becomes effective on the date of filing such notice of lien and shall bear interest from such date at the rate of ten percent per annum until paid. If the resulting lien remains unpaid the town may:

- (1) File suit to foreclose on the lien property as provided by law in suits to foreclose mortgages; or
- (2) Follow any other lawful process or procedure available for enforcement or collection of the lien, including, but not limited to, the Uniform Method of Collection in accordance with any general law of the state relating to the enforcement or collection of municipal liens.

Section 3. That Division 2 “Lee County’s Boards of Adjustment and Appeals” of Article II “Building Codes,” of Chapter 6 “Maintenance Codes, Building Codes and Coastal Regulations,” of the Land Development Code of the Town of Fort Myers Beach, Florida, are hereby amended to read as follows:

DIVISION 2. - ~~LEE COUNTY'S BOARDS OF ADJUSTMENT AND APPEALS~~
APPEALS OF DECISIONS BY THE TOWN'S BUILDING OFFICIAL

Sec. 6-71. - Applicability of division.

This division shall include, but not be limited to, any contractor, owner, agent, manufacturer or supplier providing construction services or materials regulated by standard codes enforced by the Town of Fort Myers Beach.

Sec. 6-72. - Intent of division.

The town has adopted various standard codes relating to building, plumbing, mechanical, gas, electrical, unsafe buildings, housing and fire. This division is intended to be construed in conjunction with these codes.

~~Sec. 6-73. - Boards established; jurisdiction.~~

~~Lee County has established a construction board of adjustment and appeals known as the Lee County Board of Adjustment and Appeals. The purpose of that board is to hear and decide appeals from the decision of the county's building official and fire official or their designees on any of the various standard codes regulated and enforced by the county except the plumbing code~~

and mechanical code. Lee County has also established separate boards of adjustment and appeals to arbitrate matters involving the plumbing code and mechanical code.

~~Sec. 6-74. — Delegation of authority to Lee County's Boards of Adjustment and Appeals.~~

~~(a) The Town of Fort Myers Beach hereby delegates to each of the three Lee County Boards of Adjustment and Appeals the authority to make decisions on appeals that may be filed in accordance with § 6-80 of this division.~~

~~(b) The town attorney will provide legal advice to each of the three Lee County Boards of Adjustment and Appeals when warranted.~~

~~Secs. 6-75 — 6-79. — Reserved.~~

Secs. 6-73—6-79. - Reserved.

Sec. 6-80. - Right of appeal; notice of appeal.

(a) Whenever the building official or fire official or their designees shall reject or refuse to approve the mode or manner of construction to be followed or materials to be used, or when it is claimed that the provisions of a code do not apply, or that an equally good or more desirable form of construction can be employed in any specific case, or when it is claimed that the true intent and meaning of a code or any of the regulations thereunder have been misconstrued or wrongly interpreted, the owner of such building or structure, or his duly authorized agent, may appeal from the decision of the building official or fire official or their designees to the Town of Fort Myers Beach Special Magistrates Lee County's appropriate Board of Adjustment and Appeals. Notice of appeal shall be in writing and filed within 30 days after the decision is rendered by the building official or fire official or their designees. All requests for appeal shall be on forms provided by the building official with payment of the appropriate fee.

(b) In the case of a building or structure which in the opinion of the building official is unsafe or dangerous, the building official may, in his order, limit the time for such appeal to a shorter period.

Sec. 6-81. - Variations and modifications.

(a) ~~Lee County's Boards of Adjustment and Appeals~~ A Town of Fort Myers Beach Special Magistrate, pursuant to an appeal from a decision of the building official or fire official or their designees, may vary the application of a code to any particular case when, in its opinion and based upon sufficient evidence, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of a code or public interest, or when, in its opinion and based upon sufficient evidence to the contrary, the interpretation of the building official or fire official or their designees should be modified or reversed.

(b) Any decision of ~~Lee County Boards of Adjustment and Appeals~~ the Town of Fort Myers Beach Special Magistrate to vary the application of any provision of a code or to modify an order of the building official or fire official or their designees shall specify the variation or modification made, the conditions upon which it is made, and the reasons therefor.

(c) Variances to the floodplain regulations must meet the additional criteria in article IV of this chapter.

Sec. 6-82. - Decisions.

(a) Every decision of ~~Lee County's Boards of Adjustment and Appeals~~ the Town of Fort Myers Beach Special Magistrate shall be final; subject, however, to any remedy an aggrieved party might have at law or in equity. Every decision shall be in writing, ~~and shall indicate the vote upon the decision.~~ Every decision of ~~Lee County's Boards of Adjustment and Appeals~~ shall be signed and attested to by the chairman of the board.

(b) ~~Lee County's Boards of Adjustment and Appeals~~ The Town of Fort Myers Beach Special Magistrate shall, in every case, reach a decision without unreasonable or unnecessary delay.

(c) If a decision of any of ~~the Town of Fort Myers Beach Special Magistrates~~ ~~Lee County's Boards of Adjustment and Appeals~~ reverses or modifies a refusal, order or disallowance of the building official or fire official or their designees or varies the application of any provision of a code, the appropriate official shall immediately take action in accordance with such decision.

(d) Any aggrieved person may obtain judicial review of the decision of ~~Lee County's Boards of Adjustment and Appeals~~ the Town of Fort Myers Beach Special Magistrate by filing a petition for writ of certiorari in the circuit court. Such petition must be filed within 30 calendar days after the ~~board of adjustment and appeals'~~ Special Magistrate's decision, but not thereafter, pursuant to the Florida Rules of Civil Procedure. The original petition for writ of certiorari must be filed with the clerk of the circuit court. Copies of the petition shall be filed with the building official for forwarding to the town attorney.

Secs. 6-83—6-110. - Reserved.

Section 4. That the town council intends that the provisions of this ordinance be made a part of the Fort Myers Beach, Florida, Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the town manager without further process.

Section 5. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

Section 6. If any section, subsection, sentence, clause, word, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional

or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 7. This Ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the town council upon a motion by Council Member King and seconded by Mayor Allers, and upon being put on a roll call vote, the results were as follows:

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

ADOPTED this 18th day of November 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH


Dan Allers (Nov 22, 2024 13:44 EST)

Dan Allers, Mayor

ATTEST:


Amy Baker (Nov 25, 2024 13:06 EST)

Amy Baker, Town Clerk

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


Nancy Stuparich (Nov 25, 2024 12:20 EST)

Vose Law Firm, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 22nd day of November 2024.

Prepared by and return to:
THOMAS G. ECKERTY, Esq
Attorney at Law
12734 Kenwood Lane, Suite 89
Fort Myers, FL 33907-5638

THIS DOCUMENT PREPARED WITHOUT
EXAMINATION OF TITLE

Strap No: 34-46-24-W1-022M0.0010

Recording: \$18.50
Documentary Stamps: \$0.70
Consideration: \$0.00

WARRANTY DEED

THIS WARRANTY DEED made this 26 day of JANUARY, 2024, between TODD R. PLAISTED, (the "Grantor"), whose post office address is 15781 Andrie Street NW, Ramsey, Minnesota 55303, and,

TODD R. PLAISTED, Trustee of The Todd R. Plaisted Revocable Trust Agreement, with full power and authority to protect, conserve, sell, lease, encumber or otherwise manage and dispose of said property (the "Grantee"), whose post office address is 15781 Andrie Street NW, Ramsey, Minnesota 55303.

WITNESSETH:

That the Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the Grantee all that certain land, located in Lee County, State of Florida, and more particularly described as follows:

Unit M-1 of FLAMINGO HARBOUR CONDOMINIUM, a Condominium according to the Declaration of Condominium thereof recorded in Official Records Book 1357, page 1089, of the Public Records of Lee County, Florida, and all amendments thereto, together with its undivided share in the common elements.

The Real Property or its Address is commonly known as: 21391 Widgeon Terrace, Fort Myers Beach, Florida 33931

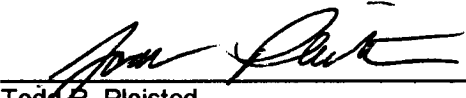
THIS PROPERTY IS NOT THE HOMESTEAD OF THE GRANTOR.

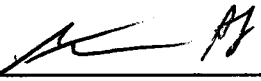
SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS OF RECORD AND TAXES.

TO HAVE AND TO HOLD the premises aforesaid, with all and singular the rights, privileges, appurtenances and immunities thereto belonging unto the said Grantee and its successors and assigns, forever; the said Grantor hereby covenanting that the said premises are free and clear from any encumbrance, except as set forth above, that it is lawfully seized of an indefeasible estate in fee simple to said premises and may convey the same, and that it will warrant and defend the title to said premises unto said Grantee and its successors and assigns, forever, against the lawful claims and demands of all persons whomsoever, except real property taxes for the year 2024 and thereafter.

IN WITNESS WHEREOF, the said first party have signed and sealed these presents the day and year first above written.

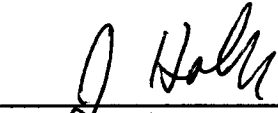
Signed, sealed and delivered in the presence of:


Todd R. Plaisted


Witness #1 Signature

Alice Plaisted
Witness #1 Name

5711 164th In NW Ramsey
MN 55303
Witness #1 Address


Witness #2 Signature

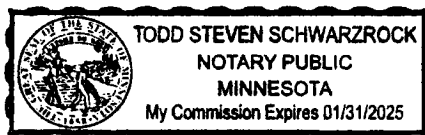
Jack Haller
Witness #2 Name

10615 53rd ST NE
Albertville, MN 55301
Witness #2 Address

STATE OF MN
COUNTY OF Sherburne

The foregoing instrument was acknowledged before me, by means of ☒ physical presence or ☐ online notarization, this 26 day of January, 2024, by Todd R. Plaisted, who provided Driver's License as identification.

NOTARY STAMP OR SEAL




NOTARY PUBLIC: Todd Schwarzrock
My Commission No: _____
My Commission Expires: 1-31-25

1212327

THIS INSTRUMENT PREPARED BY:
 RICHARD D. DEBOEST
 ATTORNEY AT LAW
 P. O. BOX 1451
 FORT MYERS, FLORIDA 33902

DECLARATION OF CONDOMINIUM

OF

1357 1089

FLAMINGO HARBOUR CONDOMINIUM

Flamingo Bayou, Inc., a Florida corporation, herein called "developer" on behalf of itself, its successors, grantees and assigns, to its grantees and assigns and their heirs, successors and assigns hereby make this Declaration of Condominium:

1. SUBMISSION TO CONDOMINIUM - The lands located in Lee County, Florida, owned by Developer and described in attached Exhibit "D", are submitted to the condominium form of ownership.

2. NAME AND SCOPE - The name of the condominium is FLAMINGO HARBOUR CONDOMINIUM, and will consist of 13 residential units consisting of land only (a Land Condominium).

3. NAME - ASSOCIATION - The name of the condominium association is FLAMINGO HARBOUR CONDOMINIUM ASSOCIATION, INC. This association shall be incorporated as a non-profit Florida corporation.

4. DEFINITIONS - The terms used herein shall have the meanings stated in the Condominium Act (Florida Statutes, Chapter 718) and as follows unless the context otherwise requires:

A. UNIT - A part of the condominium property which is subject to exclusive ownership.

B. UNIT OWNER - The owner of a Condominium parcel.

C. UNIT NUMBER - The letter, number, or combination thereof which is designated upon the surveyor plans, and which is used as the identification of a unit.

D. ASSESSMENT - Means a share of the funds required for the payment of common expenses which from time to time is assessed against the unit owner.

E. ASSOCIATION - The corporation responsible for the operation of the condominium.

ALLEN, KNUDSEN,
 SWARTZ,
 DEBOEST, RHODES
 & EDWARDS, P. A.
 ATTORNEYS AT LAW
 P. O. BOX 1451
 COLLIER ARCADE
 FORT MYERS, FLORIDA

-1-

RECORD VERIFIED - SAILOR CLERK
 BY G. WORKMAN D.C. 19

FF 1357 1090

F. BOARD OF ADMINISTRATION - means the Board of Directors responsible for administration of the association.

G. COMMON ELEMENTS - The portions of the condominium property not included in the units as defined in Florida Statute 718.108, including:

- (.1) Those portions of the land that do not constitute the units.
- (.2) Improvements which are not included within the units.
- (.3) Easements.
- (.4) Installations for the furnishing of services to more than one unit or to the common elements, such as electricity, gas, water and sewer.
- (.5) Personal property - tangible personal property may be purchased, sold, leased, replaced and otherwise dealt with by the association, through its Board of Directors, on behalf of the members of the association, without the necessity of any joinder by the members.

H. LIMITED COMMON ELEMENTS - means and includes those portions of the common elements which are reserved for the use of a certain unit or units to the exclusion of other units.

I. COMMON EXPENSES - All expenses and assessments properly incurred by the association for the condominium.

J. COMMON SURPLUS - means the excess of all receipts of the association including but not limited to assessments, rents, profits and revenues on account of the common elements over the amount of the common expenses.

K. PERSON - means an individual, corporation, trustee, or other legal entity capable of holding title to real property.

L. SINGULAR, PLURAL, GENDER - Whenever the context so permits, the use of the plural shall include the singular, the plural, and use of any gender shall be deemed to include all genders.

ALLEN, KNUDSEN,
SWARTZ,
DEROEST, RHOADS
& EDWARDS, P.A.
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1357 1091

M. CONDOMINIUM DOCUMENTS - means the declaration and its attached exhibits, which set forth the nature of the property rights in the condominium and the covenants running with the land which govern these rights. All the condominium documents shall be subject to the provisions of the declaration.

N. CONDOMINIUM PARCEL - means a unit together with the undivided share in the common elements which is appurtenant to the unit.

O. CONDOMINIUM PROPERTY - means the lands and personal property subject to condominium ownership, whether or not contiguous and all improvements thereon and all easements and rights appurtenant thereto.

P. OPERATION - means and includes the administration and management of the condominium property.

5. UNITS SHALL BE CONSTITUTED AS FOLLOWS:

A. REAL PROPERTY - Each unit (which is the parcel of land graphically depicted and numbered on the surveyor plans), all appurtenances thereto, for all purposes, constitute a separate parcel of real property, which may be owned in fee simple and which may be conveyed, transferred and encumbered in the same manner as any other parcel of real property, independently of all other parts of the property, subject only to the provisions of the Condominium Documents and applicable laws.

B. BOUNDARIES - Since the unit has been defined herein as land, the only boundary each unit shall have is its perimeter boundary as shown on the surveyor plans.

C. EXCLUSIVE USE - Each unit owner shall have the exclusive use of his unit, subject to easements.

D. APPURTENANCES - The ownership of each unit shall include, and there shall pass as appurtenances thereto whether or not separately described, all of the right, title and interest of a unit owner in the condominium property which shall include but not be limited to:

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SWARTZ,
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1357 1092

(.1) COMMON ELEMENTS - an undivided share of the common elements as defined in Chapter 718.108, Florida Statutes.

(.2) ASSOCIATION MEMBERSHIP and an undivided share in the common surplus and property, real and personal, held by the association.

E. EASEMENTS - The following non-exclusive easements are hereby granted from the Developer to each unit owner, to the association and its employees, agents and hired contractors, to utility companies, unit owners' families in residence, guests, invitees and to governmental and emergency services are hereby granted and created:

(.1) INGRESS AND EGRESS - Easement as shown on the plot plan for ingress and egress, to units and public ways.

(.2) MAINTENANCE, REPAIR AND REPLACEMENT - Easements through the units and common elements for maintenance, repair and replacements. Such access is to be only during reasonable hours except that access may be had at any time in case of emergency.

(.3) UTILITIES - Easement as shown on the plot plan for conduits, ducts, plumbing, wiring and other facilities for the furnishing of services to other units and the common elements.

(.4) Emergency, regulatory, law enforcement and other public services in the lawful performance of their duties upon the condominium property.

G. MAINTENANCE - The responsibility for the maintenance of a unit shall be as follows:

(.1) BY THE ASSOCIATION - The association shall maintain, repair, and replace at the association's expense:

(i) The roads and all other common elements;

(ii) Provided that if the maintenance and repair and replacement of any of the above shall be made necessary because of the negligence, act or omission of a unit

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-4-

1357 1093

owner, his family, lessees, invitees and guests, in that event the work shall be done by the association at the expense of the unit owner; and the cost shall be secured as an assessment.

(iii) All incidental damage caused to a unit by work done or ordered by the association shall be promptly repaired by and at the expense of the association.

(.2) BY THE UNIT OWNER - The responsibility of the unit owner shall be as follows:

(i) To maintain, repair and replace at his expense, all portions of the unit and improvements placed upon the unit by or at the order of the owner except the portions to be maintained, repaired and replaced by the association.

H. ALTERATION AND IMPROVEMENT - No owner shall make any alterations in the portions of the improvements which are to be maintained by the association or remove any portion thereof or make any additions thereto, or do any work which would jeopardize the safety or soundness of the common elements, or impair any easements.

J. COMMON ELEMENTS -

(.1) The common elements shall be owned by the unit owners in such undivided shares as are set forth in Exhibit "D".

(.2) No action for partition of the common elements shall lie.

(.3) The maintenance and operation of the common elements shall be the responsibility of the association which shall not, however, prohibit management contracts.

(.4) Each unit owner and the association shall be entitled to use the common elements in accordance with the purposes for which they are intended, but no such use shall hinder or encroach upon the lawful rights of owners of other units.

(.5) Enlargement or material alteration of or substantial additions to the common elements may be effectuated only by amendment to the declaration.

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FORT MYERS, FLORIDA

1357 1094

6. FISCAL MANAGEMENT - The fiscal management of the condominium including budget, fiscal year, assessments, lien for and collection of assessments, and accounts shall be as set forth in the By-Laws.

7. ASSOCIATION - The administration of the condominium by the Board of Directors and its powers and duties shall be as set forth in the By-Laws.

8. INSURANCE - The insurance which shall be carried upon the property shall be governed by the following provisions:

A. UNIT OWNERS - Each unit owner shall obtain and maintain insurance at his own expense, affording coverage upon buildings and other insurable improvements constructed upon his unit against loss due to fire, windstorm and extended coverage, and flood insurance, if available.

B. ASSOCIATION - The Association shall maintain public liability and property damage insurance in such amounts as shall be decided by the association. The association may purchase such other insurance as they may deem necessary.

C. PREMIUMS - Premiums upon insurance policies purchased by the association shall be paid by the association and charged as common expenses.

D. ALL INSURANCE POLICIES PURCHASED by the association shall be for the benefit of the association and the unit owners and their mortgagees as their respective interests may appear.

E. INSURANCE ADJUSTMENTS - Each unit owner shall be deemed to have delegated to the Board of Directors his right to adjust with insurance companies all losses under policies purchased by the Association.

9. USE RESTRICTIONS - The use of the property of the condominium shall be in accordance with the following provisions:

A. LAWFUL USE - All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the require-

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FORT MYERS, FLORIDA

1357 1095

ments of governmental bodies which require maintenance, modification or repair upon condominium property shall be the same as the responsibility for the repair and maintenance of the property concerned as expressed earlier in this Declaration.

B. REGULATIONS - Reasonable regulations concerning the use of the condominium property may be made and amended from time to time by a majority vote of the association. Copies of such regulations and amendments thereto shall be posted conspicuously and shall be furnished by the association to all unit owners. No regulation may discriminate against any group or class of users.

C. ALL UNITS shall be used for residential purposes only.

D. THE BOARD OF DIRECTORS of the association shall constitute the architectural control committee and no houses or other structures may be erected upon the units without the prior written approval of the committee. The committee may consider size, setback, style, color, landscaping and any other factor they consider to be pertinent in making their decision.

E. NO HOUSE TRAILER or mobile home shall be used as a residence upon the condominium property.

F. NO UNIT may be subdivided.

G. IN ORDER TO PROTECT the value of all the units, the association may enter upon units to perform groundskeeping and exterior maintenance of structures so that they are at all times presentable and in good condition and appearance if the owner fails to do so after 30 days' written notice delivered or mailed to the owner's last known address and the costs thereof shall be secured as an assessment against the unit.

H. UNITS A THROUGH L, inclusive, are restricted to single family or duplex residential purposes only, and Unit M to fourplex residential purposes only.

10. LIENS -

A. PROTECTION OF PROPERTY - All liens against a unit other than for mortgages, taxes or special assessments, will be satisfied or otherwise removed within 30 days from the

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1357 1096

date the lien attaches. All taxes and special assessments upon a unit shall be paid before becoming delinquent.

B. NOTICE OF LIEN - An owner shall give notice to the association of every lien upon his unit other than for mortgages, taxes and special assessments within seven (7) business days after the attaching of the lien.

C. NOTICE OF SUIT - An owner shall give notice to the association of every suit or other proceedings which may affect the title to his unit, such notice to be given within seven (7) business days after the owners receives knowledge thereof.

D. FAILURE TO COMPLY with this section concerning liens will not affect the validity of any judicial sale.

11. COMPLIANCE AND DEFAULT - Each owner and the association shall be governed by and shall comply with the terms of the condominium documents as they may be amended from time to time.

A. FAILURE TO COMPLY shall be grounds for relief, which relief may include but shall not be limited to an action to recover sums due for damages or injunctive relief or both, and which actions may be maintained by the association or by an aggrieved owner.

B. IN ANY SUCH PROCEEDING the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney fees as may be awarded by the Court.

C. IN THE EVENT that the grievance is that of an owner or owners against the Board of Directors or a member thereof, prior to the institution of litigation, written notice in detail of the grievance shall be given the Directors and they shall be allowed a period of 20 days in which to cure or correct.

D. NO WAIVER OF RIGHTS - The failure of the association or any owner to enforce any covenant, restriction or other provision of the condominium documents shall not constitute a waiver of the right to do so thereafter as to later infractions.

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12. AMENDMENTS - Amendments to any of the condominium documents shall be in accordance with the following:

A. AN AMENDMENT may be proposed either by the Board of Directors or by any owner and may be considered at any meeting of the owners, regular or special, of which due notice has been given according to the By-Laws, which notice includes notice of the substance of the proposed amendment. Passage shall be evidenced by a certificate executed with the formalities of a deed signed by the President or Vice-President and Secretary of the association that it has been enacted by the affirmative vote of the required percentage of unit owners (which vote may be evidenced by written approval of owners not present and the separate written joinder of mortgagees where required; shall include the recording data identifying the Declaration and which shall become effective when recorded according to law.

B. CORRECTORY AMENDMENT - Whenever it shall appear that there is a defect, error or omission in any of the condominium documents amendment of which will not materially adversely affect the property rights of unit owners, a 51% vote of the owners shall be the required percentage, or the procedure set forth in F. S. 718.110(5) may be used.

C. REGULAR AMENDMENTS - An amendment which does not change the configuration or size of any condominium unit in any material fashion, materially alter or modify the appurtenances to such unit, change the proportion or percentage by which the owner of the parcel shares the common expenses and owns the common surplus or materially adversely affects the property rights of owners may be enacted by a 66 2/3% vote.

D. EXTRAORDINARY AMENDMENTS - An amendment which will have the effect of doing any of the things mentioned in "C" above shall require the affirmative vote of all the record owners of the affected units and all record owners of liens thereon and the affirmative vote of the owners of all other units. This section shall be deemed to include enlarge-

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1357 1098

ment of, material alteration of or substantial additions to the common elements only if the same will have a material adverse effect on the owners' property rights; which shall otherwise be treated as regular amendments. Any vote changing the percentage of ownership of the common elements or sharing the common expenses shall be conducted by secret ballot.

13. TERMINATION - The condominium shall be terminated if at all, in the following manner:

A. BY THE AGREEMENT of 66 2/3% of the owners which agreement shall be evidenced by an instrument or instruments executed in the manner required for conveyance of land. The termination shall become effective when such Agreement has been recorded according to law.

B. SHARES OF UNIT OWNERS AFTER TERMINATION - After termination of the condominium, the owners shall continue to own the parcels which were formerly their units in fee simple and also the limited common elements land abutting their unit shown on the plot plan and the holders of mortgages and liens against the former unit or units owned by such owners shall have mortgages and liens upon such parcels. All funds held by the association except for the reasonably necessary expenses of winding up shall be disbursed to the unit owners in the shares set forth in Exhibit "D". The costs incurred by the association in connection with a termination shall be a common expense.

C. FOLLOWING TERMINATION - The road shall remain burdened with a non-exclusive easement for ingress and egress and public utilities in favor of the property parcels which were units and limited common elements in the condominium prior to the termination, or in the alternative the owners may elect to deed the road to the county as a public road if the county will accept it or to a non-profit corporation in which all the owners would be members, formed to maintain the road.

D. THE MEMBERS OF THE LAST BOARD OF DIRECTORS shall continue to have such powers as in this Declaration are granted,

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-10-

FF 1357 1099

notwithstanding the fact that the association itself may be dissolved upon a termination, subject to the limitations of F. A. Chapter 617 (1977).

14. PROVISIONS PERTAINING TO THE DEVELOPER -

A. SO LONG AS THE DEVELOPER holds more than one unit for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the Developer:

(.1) Assessment of the Developer as a unit owner for capital improvements.

(.2) Any action by the association that would be detrimental to the sale of units or the completion of the project by the Developer including such use of unsold units and common areas as may facilitate completion and/or sale, maintenance of a sales office, showing the property and display of signs.

B. UNTIL A MAJORITY OF THE BOARD OF DIRECTORS of the association is elected from owners other than the Developer or its nominees, the Developer reserves the right for itself, or its nominees, to provide and charge for management which shall be fair and reasonable.

15. RIGHTS OF MORTGAGEES - Where a mortgagee of a first mortgage of record obtains title to a unit by foreclosure, such mortgagee and its successors and assigns shall not be liable for such unit's assessments or share of the common expenses which become due prior to acquisition of title unless such share is secured by a claim of lien for assessments recorded prior to the recordation of the subject mortgage. In a voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor for his share of the common expenses up to the time of the conveyance, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee. See F. S. 718.116(1)(a).

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-11-

1357 1100

Also, such mortgagee may occupy, lease, sell or otherwise dispose of such unit without the approval of the association.

16. ENFORCEMENT OF ASSESSMENT LIENS - Liens for assessments may be foreclosed by suit brought in the name of the association in like manner as a foreclosure of mortgage on real property. During his occupancy, the foreclosed owner shall be required to pay a reasonable rental and the association shall be entitled to the appointment of a receiver to collect the same, and the association shall have all the powers provided in F. S. 718.116, including specifically interest at ten (10) percent per annum on unpaid assessments and reasonable attorney's fees incident to the collection of such assessment or enforcement of such lien, with or without suit.

17. MEMBERS - The qualification of members, the manner of their admission and voting by members shall be as follows:

A. ALL OWNERS OF UNITS in the condominium shall be members of the Association, and no other persons or entities shall be entitled to membership.

B. MEMBERSHIP IN THE ASSOCIATION shall be established by the recording in the Public Records of Lee County, Florida, a deed or other instrument establishing a change of record title to a unit in the condominium and delivery to the association of a copy of such instrument, the new owner thereby becoming a member of the association. The membership of the prior owner shall be thereby terminated. Provided, however, that the change of ownership and occupancy of the new owner must have been in compliance with this declaration and the association need not recognize membership or ownership in any person until its requirements have been complied with.

18. INDEMNIFICATION - Every Director of the association shall be indemnified by the association against all expenses and liabilities, including counsel fees, reasonably incurred or imposed upon him in connection with any proceedings to which

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he may be a party, or in which he may become involved by reason of his being or having been a Director of the association, or any settlement thereof, whether or not he is a Director at the time such expenses are incurred, except in cases wherein the Director is adjudged tuiity of nonfeasance, misfeasance or malfeasance in the performance of his duties, or shall have breached his fiduciary duty to the members of the association. Provided however, that the association shall not be liable for payment of a voluntary settlement unless it is first approved by the Board of Directors.

19. COMMON EXPENSES AND COMMON SURPLUS - The percentage of sharing common expenses and the percentage of ownership of common surplus are shown on Exhibit "C" to this declaration and are based on the approximate square footage within each unit. The manner of sharing the common expenses will be such that units of approximately equal square footage will pay the same dollar assessment, and the dollar assessments on units of different sizes will be fair in relation to the others.

20. SEVERABILITY - If any provision of this declaration or the exhibits thereto, as now constituted or as later amended, or any section, sentence, clause, phrase or word, or the application thereof in any circumstances is held invalid, the validity of the remainder and of the application of any such provision, section, sentence, clause, phrase or word in other circumstances shall not be affected thereby.

21. UNTIL THE COMPLETION OF THE CONTEMPLATED IMPROVEMENTS to the condominium property, the Developer specifically reserves the right, without joinder of any person, to make such changes in the declaration and its attachments or in the plan of development, as may be required by any lender, governmental authority or as may be, in its judgment, necessary or desirable. This paragraph shall take precedence over any other provision of the declaration or its attachments.

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THIS DECLARATION OF CONDOMINIUM and attachments hereto
made and entered into this 13th day of June,
1979.

FLAMINGO BAYOU, INC.,
A Florida Corporation

(Corporate Seal)

By C. A. Cartwright (SEAL)
President

STATE OF FLORIDA

COUNTY OF LEE

The foregoing instrument was acknowledged before me this
13th day of June, 1979, by C. A. CARTWRIGHT,
President of FLAMINGO BAYOU, INC., a Florida corporation, on
behalf of the corporation.

Sharon M. Welch
Notary Public

My Commission expires:

Notary Public, State of Florida at Large
My Commission Expires Nov. 8, 1980

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-14-

EXHIBIT "A"

LFE 1357 Pg 1103

BY-LAWSOFFLAMINGO HARBOUR CONDOMINIUM ASSOCIATION, INC.

1. IDENTITY - These are the By-Laws of FLAMINGO HARBOUR CONDOMINIUM ASSOCIATION, INC., a non-profit Florida corporation formed for the purpose of administering Flamingo Harbour Condominium, which is located at Fort Myers Beach, Florida, upon the lands described in the Declaration of Condominium. (The corporation shall hereafter be referred to as the Association).

(.1) OFFICE - The office of the Association shall be at the Condominium.

(.2) FISCAL YEAR - The fiscal year of the Association shall be the calendar year.

(.3) SEAL - The seal of the Association shall bear the name of the Association, the word "Florida", and the year of establishment.

2. MEMBERS' MEETINGS -

(.1) ANNUAL MEMBERS' MEETINGS shall be held at the Condominium or at such other convenient location as may be determined by the Board of Directors, at such hour and upon such date each year as may be determined by the Board, for the purpose of electing Directors and of transacting any business authorized to be transacted by the members.

(.2) SPECIAL MEMBERS' MEETINGS shall be held whenever called by the President, Vice President, or by a majority of the Board of Directors, and when called by written notice from ten (10) percent of the entire membership. As

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to the meeting required when unit owners other than the Developer are entitled to elect a member or members of the Board of Directors, the meeting may be called and notice given by any unit owner if the Association fails to do so.

(.3) NOTICE OF MEMBERS' MEETINGS - Notice of the annual meeting shall be sent to each unit owner by United States mail at least 14 days prior to the annual meeting. A post office certificate of mailing shall be obtained and retained as proof of such mailing. Written notice of the meeting shall also be posted in a conspicuous place on the condominium property at least 14 days prior to the annual meeting.

The Board of administration shall also mail a meeting notice and copies of the proposed annual budget of common expenses to the unit owners not less than 30 days prior to the meeting at which the budget will be considered.

Notice of a special meeting to elect a director or directors from the unit owners other than the Developer is specified in By-Law 3(.2)(D)(ii).

Notice of a special meeting called by the Board at the written request of ten (10) percent of the owners because of a budget exceeding 115% of that of the preceding year requires not less than 10 days' written notice to each unit owner.

Notice of other special meetings not covered above shall be in writing and mailed to each member first class, postage pre-paid not less than 10 days prior to the meeting.

OFF REC. 1357 1105

However, unit owners may waive notice of specific meetings and may take action by written agreement without meetings where it is in the best interest of the condominium to do so.

All notice of meetings shall state clearly and , particularly the purpose or purposes of the meeting.

(.4) A QUORUM at members' meetings shall consist of persons entitled to cast a majority of the votes of the entire membership. The joinder of a member in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such member for the purpose of determining a quorum. Decisions made by owners of a majority of the units represented at a meeting at which a quorum is present shall be binding and sufficient for all purposes except an amendment to the condominium documents or such other decision as may by law or said documents require a larger percentage in which case the percentage required in the documents or law shall govern.

(.5) EACH UNIT shall have one indivisible vote, and the vote of the owners of a unit owned by more than one person or by a corporation or other entity shall be cast by the person named in a certificate signed by all of the owners of the unit and filed with the Secretary of the Association. The certificate shall be valid until revoked by a

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subsequent certificate. If such a certificate is not on file, the vote of such unit shall not be considered in determining the requirement for a quorum nor for any other purpose. No certificate is required for a unit owned by husband and wife and either spouse may cast the vote of that unit.

(.6) PROXIES Votes may be cast in person or by proxy. Proxies shall be in writing, signed and dated and shall be valid only for the particular meeting designated therein and must be filed with the Secretary before or at the appointed time of the meetings.

(.7) APPROVAL OR DISAPPROVAL of a unit owner upon any matter, whether or not the subject of an Association meeting, shall be by the same person who would cast the vote of such owner if in an Association meeting.

(.8) ADJOURNED MEETINGS - If any meeting of members cannot be organized because a quorum has not attended, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present.

(.9) THE ORDER OF BUSINESS AT ANNUAL MEMBERS' MEETINGS, and, as far as applicable at all other members' meetings, shall be:

- (a) Election of Chairman of the meeting, unless the President or Vice-President of the Association is present when he (or she) shall preside.
- (b) Calling of the roll and certifying of proxies.
- (c) Proof of Notice of meeting or waiver of notice.

REF 1357 PG 1107

- (d) Reading and disposal of any unapproved minutes.
- (e) Reports of Directors.
- (f) Reports of Committees.
- (g) Election of Directors.
- (h) Unfinished business.
- (i) New business.
- (j) Adjournment.

3. BOARD OF DIRECTORS -

(.1) MEMBERSHIP - The affairs of the Association shall be managed initially by a Board of three Directors selected by the Developer. Boards elected subsequent to the time members other than the Developer are entitled to elect a majority of the Directors shall be composed of any odd number of Directors that the Owners may decide. Other than Directors selected by the Developer, each Director shall be a person entitled to cast a vote in the meetings of the Association. The Developer shall be entitled to select at least one Director as long as it holds at least 5% of the units that will ultimately be operated by the Association for sale in the ordinary course of business.

(.2) DESIGNATION OF DIRECTORS shall be in the following manner:

(a) Members of the Board of Directors except those selected by the Developer shall be elected by a majority of those present and voting at the annual meeting of the members of the Association or at a special meeting called

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for pursuant to Paragraph 3 (.2)(D)(ii) under F.S. 718.301.

(b) Except as to vacancies provided by removal of Directors by members, vacancies in the Board of Directors occurring between annual meetings of members shall be filled by a majority vote of the remaining Directors.

(c) Any Director except those selected by the Developer, may be removed with or without cause by concurrence of a majority of the members of the Association, either by written agreement or at a special meeting of the members called for that purpose either by a majority of the Board of Directors or by 10% of the members. The vacancy in the Board of Directors so created shall be filled by the members of the Association at the same meeting.

(d)

(i) When unit owners other than the Developer own fifteen percent (15) or more of the units that will be operated ultimately by the Association, the unit owners other than the Developer shall be entitled to elect not less than one-third of the members of the Board of Directors of the Association. Unit owners other than the Developer shall be entitled to elect not less than a majority of the members of the Board of Directors 3 years after 50% of the units that will be operated ultimately by the Association have been conveyed to purchasers, or 3 months after 90% of the units that will be operated ultimately by the Association have been conveyed to purchasers, or when all of the units that will be operated ultimately by the Association have been completed and some of them have been sold and none of

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the others are being offered for sale by the Developer in the ordinary course of business or when some of the units have been conveyed to purchasers, and none of the others are being constructed or offered for sale by the Developer in the ordinary course of business, whichever shall first occur.

(ii) Within 60 days after unit owners other than the Developer are entitled to elect a member or members of the Board of Directors, the Association shall call and give not less than 30 or more than 40 days' notice of a meeting of the unit owners for this purpose.

(iii) Prior to or not more than 60 days after unit owners other than the Developer elect a majority of the members of the Board of Directors of the Association, the Developer shall relinquish control of the Association and shall deliver to the Association all property of the unit owners and of the Association held by or controlled by the Developer, as specified in F.S. 718.301.

(.3) THE TERM OF EACH DIRECTOR'S SERVICE shall extend until the next annual meeting of the members and thereafter until his successor is duly elected and qualified or until he is removed in the manner elsewhere provided. Provided however, that in order to provide a continuity of experience, the members at the first annual meeting after the Developer has relinquished control of the Association may vote to give up to one-half of the Board members terms of two years so that a system of staggered terms will be

REF: 1357 PC1110

initiated.

(.4) THE ORGANIZATION MEETING of the newly elected Board of Directors shall be held at such place and time as shall be fixed by the Directors, provided a quorum shall be present.

(.5) REGULAR MEETINGS OF THE BOARD OF DIRECTORS may be held at such time and place as shall be determined from time to time, by a majority of the Directors, but not less than quarterly. Notice of regular meetings shall be given to each Director personally or by mail, telephone or telegraph, at least three (3) days prior to the day named for such meeting.

(.6) SPECIAL MEETINGS OF THE DIRECTORS MAY BE called by the President and must be called by the Secretary at the written request of one-third of the Directors. Not less than three (3) days' notice of the meeting shall be given personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting, except in an emergency.

(.7) WAIVER OF NOTICE - Any Director may waive notice of a meeting before, at or after the meeting and such waiver shall be deemed equivalent to the giving of notice.

(.8) MEETINGS OF THE BOARD OF DIRECTORS shall be open to all unit owners to attend and listen but not be heard or participate (unless a majority of the Directors consent thereto) and notice of meetings shall be posted conspicuously

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on the condominium property forty-eight (48) hours in advance for the attention of unit owners except in an emergency.

(.9) A QUORUM AT DIRECTORS' meetings shall consist of a majority of the entire Board of Directors. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the Board. If at any meeting of the Board there be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any adjourned meeting any business which might have been transacted at the meeting as originally called may be transacted without further notice. The joinder of a Director in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such Director for the purpose of determining a quorum.

(.10) THE PRESIDING OFFICER at Directors' meetings shall be the President of the Board if such an officer has been elected; and if none, then the Vice-President shall preside. In the absence of the presiding officer, the Directors present shall designate one of their number to preside.

(.11) DIRECTORS SHALL SERVE WITHOUT PAY, but shall be entitled to reimbursement for expenses reasonably incurred.

4. POWERS AND DUTIES OF THE BOARD OF DIRECTORS - All of the powers and duties of the Association existing under the Condominium Act, Declaration of Condominium, and these By-Laws shall be exercised exclusively by the Board of Directors.

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or its duly authorized agents, contractors, or employees subject only to the approval by unit owners when such is specifically required. Such powers and duties of the Directors shall include but shall not be limited to the following:

(.1) TO MAKE AND COLLECT ASSESSMENTS AGAINST members to defray the costs of the condominium.

(.2) TO USE THE PROCEEDS OF ASSESSMENTS in the exercise of its powers and duties.

(.3) THE MAINTENANCE, REPAIR, REPLACEMENT AND OPERATION of the condominium property.

(.4) THE RECONSTRUCTION OF IMPROVEMENTS AFTER CASUALTY and the further improvement of the property.

(.5) TO APPROVE OR DISAPPROVE PROPOSED TRANSACTIONS in the manner provided by the Condominium Declaration.

(.6) TO ENFORCE by legal means the provisions of applicable laws, the condominium documents, the Bylaws of the Association, and the regulations for the use of the property in the condominium.

(.7) TO CONTRACT FOR MANAGEMENT of the condominium.

(.8) TO PAY TAXES AND ASSESSMENTS which are liens against any part of the condominium other than individual units and the appurtenances thereto, and to assess the same against the unit subject to such liens.

(.9) TO CARRY INSURANCE for the protection of the unit owners and the Association against casualty and liabilities.

REC-1357 #1113

(.10) TO PAY THE COST OF ALL POWER, WATER, SEWER and other utility services rendered to the condominium and not billed to owners of individual units.

(.11) TO EMPLOY PERSONNEL and designate other officers for reasonable compensation and grant them such duties as seems appropriate for proper administration of the purposes of the Association.

(.12) TO BRING SUIT, EXECUTE CONTRACTS, DEEDS, MORTGAGES, LEASES and other instruments by its officers and to own, convey and encumber real and personal property.

(.13) THE DIRECTORS MAY, pursuant to F.S. 617.10 (3) impose fines in such reasonable sums as they deem appropriate, not to exceed \$100.00, against unit owners for violations of the Condominium Documents, including the Rules and Regulations, by owners or their guests or lessees.

5. OFFICERS

(.1) THE EXECUTIVE OFFICERS of the Association shall be the President, a VicePresident, a Secretary and a Treasurer, all of whom shall be elected annually by and from the Board of Directors and who may be peremptorily removed by a majority vote of the Directors at any meetings. Any person may hold two or more offices except that the President shall not also be the Secretary or Assistant Secretary.

(.2) THE PRESIDENT shall be the chief executive officer of the Association. He shall have all of the powers and duties which are usually vested in the office of President of a corporation.

OFF. REC. 1357 PG 1114

(.3) THE VICEPRESIDENT shall in the absence or disability of the President exercise the powers and perform the duties of the President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Directors..

(.4) THE SECRETARY shall keep the minutes of all proceedings of the Directors and the members. He shall attend to the giving and serving of all notices to the members and Directors and other notices required by law. He shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of Secretary of the Association and as may be required by the Directors or the President. The Assistant Secretary will perform the duties of the Secretary when the Secretary is absent.

(.5) THE TREASURER shall have custody of all property of the Association, including funds, securities and evidences of indebtedness. He shall keep the assessment rolls and accounts of the members; he shall keep the books of the Association in accordance with good accounting practices; and he shall perform all other duties incident to the office of the Treasurer of a corporation.

(.6) THE COMPENSATION of all officers and employees of the Association shall be fixed by the Directors. This

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provision shall not preclude the Board of Directors from employing a Director as an employee of the Association or preclude the contracting with a Director for the management of the condominium.

7. MINUTES OF ALL MEETINGS OF UNIT OWNERS and of the Board of Directors shall be kept in a businesslike manner and these plus records of all receipts and expenditures and all other records shall be available for inspection by unit owners and Board members at all reasonable times.

8. FISCAL MANAGEMENT shall be in accordance with the following provisions:

A. BUDGET A proposed annual budget of

(.1) common expenses shall be prepared by the Board of Directors which shall include all anticipated expenses for operation, maintenance and administration of the condominium including insurance, management fees, if any, and which may accrue a reserve for deferred maintenance and depreciation. It will contain a reasonable allowance for contingencies, and provide funds for all unpaid operating expense previously incurred.

(.2) A copy of the proposed annual budget shall be mailed to the unit owners not less than thirty days prior to a meeting of the owners at which the budget will be considered together with a notice of the meeting. Should a quorum fail to be present or represented at the meeting or fail to adopt the budget presented or a revised budget, then and in that

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event the Directors shall have the authority to adopt a budget.

(.3) The first budget shall be made by the Developer.

B. ASSESSMENTS The shares of the unit owners of the common expenses shall be made payable monthly in advance or, in the discretion of the Directors, quarterly in advance and shall become due on the first day of each month or the first day of each quarter. The amounts shall be no less than are required to provide funds in advance for payment of all the anticipated current operating expenses and for all of the unpaid operating expense previously incurred.

C. EMERGENCY ASSESSMENTS - Assessments for the expenses of emergencies which cannot be paid from the contingency account shall be made only by the Board of Directors and the time of payment shall likewise be determined by them.

D. ASSESSMENT ROLL - The assessments for common expenses according to the budget shall be set forth upon a roll of the units which shall be available for inspection at all reasonable times by unit owners. Such roll shall indicate for each unit the name and address of the owner, the assessments paid and unpaid. A certificate made by a duly authorized representative of the Directors as to the status of a unit's account may be relied upon for all purposes for any person for whom made other than the unit owner.

E. LIABILITY FOR ASSESSMENTS - A unit owner shall be liable for all assessments coming due while he is the owner of a unit, and such owner and his grantees after a

voluntary conveyance, shall be jointly and severally ^{FF} 1357 ^{FF} 1117
 liable for all unpaid assessments due and payable up to the time
 of such voluntary conveyance. Such liability may not be
 avoided by waiver of the use or enjoyment of any common elements,
 or by abandonment of the unit for which the assessments are
 made, per Florida Statute 718.116.

F. LIEN FOR ASSESSMENTS - The unpaid portion of
 an assessment which is due together with interest thereon
 and reasonable attorney's fees for collection, shall be secured
 by a lien upon:

(.1) THE UNIT, and all appurtenances thereto
 when a notice claiming the lien as been recorded by the Associ-
 ation in accordance with the requirements of Florida Statute
 718.116. Such lien shall be subordinate to any prior recorded
 mortgage on the unit.

(.2) ALL TANGIBLE PERSONAL PROPERTY located
 in the unit except that such lien shall be subordinate to
 prior liens and security interests of record.

(.3) COLLECTION:

(i) INTEREST: APPLICATION OF PAYMENTS -
 Assessments paid on or before ten (10) days after the date
 due shall not bear interest, but all sums not paid on or
 before ten (10) days shall bear interest at the rate of 10%
 per annum from the date due until paid. All payments upon
 account shall be first applied to interest and then to the
 assessment payment first due. All interest collected shall
 be credited to the common expense account.

REF 1357 #1118

(ii) SUIT - The Association, at its option, may enforce collection of delinquent assessment accounts by suit at law or by foreclosure of the lien securing the assessments, or by any other remedy available under the laws of the State of Florida, and in either event the Association shall be entitled to recover the payments which are delinquent at the time of judgment or decree, together with interest thereon at the rate of 10% per annum, and all costs incident to the collection and the proceedings, including reasonable attorney's fees. Per F.S. 718.116(5)(b) the Association must deliver or mail by certified mail to the unit owner a written notice of its intention to foreclose the lien 30 days before commencing foreclosure.

G. ACCOUNTS All sums collected from assessments may be mingled in a single fund, but they shall be held in trust for the unit owners in the respective shares in which they are paid and shall be credited to accounts from which shall be paid the expenses for which the respective assessments are made. These accounts shall be as follows:

(.1) COMMON EXPENSE ACCOUNT - to which shall be credited collections of assessments for all common expenses.

(.2) ALTERATION AND IMPROVEMENT ACCOUNT - to which shall be credited all sums collected for alteration and improvement assessments, if any.

(.3) CONTINGENCY ACCOUNT - which shall be credited all sums collected for contingencies and emergencies.

OFF REC. 1357 #1119

H. THE DEPOSITORY of the Association shall be such bank or banks in Florida as shall be designated from time to time by the Directors and in which the monies for the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such persons as are authorized by the Directors.

I. AN AUDIT of the accounts of the Association shall be made annually and a copy of the report shall be furnished to each member within 30 days after its completion and delivery to the Directors, or at the annual meeting.

J. FIDELITY BONDS shall be required by the Board of Directors from all officers and directors of the Association who control or disburse Association funds. The amount of such bonds shall be determined by the Directors. The premiums on such bonds shall be paid by the Association.

9. PARLIAMENTARY RULES - Roberts Rules of Order (latest edition) shall govern the conduct of corporate proceedings when not in conflict with the Declaration, the By-Laws of the Association or with the Laws of the State of Florida.

10. AMENDMENTS Amendments to the By-Laws shall be proposed in the following manner:

(.1) NOTICE of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.

(.2) A RESOLUTION adopting a proposed amendment must receive approval of a majority of the votes of the

REF. 1357 #1120

entire membership of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing.

(.3) INITIATION - An amendment may be proposed by either a majority of the Board of Directors or by ten (10) percent of the membership of the Association.

(.4) EFFECTIVE DATE - An amendment when adopted shall become effective only after being recorded according to law.

(.5) THESE BY-LAWS shall be deemed amended, if necessary, so as to make the same consistent with the provisions of the Declaration of Condominium, or the Condominium Act.

(.6) PROPOSAL TO AMEND EXISTING BY-LAWS shall contain the full text of the By-Laws to be amended. New words shall be underlined and words to be deleted shall be lined through with hyphens. If the proposed change is so extensive that this procedure would hinder rather than assist understanding, a notation must be inserted immediately preceding the proposed amendment saying "SUBSTANTIAL REWORDING OF BY-LAW. SEE BY-LAW # _____ FOR PRESENT TEXT."

11. WEIGHT OF VOTES cast by members of the Association shall be one vote for each unit.

12. IN THE EVENT THE DIRECTORS DEEM IT NECESSARY to do so, they and the owners may act by written agreement without meetings, which written agreement may be executed in counterparts.

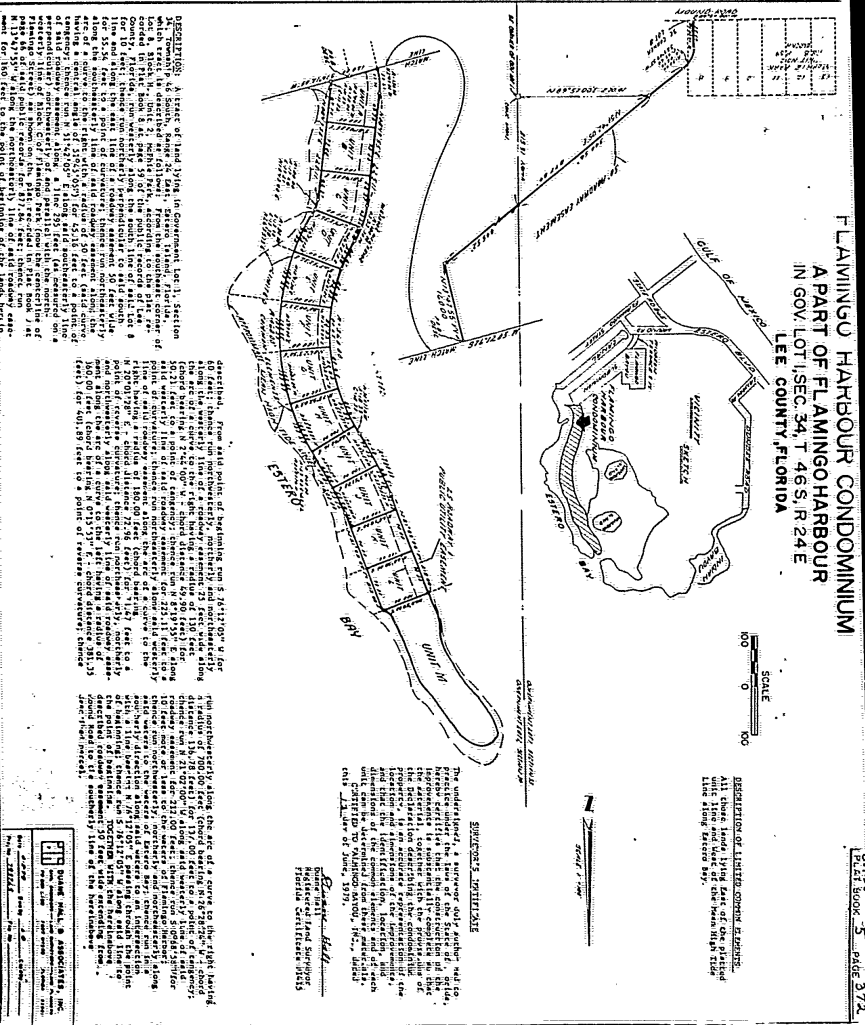
OFF
REC. 1357 #1121

The foregoing was adopted as the By-Laws of Flamingo
Harbour Condominium Association, at the first meeting of the
Board of Directors.

C. A. Cartwright

EXHIBIT "B"

OFF. REC. 1357 PL 1122



1357 1123

FLAMINGO HARBOUR CONDOMINIUM

EXHIBIT "C"

PERCENTAGES OF OWNERSHIP

Units A through L, inclusive	1/14th of the whole
Unit M	2/14ths of the whole
	14/14ths

ALLEN, KNUDSEN,
SWARTZ,
DEBOEST, RHOADS
& EDWARDS, P.A.
ATTORNEYS AT LAW
P. O. BOX 1480
COLLIER ARCADE
FORT MYERS, FLORIDA

1357 1124

FLAMINGO HARBOUR CONDOMINIUM

EXHIBIT "D"

LEGAL DESCRIPTION

A tract of land lying in Government Lot 1, Section 34, Township 46 South, Range 24 East, Estero Island, Florida, which tract is described as follows: From the southeast corner of Lot 8, Block H., Unit 2, McPhie Park, according to the plat recorded in Plat Book 8 at page 59 of the public records of Lee County, Florida, run westerly along the south line of said Lot 8 for 10 feet; thence run northerly perpendicular to said south line and along the east line of a roadway easement 50 feet wide for 55.54 feet to a point of curvature; thence run northeasterly along the southeasterly line of said roadway easement along the arc of a curve to the right with a radius of 50 feet (said curve have a central angle of 51°45'05") for 45.16 feet to a point of tangency; thence run N 51°42'05" E along said southeasterly line of said roadway easement along a line 295 feet (measured on a perpendicular) northwesterly of and parallel with the northwesterly line of Block C of Flamingo Park (now the centerline of Flamingo Street) as shown on the plat recorded in Plat Book 9 at page 66 of said public records for 877.84 feet; thence run N 13°47'55" W along the northeasterly line of said roadway easement for 160 feet to the point of beginning of the lands herein described. From said point of beginning run S 76°12'05" W for 60 feet; thence run northwesterly, northerly and northeasterly along the westerly line of a roadway easement 25 feet wide along the arc of a curve to the right having a radius of 130 feet (chord bearing N 2°44'00" W - chord distance 49.90 feet) for 50.21 feet to a point of tangency; thence run N 8°19'55" E along said westerly line of said roadway easement for 225.11 feet to a point of curvature; thence run northeasterly along said westerly line of said roadway easement along the arc of a curve to the right having a radius of 180.00 feet (chord bearing N 20° 01'28" E - chord distance 72.96 feet) for 73.47 feet to a point of reverse curvature; thence run northeasterly, northerly and northwesterly along said westerly line of said roadway easement along the arc of a curve to the left having a radius of 360.00 feet (chord bearing N 0°15'53" E - chord distance 381.35 feet) for 401.89 feet to a point of reverse curvature; thence run northwesterly along the arc of a curve to the right having a radius of 700.00 feet (chord bearing N 26°28'24" W - chord distance 136.78 feet) for 137.00 feet to a point of tangency; thence run N 21°02'00" W along said westerly line of said roadway easement for 212.00 feet; thence

ALLEN, KNUDSEN,
SWARTZ,
DEBOKST, RHOADS
& EDWARDS, P.A.
ATTORNEYS AT LAW
P. O. BOX 1480
COLLIER ARCADE
FORT MYERS, FLORIDA

1357 1125

run S 0°68'58" W for 10 feet more or less to the waters of Flamingo Harbor; thence run northwesterly, northerly and northeasterly along said waters to the waters of Estero Bay; thence run in a southerly direction along said waters to an intersection with a line bearing N 76°12'05" E passing through the point of beginning; thence run S 76°12'05" W along said line to the point of beginning. TOGETHER WITH the hereinabove described roadway easement 50 feet wide extending from Mound Road to the southerly line of the hereinabove described parcel.

ALLEN, KNUDSEN,
SWARTZ,
DEBOEST, RHODES
& EDWARDS, P. A.
ATTORNEYS-AT-LAW
P.O. BOX 1480
COLLIER ARCADE
FORT MYERS, FLORIDA

State of Florida



Department of State

OFF. REC. 1357 #1126

I certify that the attached is a true and correct copy of the Articles of Incorporation of FLAMINGO HARBOUR CONDOMINIUM ASSOCIATION, INC., a corporation not for profit organized under the Laws of the State of Florida, filed on June 5, 1979, as shown by the records of this office.

The charter number for this corporation is 747514.



CER-101
12-74

Given under my hand and the Great Seal of the State of Florida, at Tallahassee, the Capital, this the 6th day of June, 1979.

Leah Fu
Secretary of State

FLORIDA — STATE OF THE ARTS

ARTICLES OF INCORPORATION
OF
FLAMINGO HARBOUR CONDOMINIUM ASSOCIATION, INC.
 (A NONPROFIT FLORIDA CORPORATION)

FILED
JUN 5 6 47 PM '73
JUL 15 1973
JUL 15 1973

REC-1357 FILE-1127

ARTICLE I.

The name of this corporation is FLAMINGO HARBOUR CONDOMINIUM ASSOCIATION, INC.

ARTICLE II.

The purpose for which this corporation is organized is to act as the governing association of Flamingo Harbour Condominium, located at Fort Myers Beach, Florida.

ARTICLE III.

The qualification of members and the manner of their admission shall be as follows: Any person or persons who hold title in fee simple to a condominium unit in the Condominium shall by virtue of such ownership be a member of this corporation.

ARTICLE IV.

This corporation shall exist perpetually.

ARTICLE V.

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

Green Keltner
4253 Bay Beach Lane S. W.
Apt. H-6
Fort Myers Beach, Florida 33931

C. A. Cartwright
Carnoustie Drive
General Delivery
Bonita Springs, Florida

Sharon M. Willis
6308 Panther Drive
Apartment T-5
Fort Myers, Florida 33907

ARTICLE VI.

The affairs of the corporation are to be managed initially by a Board of three (3) Directors who will be elected each year at the annual meeting of the Condominium Association as provided

FF 1357 1128

for in the By-Laws. At such time as the Developer has relinquished control of the Association as provided by the Condominium Act, the Board may be composed of any odd number of Directors that the members decide (as provided for in the By-Laws).

ARTICLE VII.

The names of the officers who are to serve until the first election or appointment under the Articles of Incorporation are:

President - Green Keltner
Vice President - C. A. Cartwright
Secretary-Treasurer - Sharon M. Willis

ARTICLE VIII.

The number of persons constituting the first Board of Directors shall be three (3) and their names and addresses are as follows:

Green Keltner
4253 Bay Beach Lane S. W.
Apt. H-6
Fort Myers Beach, Florida 33931

C. A. Cartwright
Carnoustie Drive
General Delivery
Bonita Springs, Florida

Sharon M. Willis
6308 Panther Drive
Apartment T-5
Fort Myers, Florida 33907

ARTICLE IX.

The By-Laws of the corporation are to be made, altered or rescinded by a majority vote of the members and Directors of the corporation.

ARTICLE X.

Amendments to these Articles of Incorporation may be proposed and adopted as follows:

An Amendment may be proposed by either the Board of Directors or by any owner and may be considered at any meeting of the owners, regular or special, of which due notice has been given according to the By-Laws, which includes a notice of the substance of the proposed amendment.

The Amendment must be approved by a vote of a majority of the members of the corporation.

REF 1357 PG 1129

ARTICLE XI.

Each unit in the condominium shall have one (1) full vote, which vote shall be cast by a designated owner as provided for in the Declaration of Condominium.

ARTICLE XII.

This corporation reserves the right to amend or repeal any provisions contained in these Articles of Incorporation.

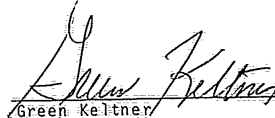
ARTICLE XIII.

This corporation shall have all the powers permitted by law together with such additional specific powers as are contained in the Declaration and ByLaws.

ARTICLE XIV.

No part of the net earnings of this corporation shall inure to the benefit of any member or individual, except through the acquisition, construction, management, maintenance, or care of association property or through the rebate of the excess membership due, fees, or assessments.

IN WITNESS WHEREOF, the undersigned subscribers have executed these Articles of Incorporation this 21st day of May, 1979.

 (SEAL)
Green Keltner

 (SEAL)
C. A. Cartwright

 (SEAL)
Sharon M. Willis

STATE OF FLORIDA

COUNTY OF LEE

Before me, the undersigned, a Notary Public authorized to take acknowledgments in the State and County aforesaid, personally appeared Green Keltner, C. A. Cartwright and Sharon M. Willis, known to me and known to be the persons who executed the foregoing

FF 1357 Fe1130

Articles of Incorporation, and they acknowledged before me that they
executed those Articles of Incorporation.

WITNESS my hand and seal this 21st day of MAY, 1979.



[Signature]
Notary Public

My Commission Expires:
Notary Public, State of Florida at Large
My Commission Expires Aug. 24, 1981

1357 1131

CERTIFICATE DESIGNATING PLACE OF BUSINESS OR DOMICILE FOR THE SERVICE OF PROCESS WITHIN FLORIDA, NAMING AGENT UPON WHOM PROCESS MAY BE SERVED

IN COMPLIANCE WITH SECTION 48.091, FLORIDA STATUTES, THE FOLLOWING IS SUBMITTED:

FIRST--THAT FLAMINGO HARBOUR CONDOMINIUM ASSOCIATION, INC.,
a Florida Corporation (NAME OF CORPORATION)

DESIRING TO ORGANIZE OR QUALIFY UNDER THE LAWS OF THE STATE OF FLORIDA,
WITH ITS PRINCIPAL PLACE OF BUSINESS AT CITY OF FORT MYERS BEACH,
(CITY)

STATE OF FLORIDA, HAS NAMED C. A. CARTWRIGHT,
(STATE) (NAME OF RESIDENT AGENT)

LOCATED AT 2800 ESTERO BOULEVARD,
(STREET ADDRESS AND NUMBER OF BUILDING,
POST OFFICE BOX ADDRESSES ARE NOT ACCEPTABLE)

CITY OF FORT MYERS BEACH, STATE OF FLORIDA, AS ITS AGENT TO
ACCEPT SERVICE OF PROCESS WITHIN FLORIDA.

SIGNATURE [Signature]
(CORPORATE OFFICER)

TITLE PRESIDENT

DATE May 21, 1979

SAL GERACI
CLERK OF CIRCUIT COURT
JUN 19 11 21 AM '79
RECORDED
OFFICIAL
REC'D
LEE COUNTY FLORIDA
RECORD VERIFIED

HAVING BEEN NAMED TO ACCEPT SERVICE OF PROCESS FOR THE ABOVE
STATED CORPORATION, AT THE PLACE DESIGNATED IN THIS CERTIFICATE, I
HEREBY AGREE TO ACT IN THIS CAPACITY, AND I FURTHER AGREE TO COMPLY
WITH THE PROVISIONS OF ALL STATUTES RELATIVE TO THE PROPER AND COM-
PLETE PERFORMANCE OF MY DUTIES.

SIGNATURE [Signature]
(RESIDENT AGENT)

DATE May 21, 1979

Sec. 34-86. Appeals from administrative action.

- (a) *Function.* The town council will hear and decide appeals where it is alleged there is an error in any order, requirement, decision, interpretation, determination, or action of any administrative official charged with the administration and enforcement of the provisions of this code, or any other ordinance or portion of this code which provides for similar review; provided, however, that:
- (1) No appeal to the town council shall lie from any act by such administrative official pursuant to:
 - a. An order, resolution, or directive of the town council directing him to perform such act; or
 - b. Any ordinance or other regulation or provision in this code which provides a different appellate procedure.
 - (2) The appeal to the town council shall be in writing on forms provided by the director, and shall be duly filed within 30 calendar days, but not thereafter, after such act or decision by the administrative official. The appeal shall specify the grounds for the appeal.
 - (3) No appeal shall be considered by the town council where it appears to be a circumvention of an established or required procedure. Specifically, in no case may an appeal be heard when the town council determines that the case should more appropriately be heard on a request for a variance.
 - (4) Appeals from administrative action do not require a public hearing before the local planning agency.
- (b) *Considerations.*
- (1) In reaching its decision, the town council shall consider the following criteria, as well as any other issues which are pertinent and reasonable:
 - a. Whether the appeal is of a nature properly brought for decision, or whether there is an established procedure for handling the request other than through the appeal process (i.e., a variance or special exception, etc.).
 - b. The intent of the ordinance which is being applied or interpreted.
 - c. The effect the ruling will have when applied generally to this code.
 - (2) Staff recommendations, the testimony of the appellant, and testimony of the general public shall also be considered.
- (c) *Authority.* In exercising its authority, the town council may reverse, affirm, or modify any decision or action of any administrative official charged with the administration or enforcement of this chapter.



Permit #: 234477

Permit Date: 06/22/23

Permit Type:

Permit Type: Residential

Sub Type: Pool- Above Ground

Type of Construction: N/A

Type of Occupancy / Use: Residential

Contractor Business Name/Applicant: Big Gator Pools and Spas

Contact Name: Kristin Riddle - contractor

Contractor/Applicant Email: Office@BigGatorPoolsandSpas.com

Contractor/Applicant Phone #: 239-770-8543

Property Owner's Email: todd@plaistedcompanies.com

Current Use: R

Proposed Use: R

Scope of Work: New elevated pool

Project Cost: 150000

Gross Square Feet: 546

Issued Date: 07/01/2024

Expiration Date: 01/01/2025

Finaled Date:

Closed Date:

Repair Damage Due To:

Storm Damage:

Floodplain:

Status: REVOKED

Assigned To:

Property

Parcel #	Address	Legal Description	Owner Name	Owner Phone	Zoning
344624W1022M00010	21391 WIDGEON TER	FLAMINGO HARBOUR CONDO CONDO PLAT 7 PG 104 UNIT M-1	PLAISTED TODD R		RM-2

Contractors

Contractor	Primary Contact	Phone	Address	Contractor Type	License	License #
Big Gator Pools and Spas LLC	Kristin Riddle	239-770-8543	1749 NE 10th Ter Unit 6	Certified Pool/Spa Servicing Contractor	General Liability	NN1754021

JJ Electrical Services LLC	Randy Higgle	239-398-4042	525 98th Ave N	Certified Electrical	Liability	P101.578.733.1
JJ Electrical Services LLC	Randy Higgle	239-398-4042	525 98th Ave N	Certified Electrical	Workman's Comp	NXT4YRJBDY-00-WC
Big Gator Pools and Spas LLC	Kristin Riddle	239-770-8543	1749 NE 10th Ter Unit 6	Certified Pool/Spa Servicing Contractor	Certified Residential Pool/Spa Contractor	CPC1459908
Big Gator Pools and Spas LLC	Kristin Riddle	239-770-8543	1749 NE 10th Ter Unit 6	Certified Pool/Spa Servicing Contractor	WC - EXEMPT	825229613
JJ Electrical Services LLC	Randy Higgle	239-398-4042	525 98th Ave N	Certified Electrical	State of Florida	EC13008653

Inspections

Date	Inspection Type	Description	Scheduled Date	Completed Date	Inspector	Status
06/22/2023	NOC		06/22/2023	06/22/2023	Misty Alexander	Pass
04/30/2024	Engineered Drainage Letter	Pile report				Open
06/22/2023	As-Built Survey Inspection					Open

Plan Reviews

Date	Review Type	Description	Assigned To	Review Status
06/22/2023	Notice of Commencement		Misty Alexander	DONE
03/14/2024	Review Flood		Joe Specht	REVIEWED FOR COMPLIANCE
03/14/2024	Review Res. Plan review		Joe Specht	REVIEWED FOR COMPLIANCE
06/22/2023	Review Zoning		Kendra Rosa	RESUBMITTAL REQUIRED
03/14/2024	Review Stormwater		Eli Lee	RESUBMITTAL REQUIRED
		COMPLY WITH LIGHTING STANDARDS All exterior lighting shall comply with Land Development Code Chapter 34, DIVISION 20: Lighting Standards and Chapter 32, ARTICLE V. Sea Turtle Conservation Code.		
		PREVENT EROSION OFF SITE AND INTO WATERWAYS Install and maintain best management practices for erosion control and sedimentation throughout construction.		
03/14/2024	Review Environmental	PROTECT NATIVE TREES Native Trees to be protected in accordance with the Tree Protection Code.	Chadd Chustz	REVIEWED FOR COMPLIANCE
		REMOVE ALL DEBRIS FROM SITE All debris shall be removed BEFORE placing any fill and commencing construction of any new structures.		
		Please make sure you have the link below saved as a favorite so you can check the address for the CCCL.		
06/22/2023	Review FMB Application		Misty Alexander	DONE
06/22/2023	Elec. Sub Permit Req.	NCS Electric EC13010997	Misty Alexander	DONE
06/26/2023	Rejection Letter Sent	initial zoning review rejection letter 234477	Ed Larkin	DONE
06/28/2023	Resubmitted (Zoning Review)	The original submittal is an elevated pool. Please refer to my previous rejection.	Kendra Rosa	RESUBMITTAL REQUIRED

06/30/2023	Rejection Letter Sent	2nd zoning review rejection letter 234477	Ed Larkin	DONE
08/28/2023	Resubmitted (Zoning Review)	Resub 2 Zoning	Kendra Rosa	RESUBMITTAL REQUIRED
08/31/2023	Rejection Letter Sent	3rd Zoning review rejection letter has been uploaded to the permit portal, and available to view.	Korey Lastinger	DONE
12/07/2023	Resubmitted (Zoning Review)	Resub 3 uploaded 12.7.23- Variance needs to be approved through council before zoning can be approved	Kendra Rosa	REVIEWED FOR COMPLIANCE
03/14/2024	Rejection Letter Sent	1st Stormwater Rejection Letter	Brooke Price	DONE
03/19/2024	Resubmitted (Stormwater Review)	Resub 1 Stormwater	Eli Lee	RESUBMITTAL REQUIRED
03/19/2024	Rejection Letter Sent	2nd Stormwater Rejection Letter	Brooke Price	DONE
04/05/2024	Resubmitted (Stormwater Review)	Resub 2 STORM WATER	Eli Lee	RESUBMITTAL REQUIRED
04/09/2024	Rejection Letter Sent	3rd Stormwater Rejection Letter	Brooke Price	DONE
04/29/2024	Resubmitted (Stormwater Review)	RESUB 3 STORM WATER	Eli Lee	RESUBMITTAL REQUIRED
04/30/2024	Resubmitted (Stormwater Review)	Resub 4 Stormwater	Eli Lee	REVIEWED W/CONDITIONS
05/01/2024	Resubmitted (Zoning Review)	zoning was re-assigned a review due to the site plan on the drainage plan not being consistent with the approved site plan	Kendra Rosa	RESUBMITTAL REQUIRED
05/01/2024	Rejection Letter Sent	4th Zoning Rejection Letter	Brooke Price	DONE
06/28/2024	Resubmitted (Zoning Review)	Resub 5 - Resub to Zoning Revision to Stormwater	Kendra Rosa	REVIEWED FOR COMPLIANCE
06/28/2024	Revision Submitted (Stormwater)	Resub 5 - Resub to Zoning Revision to Stormwater	Eli Lee	REVIEWED W/CONDITIONS

Fees			
Fee	Description	Notes	Amount
	Includes: Application Processing Fee Building Review and Inspection Environmental Review Flood Review Stormwater Review Zoning Review		
POL – Pools (Above Ground, Below Ground, Spas) (2024)			\$850.00
* MISC- DBPR & DCA Admin Fees			\$21.25
*MISC – Resubmittal Fee after 1st resubmittal (2024)	(if our reviewers request more information and the information provided by the permit holder does not fulfill request) Enter number of resubmittals after 1st.		\$60.00
*MISC – Resubmittal Fee after 1st resubmittal (2024)	(if our reviewers request more information and the information provided by the permit holder does not fulfill request) Enter number of resubmittals after 1st.		\$180.00
Engineering Fees	10.30.541.32210		\$292.50
Total			\$1,403.75

Attached Letters		
Date	Letter	Description
07/01/2024	Building Permit	
05/01/2024	Building Permit	

Payments					
Date	Paid By	Description	Payment Type	Accepted By	Amount

06/22/2023	Kristin Riddle	Invoice: 636599	\$871.25
04/29/2024	Kristin Riddle	Invoice: 874091	\$240.00
04/30/2024	Kristin Riddle	Invoice: 876556	\$292.50
Outstanding Balance			\$0.00

Notes

Date	Note	Created By:
08/26/2024	PERMIT REVOKED PER BUILDING OFFICIAL- SEE NEW PERMIT 242333	Kendra Rosa
08/13/2024	Waiting on new plans, assign to zoning when received.	Andrew Garry
08/12/2024	There was a clerical error regarding the documents that got uploaded as the approved plans (what zoning approved was not part of the approved documents) and we need to make sure that those documents are correct. The attorney said that revoking the permit until we received those documents was the best way to ensure that everyone can clearly see what is happening.	Andrew Garry
05/01/2024	Big Gator Pools and Spas LLC needs to update Worker's Comp Insurance. Submit updated insurance certificates listing the Town of Fort Myers Beach as the certificate holder, or waiver to Kory Lastinger contractorregistration@fmbgov.com. Reference the permit number.	

Uploaded Files

Date	File Name
07/15/2024	21593627-Change of Subcontractor Electrical Plaisted Pool 07122024.pdf
07/15/2024	21593625-Subcontractor form JJ Electrical Plaisted Pool 07112024.pdf
07/01/2024	21272363-JOBSITE COPY 234477.pdf
06/28/2024	21266095-DRAIN24-338-01-DRAINAGE-R(ESIGN).pdf
05/01/2024	20344042-234477 4th Zoning Rejection Letter.pdf
04/30/2024	20318553-21391 WIDGEON TERRACE PERMIT REVISION 2024.04.29.pdf
04/30/2024	20318551-response letter 21391 widgeon ter.pdf
04/29/2024	20291163-21391 Widgeon Esign Permit.pdf
04/09/2024	19607036-234477 3rd Stormwater Rejection Letter.pdf
04/05/2024	19578381-Site Plan.pdf
04/05/2024	19578379-NEW SURVEY.pdf
04/05/2024	19578348-2nd Stormwater Response Letter.pdf
03/19/2024	18985116-234477 2nd Stormwater Rejection Letter.pdf
03/19/2024	18981938-179798-SW PROPOSED SITE PLAN-PERVIOUS IMPERVIOUS CALCS.pdf
03/19/2024	18981935-Cover Letter - Response.pdf
03/19/2024	18981931-REJECTION LETTER-FMB-TH-ILEN.pdf
03/14/2024	18933727-234477 1st Stormwater Rejection Letter.pdf
12/07/2023	17695276-COVER LETTER for Rejections.docx
12/07/2023	17695273-Variance App ZONING.pdf
12/07/2023	17695269-WidgeonTer-S&S-SitePlan-2023-11-09.pdf
12/07/2023	17695267-NEW SURVEY.pdf
12/07/2023	17695263-16707844-3rd+Zoning+Review+Rejection+Letter+234477.pdf
08/31/2023	16707844-3rd Zoning Review Rejection Letter 234477.pdf
08/28/2023	16663752-179798-SW CONST TOPO BOUNDARY SURVEY.pdf
06/30/2023	15939526-2nd zoning review rejection letter 234477.pdf
06/28/2023	15907463-Revision - above ground pool.pdf
06/26/2023	15880362-initial zoning review rejection letter 234477.pdf
06/21/2023	7b5cc6ac3ab4aee4c965ab7386dbed95_variance_app - 21391_widgeon - pool.pdf
06/21/2023	e6a7f9c2a6758bbe26577846f02b5530_noc_21391_widgeon.pdf
06/21/2023	0356153327eee35ccb18edeb35b0c9c1_online_parcel_inquiry_lee_county_property_appraiser.pdf
06/21/2023	f7c30819e7d6470f8b0c36f4d389f768_plaistedmoorrev1signedsealed_1_.pdf
06/21/2023	e79f0cdb86e4daa29b918d5858314e39_permit_documents.pdf



Permit #: 242333

Permit Date: 08/26/24

Permit Type:

Permit Type: Residential

Sub Type: Pool- Below Ground

Type of Construction:

Type of Occupancy / Use: Residential

Contractor Business Name/Applicant: BIG GATOR POOLS AND SPAS

Contact Name: DARELL SIZEMORE

Contractor/Applicant Email: office@biggatorpoolsandspas.com/ Permits@thebidgator.com

Contractor/Applicant Phone #: 239-770-8543

Property Owner's Email: todd@plaistedcompanies.com

Current Use: R

Proposed Use: R

Scope of Work: ELEVATED POOL

Project Cost: 150000

Gross Square Feet: 547

Issued Date: 09/09/2024

Expiration Date: 08/13/2025

Finaled Date:

Closed Date:

Repair Damage Due To:

Storm Damage:

Floodplain:

Status: ISSUED

Assigned To:

Property

Parcel #	Address	Legal Description	Owner Name	Owner Phone	Zoning
344624W1022M00010	21391 WIDGEON TER	FLAMINGO HARBOUR CONDO CONDO PLAT 7 PG 104 UNIT M-1	PLAISTED TODD R TR FOR TODD R PLAISTED TRUST		RM-2

Contractors

Contractor	Primary Contact	Phone	Address	Contractor Type	License	License #
Big Gator Pools and Spas LLC	Kristin Riddle	239-770-8543	1749 NE 10th Ter Unit 6	Certified Pool/Spa Servicing Contractor	General Liability	NN1754021

FAVAZZA ELECTRIC INC	VINCENT J FAVAZZA JR		1320 SE 2ND TER	Certified Electrical	LIABILITY	1100
FAVAZZA ELECTRIC INC	VINCENT J FAVAZZA JR		1320 SE 2ND TER	Certified Electrical	STATE OF FLORIDA	EC13013506
FAVAZZA ELECTRIC INC	VINCENT J FAVAZZA JR		1320 SE 2ND TER	Certified Electrical	WORKMAN'S COMP	934809419
Big Gator Pools and Spas LLC	Kristin Riddle	239-770-8543	1749 NE 10th Ter Unit 6	Certified Pool/Spa Servicing Contractor	Certified Residential Pool/Spa Contractor	CPC1459908
Big Gator Pools and Spas LLC	Kristin Riddle	239-770-8543	1749 NE 10th Ter Unit 6	Certified Pool/Spa Servicing Contractor	WC - EXEMPT	825229613

Inspections

Date	Inspection Type	Description	Scheduled Date	Completed Date	Inspector	Status
02/13/2025	Pool - 109 Deck Steel	Call Doug prior to arrival 239-922-7223 Gate Code: 1133	02/14/2025	02/14/2025	*Inspection Requests	Pass
02/12/2025	Pool - 108 Shell Steel	Please call Doug prior to arrival 239-922-7223 Gate Code is 1133	02/13/2025		Ashley Shepard	Cancelled
02/12/2025	Pool - 116 Deck Bonding	Please call Doug prior to arrival 239-922-7223 Gate Code is 1133	02/13/2025	02/13/2025	James Cook	Pass
02/12/2025	Pool - 118 Shell Bonding	Please call Doug prior to arrival 239-922-7223 Gate Code is 1133	02/13/2025	02/13/2025	James Cook	Pass
02/10/2025	Pool - 108 Shell Steel	Please contact Doug prior to arrival 239-922-7223. Gate Code is 1133.	02/13/2025		Joe Specht	Pass
02/10/2025	Pool - 109 Deck Steel	Please contact Doug prior to arrival 239-922-7223. Gate Code is 1133.	02/13/2025		Evan Nelms	Cancelled by Contractor
02/10/2025	Pool - 116 Deck Bonding	Please contact Doug prior to arrival 239-922-7223. Gate Code is 1133.	02/12/2025	02/12/2025	James Cook	Cancelled by Contractor
02/10/2025	Pool - 118 Shell Bonding	Please contact Doug prior to arrival 239-922-7223. Gate Code is 1133.	02/11/2025	02/11/2025	James Cook	Cancelled by Contractor
		Per Joe Especht's request, we are requesting Joe as an inspector.				
01/16/2025	Pool - 101 Foundation / Stem Wall	Gate Code 1133	01/17/2025	01/17/2025	Joe Specht	Pass
		Please contact Darell when you have a ballpark time of your arrival. 419-327-0529				
01/08/2025	Pool - 101 Foundation / Stem Wall	Please call Darell prior to arrival	01/09/2025		Evan Nelms	Pass
		Gate Code is 1133				
01/06/2025	Pool - 101 Foundation / Stem Wall	NO FOUNDATION DRAWINGS ARE INCLUDED IN THE MATERIALS SUBMITTED BY THE CONTRACTOR, CONTRACTOR REP ON SITE DARREL INDICATED THAT HE UNDERSTOOD THE	01/08/2025		Evan Nelms	Partial

01/06/2025	Pool - 142 Silt Fence	PROBLEM AND WOULD SEE TO IT THAT FOUNDATION DRAWINGS WERE SUBMITTED TO THE TOWN, SILT FENCE NEEDS SOME MAINTENANCE. INSPECTOR DISCUSSED WITH CONTRACTOR ON SITE. REQUIRED BEFORE CC	01/08/2025	Evan Nelms	Partial
		-STRUCTURE MUST HAVE HYDROSTATIC RELIEF VALVES			
11/21/2024	Outstanding for CO CC	*PLANS STATE POOL IS IN COMPLIANCE WITH SECTION FBC SECTION 3.2.2.4 (ANCHORED TO RESIST FLOOD LOADS) AND 322.3.3.1 (COMPLIANCE WITH ASCE 24-14 - FLOOD RESISTANT DESIGN)			Open
08/26/2024	Engineered Drainage Letter				Open

Plan Reviews

Date	Review Type	Description	Assigned To	Review Status
08/26/2024	Notice of Commencement		Andrew Garry	DONE
08/26/2024	Review Flood		Carl Thomas	REVIEWED W/CONDITIONS
08/26/2024	Review Res. Plan review		Joe Specht	REVIEWED FOR COMPLIANCE
08/26/2024	Review Zoning		Kendra Rosa	REVIEWED FOR COMPLIANCE
08/26/2024	Review Stormwater		James Warner	REVIEWED FOR COMPLIANCE
08/26/2024	Review Environmental		Chadd Chustz	REVIEWED W/CONDITIONS
08/26/2024	Review FMB Application		Kendra Rosa	DONE
08/26/2024	Elec. Sub Permit Req.	FAVAZZA ELECTRIC INC	Kendra Rosa	DONE
09/03/2024	Rejection Letter Sent	1st Flood Rejection Letter	Marilyn Silva	DONE
01/08/2025	Revision Submitted (Plan Review)	Revision 1 Plan	Joe Specht	REVIEWED FOR COMPLIANCE

Fees

Fee	Description	Notes	Amount
FMB-Third Party Review Costs	Pass Through Fees from Tetra Tech Engineering		\$292.50
Total			\$292.50

Attached Letters

Date	Letter	Description
11/15/2024	Building Permit	

Payments

Date	Paid By	Description	Payment Type	Accepted By	Amount
09/03/2024	Kristin J Riddle	993655			\$292.50
Outstanding Balance					\$0.00

Notes

Date	Note	Created By:
08/26/2024	FEES WAIVED PER MANAGEMENT	Kendra Rosa

Uploaded Files

Date	File Name
01/08/2025	23724966-PLAISTED MOORE REV25-01-02 signed.pdf
11/15/2024	23204687-JOBSITE COPY 242333.pdf
09/03/2024	22248238-Flood Rejection Letter 242333.pdf
08/26/2024	22146305-NOC.pdf
08/26/2024	22142238-e6a7f9c2a6758bbe26577846f02b5530_noc_21391_widgeon.pdf
08/26/2024	22141715-DRAIN24-338-01-DRAINAGE-R(ESIGN)_1).pdf
08/26/2024	22141711-Subcontractor form_Favazza Electric_Plaisted Pool_08222024.pdf
08/26/2024	22141709-Plaisted Pool Application Paperwork.pdf
08/26/2024	22141706-PLAISTED MOORE REV24-08-19 signed (1).pdf

1. **Request:**

Meeting Date: April 21, 2025

Approve an amendment to the Town Manager's contract, extending the term for additional 30 day periods as needed with a \$1,000 pay adjustment for each 30 day period extension.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

The Town Manager advised the Town Council that he did not intend to extend the term of his Agreement with the Town beyond its expiration date. The Town Council and Town Manager agreed that his services were needed beyond the Agreement's expiration date to allow adequate time for completion of the recruitment process for his replacement and a reasonable transition period. The attached draft would provide for additional 30 day periods of service with salary adjustment of \$1,000 upon each 30 day extension period. All other terms and conditions of the existing Agreement remain in effect and unchanged.

Attachments:

1. First Amendment to Town Manager Contract
2. 04212023_ANDREW HYATT EMPLOYMENT AGREEMENT_001 Executed

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

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

Created/Initiated - 4/9/2025
Approved - 4/15/2025
Approved - 4/15/2025
Final Approval - 4/15/2025

FIRST AMENDMENT TO
EMPLOYMENT AGREEMENT BETWEEN
ANDREW HYATT AND THE TOWN OF FORT MYERS BEACH

THIS FIRST AMENDMENT (“Amendment”) is made and entered into by and between the **TOWN OF FORT MYERS BEACH**, a Florida municipal (“Town”) and **ANDREW HYATT** (“Town Manager”), to that certain **EMPLOYMENT AGREEMENT BETWEEN ANDREW HYATT AND THE TOWN OF FORT MYERS BEACH**, dated April 17, 2023 (“Agreement”).

WITNESSETH

WHEREAS, on April 17, 2023 the Town and Town Manager entered into the Agreement to employ the services of Town Manager, as provided for in Section 6.01 of the Town Charter for a period of one (1) year; and

WHEREAS, on May 1, 2024, the Town and Town Manager agreed to renew the Agreement to employ services of Town Manager for an additional year as permitted under Section 2.4 of the Agreement, with an anticipated effective termination date of May 1, 2025; and

WHEREAS, on the 21st day of January, 2025, the Town Manager advised the Town Council that he did not intend to renew the Agreement beyond its effective date of May 1, 2025; and

WHEREAS, the Town immediately began the recruitment process to select the Town Manager’s replacement, which has taken longer than anticipated; and

WHEREAS, the Town Manager and Town Council have determined and agreed that it is in the best interest of the parties to extend the existing Agreement’s termination date by periods of 30 days with additional compensation, which will allow the Town to complete the recruitment process and provide time for a reasonable transition period between the Town Manager and his replacement; and

WHEREAS, this Amendment is in the best interests of the Town and is consistent with promotion of the health, safety, and welfare of its residents.

NOW, THEREFORE, in consideration of the covenants set forth herein, the Town and Town Manager agree to amend the Agreement as follows:

1. Section 2 is amended as follows:

Section 2. Effective Date & Term.

2.1 The term of this Agreement shall be from the Effective Date of the Agreement until ~~April 30, 2024~~ May 31, 2025, or as of the date this Agreement is otherwise terminated by either party in accordance with the provisions set forth herein.

2.2 Nothing in this Agreement shall prevent, limit, interfere with, or otherwise restrict the rights of the Town and the Town Council to terminate the services of the Employee at any time, with or without cause or notice, subject only to the provisions set forth in Sections 4.1 and 4.2 of this Agreement.

2.3 Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Employee to resign at any time from his position with the Town, subject only to the provisions set forth in Section 4.3 of this Agreement.

2.4 Employee shall notify the Town Council, at least one hundred twenty (120) days prior to the expiration of this Agreement of Employee's desire to continue to serve as Town Manager. By means of a formal vote at least ninety (90) days prior to the expiration date of this Agreement, the Town Council may extend this Agreement for two (2) one (1) year periods on the same terms and conditions as set forth herein. If this Agreement is not extended or terminated as provided herein, it shall terminate on the date specified in Section 2.1 with no further action required by the Town or Employee.

2.5 At least one hundred and twenty days (120) days prior to the expiration of any of the extension periods provided for herein, the Employee can also give notice of intent to renegotiate any of the employment terms herein. The parties may contract for renewal of Employee's position after the extension periods provided herein.

2.6 The Town has the option to request extensions of the Agreement in increments of 30 days prior to the expiration of the Agreement as may be needed with the consent of the Town Manager in accordance with the same terms and conditions as set forth in the Agreement.

2. Section 3 is amended as follows:

Section 3. Salary.

3.1 Town agrees to pay Employee for services rendered during the term of this Agreement commencing upon the Effective Date of this Agreement in the amount of \$197,000.00 per year, payable in equal installments in accordance with the Town's existing pay periods, plus longevity increases as provided for other General Executive/Management employees until April 30, 2025. Thereafter, the Town Manager's base salary shall be increased \$1,000.00 through May 31, 2025 and an additional \$1,000.00 for each subsequent 30 day period the Agreement may be extended pursuant to Section 2.6.

3.2 The Town Council shall meet to review and evaluate the performance of the Employee annually in April, beginning one year after the Effective Date of this Agreement. The performance review standards shall be prepared by the Town's Human Resources Director with the input of the Town Council and Employee. In any given year in which the Employee receives a favorable annual review, the Employee may be eligible to receive an annual merit increase.

3.3 Employee shall also be eligible to receive any pay plan adjustments (cost of living adjustments) and lump sum payments that are made available to the Town's Executive staff.

3. **REMAINING TERMS.** All other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Town and Town Manager have executed this Amendment to the Agreement as of the last date signed below.

WITNESSES:

TOWN MANAGER

1st Witness Signature

Print Name: _____

Date: _____

1st Witness Print Name

2nd Witness Signature

2nd Witness Print Name

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor of Fort Myers Beach

Date: _____

ATTEST

APPROVED AS TO FORM & SUFFICIENCY

Amy Baker, Town Clerk

Vose Law Firm, Town Attorney

EMPLOYMENT AGREEMENT

BETWEEN

ANDREW HYATT

AND

THE TOWN OF FORT MYERS BEACH

THIS EMPLOYMENT AGREEMENT made and entered into on this 17^{AB} day of April 2023, by the TOWN OF FORT MYERS BEACH, a Florida municipal corporation, hereinafter referred to as the “Town” and ANDREW HYATT, herein after referred to as “Employee”.

WHEREAS, on April 17, 2023, the Town Council voted to employ the services of Andrew Hyatt, as the Town Manager of the Town of Fort Myers Beach, Florida, as provided for in Section 6.01 of the Town Charter; and

WHEREAS, it is the desire of the Town Council:

- (1) To retain the services of Employee as Town Manager and to provide inducement for him to remain in such employment; and
- (2) To make possible full work productivity by assuring Employee’s morale and peace of mind with respect to future work security; and
- (3) To provide a means for terminating Employee’s services at such time that it is deemed expedient to do so by decision of either or both parties; and
- (4) To establish standards of performance for Employee to act as a guide to ensure accountability; and

WHEREAS, Employee desires to accept employment as the Town Manager of the Town of Fort Myers Beach, Florida under the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

Section 1. Duties.

1.1 The Town hereby agrees to employ Employee as the Town Manager of the Town to perform the functions and duties specified in the Town Charter and Code of Ordinances of the Town, and to perform other such legally permissible and proper duties and functions, consistent with the office of the Town Manager, as the Town Council shall from time-to-time assign. Employee shall not engage in any outside employment during the term of this Agreement without the specific approval of the Town Council.

1.2. Annually, the Town Council and Employee shall define such goals and performance objectives that they determine necessary for the proper operation of the Town. Goals and objectives shall be established annually and prioritized by the Town Council.

Section 2. Effective Date & Term.

2.1 The term of this Agreement shall be from the Effective Date of the Agreement until April 30, 2025, or as of the date this Agreement is terminated by either party in accordance with the provisions set forth herein.

2.2 Nothing in this Agreement shall prevent, limit, interfere with, or otherwise restrict the rights of the Town and the Town Council to terminate the services of the Employee at any time, with or without cause or notice, subject only to the provisions set forth in Sections 4.1 and 4.2 of this Agreement.

2.3 Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Employee to resign at any time from his position with the Town, subject only to the

provisions set forth in Section 4.3 of this Agreement.

2.4 Employee shall notify the Town Council, at least one hundred twenty (120) days prior to the expiration of this Agreement of Employee's desire to continue to serve as Town Manager. By means of a formal vote at least ninety (90) days prior to the expiration date of this Agreement, the Town Council may extend this Agreement for two (2) one (1) year periods on the same terms and conditions as set forth herein. If this Agreement is not extended or terminated as provided herein, it shall terminate on the date specified in Section 2.1 with no further action required by the Town or Employee.

2.5. At least one hundred and twenty days (120) days prior to the expiration of any of the extension periods provided for herein, the Employee can also give notice of intent to renegotiate any of the employment terms herein. The parties may contract for renewal of Employee's position after the extension periods provided herein.

Section 3. Salary.

3.1 Town agrees to pay Employee for services rendered during the term of this Agreement commencing upon the Effective Date of this Agreement in the amount of \$197,000.00 per year, payable in equal installments in accordance with the Town's existing pay periods, plus longevity increases as provided for other General Executive/Management employees.

3.2 The Town Council shall meet to review and evaluate the performance of the Employee annually in April, beginning one year after the Effective Date of this Agreement. The performance review standards shall be prepared by the Town's Human Resources Director with the input of the Town Council and Employee. In any given year in which the Employee receives a favorable annual review, the Employee may be eligible to receive an annual merit increase.

3.3 Employee shall also be eligible to receive any pay plan adjustments (cost of living adjustments) and lump sum payments that are made available to the Town's Executive staff.

Section 4. Termination or Resignation.

4.1 Except as provided in Section 4.2, if Employee is terminated during such time that Employee is ready, willing, and able to perform the duties of Town Manager under this Agreement, the Town agrees to pay Employee twenty (20) weeks of "Salary" as set forth in Section 3 ("Salary"). Severance Pay shall not include those items enumerated in Section 5 "Benefits," Section 6 "Hours of Work," Section 7 "Professional Development," or Section 10 "Other Terms and Conditions." Such Severance Pay may not exceed an amount greater than as set out in and defined in Section 215.425(d), Florida Statutes. In consideration of receiving the Severance Pay, Employee shall execute a general release in favor of the Town and in a form acceptable to the Town Attorney. Employee will also receive payment for any annual or sick leave accrued prior to the effective date of the termination by the Town Council to be paid to Employee within forty-five (45) days of termination as provided herein. After the payments described in the immediately preceding sentence, the Town shall have no further financial obligation to Employee pursuant to this Agreement except for the payment of pension benefits, benefits earned under this Agreement, and benefits otherwise required by law. This Section shall not prevent Employee from collecting any money earned by participating in the Town's deferred compensation plans (e.g., 401(a) and 457) as they may be amended from time to time.

4.2 In the event Employee is terminated either (i) for misconduct as defined in Section 443.036(29), Florida Statutes, as determined by a majority of the Town Council or (ii) "with cause" as determined by a majority of the Town Council (both subject to the "reconsideration" request as

provided for in Section 6.02 of the Town Charter), the Town shall have no obligation to pay the Severance Pay enumerated in Section 4.1 above. For purposes of this Agreement, “with cause” is defined as and limited to any of the following:

- (a) a violation of state or local ethics laws and codes, including, but not limited to the Florida Code of Ethics for Public Officers and Employees, the Town’s Code of Ethics¹, the Public Records Law, Sunshine Law, or the Lee County Code of Ethics;
or
- (b) failure to follow Town policy; or
- (c) a breach of this Agreement; or
- (d) violence or threatened violence, threats, or threatening behavior to a Town appointed or elected official, employee, customer, or resident; or
- (e) theft of Town money or property; or
- (f) falsifying records; or
- (g) gross insubordination²; or
- (h) illegal harassment or retaliation; or
- (i) failing an alcohol or drug test; or
- (j) commission of an unlawful act in the performance of official duties; or
- (k) improper performance of any lawful act; or
- (l) failure or omission to perform an act when there is an obligation to perform that

¹ Part III of Chapter 112, *Fla. Stat.*, “Code of Ethics For Public Officers and Employees”.

² The deliberate refusal to obey a lawful instruction of the Town Council, expressly defying a lawful instruction of the Town Council, or challenging the authority of the Town Council.

act; or

- (m) neglect of duty; or
- (n) habitual drunkenness; or
- (o) incompetence in performing official duties; or
- (p) inability to perform official duties due to absence, disability, or other reason; or
- (q) arrest for a felony or for a misdemeanor related to the performance of official duties, or indicted or informed against for the commission of a federal felony or misdemeanor or state felony or misdemeanor; or
- (r) violation of any substantive Town policy, rule, or regulation, which would subject any other Town employee to termination; or
- (s) the commission of any fraudulent act against the interest of the Town; or
- (t) the commission of any act which involves moral turpitude; or

In the event Employee is terminated pursuant to this Section 4.2, the Town shall have no further financial obligation to Employee pursuant to this Agreement except for the payment of pension benefits, benefits earned under this Agreement, and benefits otherwise required by law. This Section shall not prevent Employee from collecting any money earned from participating in the Town's deferred compensation plans (e.g., 401(a) and 457) as they may be amended from time to time.

4.3 In the event that Employee voluntarily resigns the position of Town Manager during the term of this Agreement, Employee shall give the Town at least one hundred twenty (120) days written notice prior to the effective date of such resignation. The Town may elect, at its sole discretion, to accelerate the resignation date. Whether or not the Town elects to accelerate

Employee's resignation, as of the effective date of the resignation the Town shall have no further financial obligation to Employee pursuant to this Agreement except for the payment of pension benefits, benefits earned under this Agreement, and benefits otherwise required by law. This Section shall not prevent Employee from collecting any money earned from participating in the Town's deferred compensation plans (e.g., 401(a) and 457) as they may be amended from time to time.

Section 5. Allowances and Benefits.

5.1 The Town will pay for Employee's cellular telephone. Additionally, except as otherwise provide herein, the Town will provide Employee with benefits and allowances as provided to all Town employees during the term of this Agreement consistent with the Town's current Employee Handbook, as same may be amended from time-to time. The Town agrees to pay one hundred percent (100%) of the total premium cost of the Employee's health, dental and vision insurance provided to Executive staff of the Town, and 50% of family and spouse. The Town reserves the right to amend, modify, terminate, or otherwise change or adjust any benefits as it sees fit, if it is done for all executives similarly situated as the Employee and in accordance with 9.2 below. If any additional communication and/or electronic equipment is mutually determined by the Town and Employee to be required so that Employee can provide the Town Manager services provided for herein, Town shall pay such additional costs so long as such costs have been budgeted by the Town. If Employee uses any private digital or electronic devices to conduct Town business, in accordance with applicable law Employee is responsible for retaining and providing the Town upon request all public records (as defined by applicable law) on any private digital or electronic devices. It shall be a breach of this Agreement if Employee fails to

turn over all available public records to the Town that are within the employee's possession pursuant to Florida State Law within fifteen (15) days of any request for said public records. The provisions of this paragraph shall survive the termination of this Agreement.

5.2 Employee shall have the right to participate in the ICMA 401A Pension or the Town's pension plan. The Town will contribute 10% of the employee's salary into the selected plan. Employee shall vest twenty-five percent (25%) per year up to 100.

Section 6. Hours of Work.

6.1 Notwithstanding Town policies and procedures to the contrary, it is recognized that Employee must devote a great deal of time outside the normal office hours to business of the Town, and, to that end, the Employee will be allowed to take reasonable compensatory time off as shall be deemed appropriate during normal office hours consistent with the Town's Executive staff policies and procedures.

6.2 Employee acknowledges and agrees to live on Estero Island.

Section 7. Professional Development and Reasonable Expenses.

7.1 The Town hereby agrees to budget for and pay the reasonable and necessary travel, registration costs, and subsistence expenses of Employee only for professional and official travel, meetings and occasions adequate to continue the professional development of the Employee and to adequately pursue necessary official and other functions for the Town, including but not limited to the Annual Conference of the International City Management Association, the Florida League of Cities, one local civic organization such as Rotary, Kiwanis or other, and one (1) other national, regional, state and local governmental groups and committees thereof which the Employee serves as a member.

7.2 The Town also agrees to budget and to pay for the reasonable and necessary travel and subsistence expense of the Employee for short courses, institutes, and seminars that are necessary for Employee's professional development and for the good of the Town.

7.3 No less than thirty (30) days before any travel provided for herein, Employee shall notify the Town Council of Employee's absence from the Town.

7.4 The Town agrees to reimburse Employee for reasonable expenses incurred in the performance of his duties upon submission of receipts, invoices, or other documentation thereof, to a yearly amount not to exceed \$4,500.00 per year.

Section 8. Indemnification.

8.1 The Town shall provide a legal defense, and indemnification, under the same terms and conditions as provided to the other employees of the Town in accordance with the requirements and provisions of the Town Charter and Code of Ordinances of the Town. The Town shall have the right to compromise and settle any such claim or suit and pay the amount of any such settlement or judgment rendered thereon, in its sole discretion.

8.2 The Town shall bear the full cost of any fidelity or other bonds which may in the future be required of the Employee by law or ordinance.

8.3 Public Official's Liability Insurance - Town shall provide Public Officials Liability Insurance coverage applicable for all acts or omissions of the Town Manager acting within the scope of his employment, subject to and as provided for in the Annual Budget and as may be otherwise provided to Town Council members, Department Heads, and based solely upon the policies of insurance held by the Town from time to time.

Section 9. Other Terms and Conditions of Employment.

9.1 The Town Council, in consultation with the Employee, shall establish such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in direct conflict with the provisions of this Agreement, the Town Charter, the Town Code of Ordinances, or any other applicable law.

9.2 All other provisions of the Town Charter, Town Code of Ordinances, and rules and regulations of the Town relating to benefits as outlined in the schedule of benefits for the Executive staff as they now exist or hereafter may be amended from time to time, shall also apply to the Employee as it would be to other general employees of the Town not covered by a collective bargaining agreement, in addition to said benefits numerated specifically for the benefit of the Employee herein.

9.3 The Town shall not at any time during the term of this Agreement reduce the salary, compensation, or other financial benefits of the Employee, except during an across-the-board reduction for all general employees of the Town or upon majority vote of Council due to review and renegotiation of this Employment Agreement.

9.4 Employee shall accrue and be entitled to annual leave, sick leave, and holidays in the same manner as Directors of the Town. Employee is entitled to eighty hours of annual leave upon hire, thereafter Employee accrues at a rate of nineteen (19) hours per pay period.

9.5 Employee shall be entitled to utilize accrued annual leave and sick leave without undue burden. Accrued annual leave or sick leave must be used to maintain Employee in pay status when Employee is on approved leave from work or when Employee is unable to attend work due to illness, or for other approved absences from work, and nothing in this Agreement shall

require the Town to maintain Employee in pay status if Employee has exhausted annual leave and/or sick leave time.

9.6 Upon termination or resignation with appropriate notice, Employee shall be entitled to payout (a) of unused annual leave hours and (b) accumulated sick leave hours up to a maximum of 500 hours for each at the rate in effect at the time of termination or resignation.

Section 10. Notices.

10.1 Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, return receipt requested, addressed as follows:

Town: Mayor
Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, FL 33931

With a copy to: John R. Herin, Jr, Esq.
Town Attorney
c/o Fox Rothschild, LLP
2 S Biscayne Blvd #2750
Miami, FL 33131

Employee: Andrew Hyatt
Confidential and Exempt

10.2 Alternatively, notices required pursuant to this Agreement may be personally given by hand delivery or a commercially recognized overnight carrier. Notice shall be deemed given as of the date of personal service, overnight delivery, or as of the date of deposit of such written notice with the United States Postal Service addressed to the parties as stated above and to the Employee at the address on file with the Town.

Section 11. General Provisions.

11.1 It is understood and agreed that this document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and that the parties agree that there are no commitments, agreement, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

11.2 No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed by both parties.

11.3 The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach by that party.

11.4 If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, illegal, invalid, or unenforceable, the remainder of this Agreement, or portions thereof, shall not be affected and shall remain in full force and effect.

11.5 The rights and obligations herein granted are personal in nature and cannot be transferred or assigned by the Town Manager.

11.6 Florida law shall govern this Agreement and any litigation which may arise from this Agreement shall be filed and litigated in the Circuit Court in and for Lee County, Florida.

11.7 Provisions of this Agreement, which by their terms extend beyond the termination, expiration or suspension of this Agreement will survive and remain effective in accordance with their terms and to the extent necessary to the intended preservation of such rights and obligations.

11.8 The parties acknowledge that this Agreement is the result of continual and ongoing negotiation between the parties of equal bargaining power and any ambiguities herein should not

be construed against either party but should be given a fair and reasonable interpretation.

11.9 The headings or captions of Paragraphs in this Agreement are for reference only, do not define or limit the provisions of such Paragraphs and shall not affect the interpretation of such provisions.

11.10 This Agreement may be executed by facsimile signature or by other electronic means, such as electronic signature in one or more counterparts by the parties which, taken together, shall constitute one binding agreement.

11.11 Employee acknowledges that the legal counsel that prepared this Agreement is representing the Town rather than Employee and that Employee has been advised to seek the advice of independent counsel. Employee acknowledges that he has had the opportunity to seek the advice of independent counsel. Employee has obtained all information necessary to make an informed decision regarding this Agreement and that any claims regarding any possible conflict of interest regarding this Agreement or its preparation are freely and voluntarily waived.

11.12 While Employee is employed by the Town and thereafter, Employee shall cooperate with the Town in any internal investigation or administrative, regulatory or judicial proceeding as reasonably requested by the Town (including, without limitation, Employee being available to the Town upon reasonable notice for interviews and factual investigations, appearing at the Town's request to give testimony without requiring service of subpoena or other legal process, volunteering to the Town all pertinent information and turning over to the Town all relevant public records, whether owned by the Town or otherwise, which are or may come into Employee's possession, all at times and on schedules that are reasonably consistent with Employee's other permitted activities and commitments).

Section 12. Waiver of Jury Trial

BOTH THE TOWN AND EMPLOYEE KNOWINGLY, VOLUNTARILY, AND IRREVOCABLY WAIVE THEIR RIGHT TO A TRIAL BY JURY IN ANY CIVIL PROCEEDINGS THAT MAY BE INITIATED BY EITHER PARTY WITH RESPECT TO ANY TERM OR CONDITION OF THIS AGREEMENT.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Town of Fort Myers Beach, Florida, has caused this Agreement to be signed and executed on its behalf by its Mayor, and duly attested to by its Town Clerk, and approved as to form by the Town Attorney, and the Employee has signed and executed this Agreement, on the day and year first above written.

**TOWN OF FORT MYERS BEACH,
FLORIDA**

EMPLOYEE

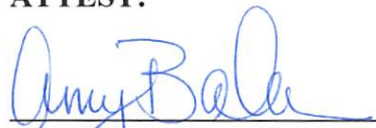


Dan Allers, Mayor



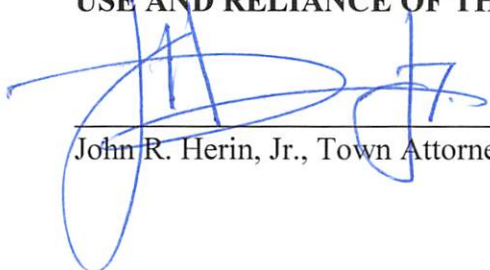
Andrew Hyatt

ATTEST:



Amy Baker, Town Clerk

**APPROVED AS TO FORM AND SUFFICIENCY FOR THE
USE AND RELIANCE OF THE TOWN ONLY:**



John R. Herin, Jr., Town Attorney

1. **Request:**

Meeting Date: April 21, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, TO RATIFY AND APPROVE TASK ORDERS 3 & 4 WITH TIDAL BASIN FOR CDBG-DR GRANT ADMINISTRATION SERVICES IN THE AMOUNTS OF \$163,864.57 AND \$291,785.90; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The Town Council previously authorized the Town Manager to administer and execute related documents to these grant agreements, but due to the amount of the two task orders, ratification and approval is being brought before the Town Council as well.

What the action accomplishes:

Ratifies and continues the administration of the CDBG-DR grants with assistance from Tidal Basin.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Frankie Kropacek, Operations & Compliance Director

5. **Background:**

In order to advance and continue grant management of the Town's CDBG-DR grants, the Town Manager executed Task Orders 3 & 4 with Tidal Basin as included and funded within the grant agreements. The Town Council also authorized the Town Manager to administer these grants and execute related documents through Resolution 24-76.

These two task orders will assist the Town in administering the CDBG-DR grants with Lee County for the Public Facilities and Critical Infrastructure Programs.

From the task orders: Tidal Basin will assist and facilitate the Town of Fort Myers Beach staff with the management of the scope of work and activities of the Community Development Block Grant-Disaster Recovery (CDBGDR) grant as described in Exhibit B – Scope of Work and Activities Project Activity Scope of Work Description, of the CDBG-DR Subrecipient Agreements.

Attachments:

1. NS 25-124, Ratifying CDBG-DR Task Orders 3 and 4
2. FMB_Task Order 3_CDBG-DR-SRA 10262_Critical Infrastructure_North Island Water Tower - signed
3. FMB_Task Order 4_CDBG-DR-SRA DR10263_Public Facilities-Parks Rec Revitalization - signed

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Jason Freeman, Deputy Town Clerk / Legislative Liaison
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 4/9/2025
Approved - 4/9/2025
Approved - 4/10/2025
Approved - 4/10/2025
Final Approval - 4/10/2025

RESOLUTION NUMBER 25-124

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, TO RATIFY AND APPROVE TASK ORDERS 3 & 4 WITH TIDAL BASIN FOR CDBG-DR GRANT ADMINISTRATION SERVICES IN THE AMOUNTS OF \$163,864.57 AND \$291,785.90; AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, the Town previously entered into a contract with Tidal Basin Government Consulting, LLC (“Tidal Basin”) through a competitive procurement process (RFP-23-07-AD); and

WHEREAS, the Town Council awarded a contract to Tidal Basin as the top ranked firm after review and interviews; and

WHEREAS, part of the scope of services authorized in the Tidal Basis contract included providing the Town with assistance with CDBG-DR administration; and

WHEREAS, the Town was recently awarded CDBG-DR grants by Lee County and is in need of additional grant administration services; and

WHEREAS, the Town Council previously authorized the Town Manager to administer CDBG-DR grants and execute any documents needed to allow the Town to attain funds from those grant programs; and

WHEREAS, the Town Manager believed it was in the best interest of the Town to continue to use Tidal Basin’s grant administration services to expedite receipt of CDBG-DR grant funding and executed two task orders to accomplish same; and

WHEREAS, the Town Council is requested to ratify the Town Manager’s approval of the two task orders with Tidal Basin to expedite CDBG-DR administration and receipt of funding.

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

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

Section 2. Task Orders 3 and 4 approved and executed by the Town Manger in the amounts not to exceed \$163,864.57 and \$291,785.90, respectively, are hereby ratified as if approved by the Town Council.

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 Council Member _____ and seconded by Council Member _____, and upon being put to a roll call vote, the result was as follows:

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

ADOPTED this 21st 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.



Task Order No. 3

Town of Fort Myers Beach Services Provider Agreement
CDBG-DR/SRA No. DR10262 Critical Infrastructure – North Island Water Tower

This Task Order No. 3 is made part of and governed by the terms and provisions of the Services Provider Agreement by and between Tidal Basin Government Consulting, LLC (“Tidal Basin” or “Consultant”) and Town of Fort Myers Beach (“Client”) dated February 6, 2023 (“Agreement”).

Project Name: Town of Fort Myers Beach, CDBG-DR/SRA No. DR10262; Critical Infrastructure - North Island Water Tower.

1. **Scope of Services/Rates:** Tidal Basin agrees to perform the services more particularly described in Exhibit A – Scope of Work, attached hereafter and incorporated herein.
2. **Payment Basis:** The Client shall pay Tidal Basin the rates set forth in Exhibit B – Compensation Rates, attached hereafter and incorporated herein. The Client shall pay Tidal Basin within thirty (30) days of receipt of invoices.
3. **Period of Performance:** This Task Order is effective beginning April 1, 2025, through February 23, 2026.
4. **Estimated Cost of Services:** The total cost of this Task Order shall not exceed **\$163,864.57**.
5. **Approval/Acceptance:** Acceptance of the terms of this Task Order is acknowledged by the following signatures of the authorized representatives of the Parties.

Tidal Basin Government Consulting, LLC

By: Paul Taylor
Paul Taylor (Apr 10, 2025 17:24 CDT)

Name: Paul Taylor

Title: Vice President

Date: 04/10/2025

Town of Fort Myers Beach

By: Andrew Hyatt
Andrew Hyatt (Apr 11, 2025 08:38 EDT)

Name: Andrew Hyatt

Title: Town Manager

Date: 04/10/2025



EXHIBIT A
SCOPE OF WORK

Tidal Basin will assist and facilitate the Town of Fort Myers Beach staff with the management of the scope of work and activities of the Community Development Block Grant-Disaster Recovery (CDBG-DR) grant as described in Exhibit B – *Scope of Work and Activities Project Activity Scope of Work Description*, of the CDBG-DR Subrecipient Agreement No. DR10262 (“Exhibit B of SRA No. DR10262”), by and between Lee County and the Town of Fort Myers Beach, signed on or about January 13, 2025. Exhibit B of SRA No. DR10262 is attached hereto and incorporated to this Exhibit A.

In assisting the Town of Fort Myers Beach, the services to be performed by Tidal Basin may include, but are not limited to:

1. Provide emergency planning, disaster recovery, mitigation planning and program services required/requested.
2. Provide grant management advice related to federal, state, or other grants.
3. Provide and gather supporting documentation for grant eligible projects.
4. Support the development of a long-term recovery strategy including identifying federal, state, local, and additional funding opportunities.
5. Assist with the Community Development Block Grant (CDBG) and CDBG-DR process.
6. Coordinate with Lee County and the Town of Fort Myers Beach to ensure HUD compliance, proper reporting, and adherence to the proposed schedule to the project.
7. Ensure procurements adhere to 2 CFR 200; Davis Bacon Labor Compliance is adhered to; Section 3 reporting is completed, and all costs can be tied to the eligible activity and national objective tied to the project.
8. Provide implementation and oversight of the project under the SRA and ensure compliance of CDBG-DR funds utilization.
9. Provide regulatory and policy interpretation, recommendations and guidance as requested.
10. Support programmatic and grant specific compliance management and assurance.
11. Track and monitor time and activities by project, or as otherwise required.
12. Provide performance/progress reports as requested.

EXHIBIT B
SCOPE OF WORK AND ACTIVITIES
PROJECT ACTIVITY SCOPE OF WORK DESCRIPTION

The information provided under this Exhibit is retrieved from the Subrecipient's approved application in response to the Critical Infrastructure Program NOFA. In coordination and agreement with the Subrecipient, the County will utilize the information below to inform and update the County's approved System of Record for key performance measures and project budget cost eligibility. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently reviewed and approved within the System of Record and/or under a formal amendment in accordance with the Agreement.

Project Activity Scope of Work Description ("Work")

The Town of Fort Myers Beach seeks Community Development Block Grant Disaster Recovery (CDBG-DR) funding through the Lee County Critical Infrastructure Program to support the critically necessary replacement and repair of the North Island Water Tower Complex. The Town of Fort Myers Beach, along with other coastal communities, absorbed the brunt of Hurricane Ian's impacts in Lee County. Recovery efforts since Ian's landfall have highlighted the need for a consistent supply of potable water, consistent with the FEMA Water Systems lifeline category.

The North Island Water Tower Complex is one of two potable water facilities on the island; together, the two facilities were responsible for holding and distributing potable water to all residents and businesses in the Town of Fort Myers Beach. Hurricane Ian heavily impacted the North Island Water Tower Complex, damaging the lower level of the pump building and all above-ground valves and pumps. The storage area and grounds were scoured by 15-feet of storm surge. Post-Ian inspection deemed the tank itself unusable; as such, the Town of Fort Myers Beach has operated with a single water tank since Hurricane Ian. With only a single operational water tank, the Town is in a critical situation because it is more susceptible to potential impacts of future emergency events that could decommission the only remaining source of potable water on the island.

The scope of this critical infrastructure project includes (1) removal of the existing, unusable tank, (2) replacement of the current tank with a new concrete poly-lined tank for water storage, (3) construction of the control building and ancillary structures which house necessary equipment, valves, pumps, and piping, (4) elevation of pumps and valves, (4) replacement of storage areas necessary for maintenance equipment, (5) major security upgrades, such as fencing and around-the-clock monitoring systems, and (6) other improvements that, through pre-construction due diligence, are determined to be necessary to ensuring and monitoring a secure potable water supply for the Town of Fort Myers Beach. The project will be constructed in accordance with all current building codes and the control building will be hardened. All improvements will be built in compliance with

current FEMA flood elevations, such that components of the facility and structures themselves are elevated above base flood elevation. The scope of work also includes all design, permitting, and construction-phase oversight services that may be necessary to ensure that the project is implemented successfully. Procurement activities will be conducted in accordance with 2 CFR 200.320 and with applicable Florida Statutes.

Given the unprecedented impacts of Hurricane Ian upon the Town of Fort Myers Beach, access to a critical resource such as potable water is paramount to the community. With CDBG-DR funding to support this project, the Town can provide residents with a resilient drinking water supply and system and reliable access to potable water for daily activities, such as drinking, cooking, and cleaning. Completion of this project will enable the town to maintain dependable access to clean drinking water for all residents on the island by building a resilient facility that is more likely to withstand future natural and climate-related hazards than pre-Ian potable water infrastructure.

The project proposed by the Town of Fort Myers Beach, with the support of CDBG-DR funding, will fully restore and secure a critical FEMA lifeline - potable water supply - for the Town of Fort Myers Beach. The completed project will increase the resiliency of the Town's potable water infrastructure by installing a system designed to withstand future natural and climate-related hazardous events.

By constructing resilient and secure potable water infrastructure, this project will create confidence in local residents and businesses that a dependable supply of water will be available for daily activities such as drinking, cleaning, and cooking. Reliable infrastructure is foundational for continued residential and commercial recovery, development, and growth in areas that were completely devastated by Hurricane Ian.

Design and Approach: The Town of Fort Myers Beach employs staff with experience in completing projects of a similar size and scope, and has secured the services of Tidal Basin Group, which has extensive experience in implementation and oversight of projects utilizing federal, state, and/or local governmental grant funds. The combination of Town staff oversight and contractual support ensures adequate experience and capacity for effective administration and oversight of all compliance requirements. Additional information regarding Town staff and contractual support is provided below:

Andrew Hyatt: Mr. Hyatt has more than 26 years of management and leadership experience in both the private and public sectors, with 18 of those years in municipal government and 13 years as a Town or City manager. Andy has an Associate's degree in general business from Cleveland State Community College in Cleveland, Tenn. From the University of Tennessee at Chattanooga, he has a Bachelor's degree in political science and a Master's degree in public

administration. Mr. Hyatt will perform general oversight of project implementation and completion.

Frank Kropacek: Mr. Kropacek has more than 30 years of experience in local, county and state government administration ranging from contracts, contract negotiation, procurement, and project management to organizational administration. He attended the University of Wisconsin Whitewater studying Geology and Geophysics. Mr. Kropacek will be the Town's primary day-to-day contact for all project activities and will directly oversee and coordinate planning implementation.

Joe Onzick: Mr. Onzick served for 10 years as the Executive Director of Finance for Kane County, Illinois. In addition to that experience, he has a wealth of financial experience as a licensed CPA, controller, chief financial officer, software consultant, and analyst. Mr. Onzick has an MBA in Accounting from Aurora University and Bachelor's of Science degree in mathematics from Wheaton College. As the Town's Financial Director, Mr. Onzick will oversee fund accounting and financial compliance for the planning project.

To supplement Town staff's expertise and capacity, Fort Myers Beach has engaged the services of Tidal Basin Group, a nationally recognized firm with extensive experience in disaster management and recovery, including oversight and compliance activities for federal funding streams associated with recovery efforts. Tidal Basin has significant experience managing all aspects of CDBG-DR projects, including those of similar scope and size as the Fort Myers Beach project being proposed. Tidal Basin serves as the grant manager for Hendry County, FL overseeing the County's three Hurricane Irma CDBG-DR funded grants totaling over \$5.5M. Tidal Basin also serves in the same capacity for the Orange County Drainage District in Orange County, TX and for various municipal subrecipients in Puerto Rico. The team will coordinate with Lee County and the Town of Fort Myers Beach to ensure HUD compliance, proper reporting, and adherence to the proposed schedule to the project. Tidal Basin will ensure procurements adhere to 2 CFR 200, Davis Bacon Labor Compliance is adhered to, Section 3 reporting is completed, and all costs can be tied to the eligible activity and national objective tied to the project.

Specific to compliance oversight related to CDBG-DR funding, Tidal Basin Group is further supported by Gouras & Associates, LLC. Team members of Gouras & Associates, LLC collectively have more than 70 years of combined experience working in high-level state and federal grant management, disaster recovery management, and economic development consulting. Gouras & Associates has unique expertise in CDBG Disaster Recovery (CDBG-DR) funding, with team members having performed compliance and oversight of billions in CDBG-DR funding since 2005, when Hurricane Katrina devastated the Mississippi and Louisiana Gulf Coasts. Since that time, Gouras & Associates has helped local and state governments and grant funding recipients throughout the southeast with

comprehensive project implementation and compliance services from project inception to grant closeout, including grant writing and submission, implementing policies and procedures, overseeing financial controls, preparing monthly, quarterly, semi-annual, and annual reporting, recordkeeping, monitoring, overseeing and supporting procurement compliance, preparing reimbursement requests, preparing amendments to grant agreements and budget modifications, and preparing project closeout documentation. Gouras & Associates also works to educate contractors and clients on compliance with the applicable state and federal regulations and laws, including the applicable procurement guidelines, MBE/WBE solicitation and outreach, labor standards compliance requirements, and HUD Section 3 compliance requirements.

Major Project Milestones

Milestone	Due Date
Design and Permitting Complete	12/31/2026
Construction Begins	04/30/2027
50% Construction	01/30/2028
Closeout and Final Reimbursement Request	12/31/2028



EXHIBIT B
COMPENSATION RATES

Position	Hourly Rate*
Subject Matter Expert (SME)	\$185.00
Senior Grant Specialist	\$155.00
Grant Specialist	\$125.00

*Travel expenses such as lodging and per diem, should not be part of the hourly rates above, and will follow guidelines established by the US General Services Administration (GSA) applicable rates for the area.

FMB_Task Order 3_CDBG-DR-SRA 10262_Critical Infrastructure_North Island Water Tower

Final Audit Report

2025-04-11

Created:	2025-04-10
By:	Jason Freeman (jasonf@fmbgov.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAGqqAAyFHNC7TAf9Agz_PYluG-wYAhP7i

"FMB_Task Order 3_CDBG-DR-SRA 10262_Critical Infrastructure_North Island Water Tower" History

-  Document created by Jason Freeman (jasonf@fmbgov.com)
2025-04-10 - 12:58:35 PM GMT
-  Document emailed to Paul Taylor (paul.taylor@tidalbasingroup.com) for signature
2025-04-10 - 12:58:40 PM GMT
-  Email viewed by Paul Taylor (paul.taylor@tidalbasingroup.com)
2025-04-10 - 10:23:44 PM GMT
-  Document e-signed by Paul Taylor (paul.taylor@tidalbasingroup.com)
Signature Date: 2025-04-10 - 10:24:37 PM GMT - Time Source: server
-  Document emailed to Andrew Hyatt (andyhyatt@fmbgov.com) for signature
2025-04-10 - 10:24:38 PM GMT
-  Email viewed by Andrew Hyatt (andyhyatt@fmbgov.com)
2025-04-11 - 12:37:53 PM GMT
-  Document e-signed by Andrew Hyatt (andyhyatt@fmbgov.com)
Signature Date: 2025-04-11 - 12:38:03 PM GMT - Time Source: server
-  Agreement completed.
2025-04-11 - 12:38:03 PM GMT



Task Order No. 4

Town of Fort Myers Beach Services Provider Agreement
CDBG-DR/SRA No. DR10263 Public Facilities – Parks and Recreation Revitalization

This Task Order No. 4 is made part of and governed by the terms and provisions of the Services Provider Agreement by and between Tidal Basin Government Consulting, LLC (“Tidal Basin” or “Consultant”) and Town of Fort Myers Beach (“Client”) dated February 6, 2023 (“Agreement”).

Project Name: Town of Fort Myers Beach, CDBG-DR/SRA No. DR10263; Public Facilities – Parks and Recreation Revitalization.

1. **Scope of Services/Rates:** Tidal Basin agrees to perform the services more particularly described in Exhibit A – Scope of Work, attached hereafter and incorporated herein.
2. **Payment Basis:** The Client shall pay Tidal Basin the rates set forth in Exhibit B – Compensation Rates, attached hereafter and incorporated herein. The Client shall pay Tidal Basin within thirty (30) days of receipt of invoices.
3. **Period of Performance:** This Task Order is effective beginning April 1, 2025, through February 23, 2026.
4. **Estimated Cost of Services:** The total cost of this Task Order shall not exceed **\$291,785.90**.
5. **Approval/Acceptance:** Acceptance of the terms of this Task Order is acknowledged by the following signatures of the authorized representatives of the Parties.

Tidal Basin Government Consulting, LLC

By: 
Paul Taylor (Apr 10, 2025 17:25 CDT)

Name: Paul Taylor

Title: Vice President

Date: 04/10/2025

Town of Fort Myers Beach

By: 
Andrew Hyatt (Apr 11, 2025 08:39 EDT)

Name: Andrew Hyatt

Title: Town Manager

Date: 04/11/2025



EXHIBIT A
SCOPE OF WORK

Tidal Basin will assist and facilitate the Town of Fort Myers Beach staff with the management of the scope of work and activities of the Community Development Block Grant-Disaster Recovery (CDBG-DR) grant as described in Exhibit B – *Scope of Work and Activities Project Activity Scope of Work Description*, of the CDBG-DR Subrecipient Agreement No. DR10263 (“Exhibit B of SRA No. DR10263”), by and between Lee County and the Town of Fort Myers Beach, signed on or about January 13, 2025. Exhibit B of SRA No. DR10263 is attached hereto and incorporated to this Exhibit A.

In assisting the Town of Fort Myers Beach, the services to be performed by Tidal Basin may include, but are not limited to:

1. Provide emergency planning, disaster recovery, mitigation planning and program services required/requested.
2. Provide grant management advice related to federal, state, or other grants.
3. Provide and gather supporting documentation for grant eligible projects.
4. Support the development of a long-term recovery strategy including identifying federal, state, local, and additional funding opportunities.
5. Assist with the Community Development Block Grant (CDBG) and CDBG-DR process.
6. Coordinate with Lee County and the Town of Fort Myers Beach to ensure HUD compliance, proper reporting, and adherence to the proposed schedule to the project.
7. Ensure procurements adhere to 2 CFR 200; Davis Bacon Labor Compliance is adhered to; Section 3 reporting is completed, and all costs can be tied to the eligible activity and national objective tied to the project.
8. Provide implementation and oversight of the project under the SRA and ensure compliance of CDBG-DR funds utilization.
9. Provide regulatory and policy interpretation, recommendations and guidance as requested.
10. Support programmatic and grant specific compliance management and assurance.
11. Track and monitor time and activities by project, or as otherwise required.
12. Provide performance/progress reports as requested.

EXHIBIT B
SCOPE OF WORK AND ACTIVITIES
PROJECT ACTIVITY SCOPE OF WORK DESCRIPTION

The information provided under this Exhibit is retrieved from the Subrecipient's approved application in response to the Public Facilities Infrastructure Program NOFA. In coordination and agreement with the Subrecipient, the County will utilize the information below to inform and update the County's approved System of Record for key performance measures and project budget cost eligibility. Subrecipients will work with the County to ensure any edits and amendments to this Exhibit are subsequently reviewed and approved within the System of Record and/or under a formal amendment in accordance with the Agreement.

Project Activity Scope of Work Description ("Work")

The Town of Fort Myers Beach is applying for Community Development Block Grant Disaster Recovery (CDBG-DR) funding through the Lee County Public Facilities Program to support the restoration and enhancement of its parks and recreational facilities. The devastating impact of Hurricane Ian left the town not only physically damaged but also economically stifled. The Parks & Recreation Revitalization project is a vital initiative aimed at repairing and upgrading these essential public spaces. This project will address the damage caused by Hurricane Ian while also improving the resilience and sustainability of the Town's recreational facilities for future use. Before the storm, these facilities were central to the Town's community life, promoting health, wellness, and social connections. The program is divided into three key components, each crucial to the Town's long-term recovery and success:

1. Bay Oaks Community Pool Rehabilitation. This component of the project involves a comprehensive rebuild of the existing pool facilities, which suffered extensive damage during Hurricane Ian. The project's scope includes repairing the pool basins that withstood the storm and completely reconstructing the pool deck, water slide, mechanical systems, restrooms, offices, and other facilities that were devastated. The design strategy focuses on leveraging the intact parts of the pool infrastructure while updating and enhancing areas that require complete renovation.

The reconstruction will not only restore the pool to its former glory, but also introduce improvements in the design to enhance user experience and operational efficiency. This includes modernizing the pool deck layout to accommodate more visitors comfortably and safely, upgrading the water slide to meet the latest safety standards, and overhauling the mechanical systems to ensure more efficient and reliable operation.

The technical aspects of reconstruction will be carefully planned to ensure both

durability and functionality. The pool deck will be rebuilt using advanced, weather-resistant materials that offer both aesthetic appeal and long-lasting performance. The mechanical systems—including pumps, filters, and heating systems—will be state-of-the-art, optimized for energy efficiency and ease of maintenance.

This technical overhaul extends to the water management systems, with plans to implement cutting-edge solutions for water filtration and circulation, ensuring the pool water remains clean and safe for public use. Furthermore, the redesign includes enhanced accessibility features, making the pool complex fully compliant with ADA standards and more welcoming for all community members.

2. Old San Carlos & Time Square Lighting Restoration: This component of the project involves the complete replacement and modernization of the lighting system in the downtown area of the Town of Fort Myers Beach, which was severely damaged by Hurricane Ian. This project will install 46 new streetlights and light poles to replace those destroyed by the storm surge and debris, ensuring the new lights meet modern standards for energy efficiency and turtle compliance. Additionally, all damaged wiring and conduit throughout the area will be replaced to restore full functionality to the lighting grid. Two new panel/switch boxes will be installed to support the new lighting infrastructure and ensure reliable power distribution.

The business district has remained largely dark since Hurricane Ian, and this project focuses on improving public safety by providing adequate lighting, enhancing safety for both residents and visitors, supporting local businesses, and reducing the risk of accidents and crime. Aesthetic improvements will also be considered, with the new lighting fixtures designed to enhance the overall appearance of the downtown area, making it more inviting and attractive for tourists and locals alike.

The town is anchored by two community gathering spaces —Bayside to the north and Time Square to the south—connected by Old San Carlos Boulevard. The town's long-term plan is for Old San Carlos Boulevard to evolve into a "park corridor." This lighting project will be the first step toward realizing that vision.

Since Hurricane Ian, the Town has spent over \$200,000 on inadequate patchwork repairs, resulting in only three functioning streetlights out of the original 46. These temporary fixes have proven insufficient, highlighting the urgent need for a comprehensive overhaul. The new lighting system will prioritize sustainability and resiliency. Energy-efficient fixtures will reduce operational costs and environmental impact, while the infrastructure will be designed to withstand future storms and minimize damage.

The total cost for the Old San Carlos and Time Square Lighting Project represents a crucial investment in revitalizing the downtown area, ensuring public safety, supporting the economic recovery of local businesses, and enhancing the town's resilience and sustainability for the future.

3. Newton Park Beach Facility Project: This component of the project will rebuild and enhance park facilities, which were severely damaged by Hurricane Ian's 17-foot storm surge. This surge single-handedly erased a hundred years of history, including the historical 'Seven Seas' cottage. Given that the property was gifted to the town by the state to remain an educational center in perpetuity, the project focuses on constructing a new elevated educational and environmental center designed to meet current building codes and withstand future storm surges. Importantly, all new buildings will be constructed above base flood elevations to mitigate the risk of future flood losses. The center will serve as an educational hub, providing information on local history, environmental conservation, and marine life. The design will focus on modern architectural elements that are both functional and aesthetically pleasing, with an emphasis on sustainability. Additionally, all buildings, including restrooms, will be fully ADA-compliant, ensuring accessibility for all visitors.

Recognizing the ecological importance of native flora, the project will include extensive landscaping with indigenous plants to stabilize the beachfront and provide a habitat for local wildlife. Landscaping designs will promote ecological balance and resilience against future storms. A redesigned parking lot using eco-friendly materials will be installed to minimize environmental impact while accommodating visitors, including spaces for buses and bicycles to promote greener transportation options.

To honor the historical significance of the site, the project will incorporate elements that pay homage to the original 'Seven Seas' cottage. The new center will feature exhibits and displays educating visitors about the site's history and the impact of Hurricane Ian. Infrastructure and utility upgrades, including water, electricity, and sewage systems, will be implemented to support the new facilities and ensure reliability, with a focus on energy-efficient systems and sustainable technologies.

Investment in this project will restore a valuable community asset and enhance its resilience and sustainability, ensuring it remains a vital part of Fort Myers Beach for generations to come.

The comprehensive Parks and Recreation Revitalization Program, encompassing the Old San Carlos & Time Square Lighting Project, Newton Park Beach Facility

Project, and Bay Oaks Community Pool Project, is projected to yield significant positive outcomes for the Town of Fort Myers Beach. This program will restore and enhance critical public facilities that were severely damaged by Hurricane Ian, addressing immediate recovery needs and future resilience and addressing blighted properties contributing to economic decline and dangerous conditions. The upgraded lighting system in the downtown area will improve public safety and support local businesses, while the new educational and environmental center at Newton Park will preserve the site's historical significance and promote ecological awareness. The fully reconstructed Bay Oaks Community Pool will restore a key recreational facility, providing a central gathering place for community wellness and social bonding.

By integrating modern, energy-efficient technologies and ensuring all new structures are built above base flood elevations, the program will enhance the resilience and sustainability of these public facilities. ADA-compliant designs across all projects will ensure accessibility for all visitors, promoting inclusivity within the community. Extensive landscaping with native plants will stabilize the environment, prevent erosion, and support local wildlife, contributing to the ecological health of the area. The redesigned parking facilities will accommodate various transportation options, encouraging greener alternatives and reducing environmental impact.

The Town of Fort Myers Beach expects to create a new unity among residents, visitors, and businesses by investing in the community through the Parks & Recreation Revitalization Program. This set of projects will ensure a sustainable and effective recovery from the devastation of Hurricane Ian. With the support of CDBG-DR funding, the program will create a state-of-the-art community facility to replace the previous Bay Oaks community pool, revitalize three community parks by reintroducing the lighting grid to ensure public safety, and rebuild an improved facility with a focus on town history and education to replace the lost "Seven Seas" cottage, boosting tourism and resident satisfaction. Additionally, the town's long-term plan for Old San Carlos Boulevard to evolve into a "park corridor" will be initiated through the lighting project, enhancing connectivity between Bayside to the north and Time Square to the south and laying a foundation for a long-term vision that will significantly enhance the community.

The completed projects will bring back the cherished parks of Fort Myers Beach, accelerating the social and cultural recovery of the community through environmentally friendly construction practices. This program will serve the entire community, attracting visitors and catalyzing social and cultural revitalization. These places once served as vital recreational and social hubs for residents, and their restoration is essential to the community's physical and mental well-being. The urgency of this program is driven by the need to restore these essential services swiftly to avoid further disruption to community life.

The Parks & Recreation Revitalization Program is not just a reconstruction and

restoration effort; it is a transformative initiative that will significantly enhance the quality of life in Fort Myers Beach. By rebuilding these key community parks and facilities, the program addresses an urgent need for recreational and social infrastructure, providing safe, modern, and welcoming environments for residents and visitors of all ages. This investment will not only address the immediate damages caused by Hurricane Ian but also build a more resilient, sustainable, and inclusive future for the town, ensuring that these public facilities remain vital assets for generations to come.

Design and Approach: The Town of Fort Myers Beach employs staff with experience in completing projects of a similar size and scope, and has secured the services of Tidal Basin Group, which has extensive experience in implementation and oversight of projects utilizing federal, state, and/or local governmental grant funds. The combination of Town staff oversight and contractual support ensures adequate experience and capacity for effective administration and oversight of all compliance requirements. Additional information regarding Town staff and contractual support is provided below:

Andrew Hyatt: Mr. Hyatt has more than 26 years of management and leadership experience in both the private and public sectors, with 18 of those years in municipal government and 13 years as a Town or City manager. Andy has an Associate's degree in general business from Cleveland State Community College in Cleveland, Tenn. From the University of Tennessee at Chattanooga, he has a Bachelor's degree in political science and a Master's degree in public administration. Mr. Hyatt will perform general oversight of project implementation and completion.

Frank Kropacek: Mr. Kropacek has more than 30 years of experience in local, county and state government administration ranging from contracts, contract negotiation, procurement, and project management to organizational administration. He attended the University of Wisconsin Whitewater studying Geology and Geophysics. Mr. Kropacek will be the Town's primary day-to-day contact for all project activities and will directly oversee and coordinate planning implementation.

Joe Onzick: Mr. Onzick served for 10 years as the Executive Director of Finance for Kane County, Illinois. In addition to that experience, he has a wealth of financial experience as a licensed CPA, controller, chief financial officer, software consultant, and analyst. Mr. Onzick has an MBA in Accounting from Aurora University and Bachelor's of Science degree in mathematics from Wheaton College. As the Town's Financial Director, Mr. Onzick will oversee fund accounting and financial compliance for the planning project.

To supplement Town staff's expertise and capacity, Fort Myers Beach has engaged the services of Tidal Basin Group, a nationally recognized firm with extensive experience in disaster management and recovery, including oversight

and compliance activities for federal funding streams associated with recovery efforts. Tidal Basin has significant experience managing all aspects of CDBG-DR projects, including those of similar scope and size as the Fort Myers Beach project being proposed. Tidal Basin serves as the grant manager for Hendry County, FL overseeing the County's three Hurricane Irma CDBG-DR funded grants totaling over \$5.5M. Tidal Basin also serves in the same capacity for the Orange County Drainage District in Orange County, TX and for various municipal subrecipients in Puerto Rico. The team will coordinate with Lee County and the Town of Fort Myers Beach to ensure HUD compliance, proper reporting, and the adherence to the proposed schedule to the project. Tidal Basin will ensure procurements adhere to 2 CFR 200, Davis Bacon Labor Compliance is adhered to, Section 3 reporting is completed, and all costs can be tied to the eligible activity and national objective tied to the project.

Specific to compliance oversight related to CDBG-DR funding, Tidal Basin Group is further supported by Gouras & Associates, LLC. Team members of Gouras and Associates collectively have more than 70 years of combined experience working in high-level state and federal grant management, disaster recovery management, and economic development consulting. Gouras & Associates has unique expertise in CDBG-DR funding, with team members having performed compliance and oversight of billions in CDBG-DR funding since 2005, when Hurricane Katrina devastated the Mississippi and Louisiana Gulf Coasts. Since that time, Gouras & Associates has helped local and state governments and grant funding recipients throughout the southeast with comprehensive project implementation and compliance services from project inception to grant closeout, including grant writing and submission, implementing policies and procedures, overseeing financial controls, preparing monthly, quarterly, semi-annual, and annual reporting, recordkeeping, monitoring, overseeing and supporting procurement compliance, preparing reimbursement requests, preparing amendments to grant agreements and budget modifications, and preparing project closeout documentation. Gouras & Associates also works to educate contractors and clients on compliance with the applicable state and federal regulations and laws, including the applicable procurement guidelines, MBE/WBE solicitation and outreach, labor standards compliance requirements, and HUD Section 3 compliance requirements.

This project will be directly implemented by the Town of Fort Myers Beach and will not involve a subgrantee.

The project administration team will be led by Mr. Andrew Hyatt, with programmatic activities overseen by Mr. Frank Kropacek and financial activities overseen by Mr. Joe Onzick. Additional information regarding each team member is included below:

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Major Project Milestones

Milestone	Due Date
Design and Permitting Complete	12/31/2026
Construction Begins	04/30/2027
50% Construction	01/30/2028
Closeout and Final Reimbursement Request	12/30/2028



EXHIBIT B
COMPENSATION RATES

Position	Hourly Rate*
Subject Matter Expert (SME)	\$185.00
Senior Grant Specialist	\$155.00
Grant Specialist	\$125.00

*Travel expenses such as lodging and per diem, should not be part of the hourly rates above, and will follow guidelines established by the US General Services Administration (GSA) applicable rates for the area.

FMB_Task Order 4_CDBG-DR-SRA DR10263_Public Facilities-Parks Rec Revitalization

Final Audit Report

2025-04-11

Created:	2025-04-10
By:	Jason Freeman (jasonf@fmbgov.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA6rH8jdzM4jJLNaf5h9O3JSNeywqc7kZL

"FMB_Task Order 4_CDBG-DR-SRA DR10263_Public Facilities-Parks Rec Revitalization" History

-  Document created by Jason Freeman (jasonf@fmbgov.com)
2025-04-10 - 1:00:44 PM GMT
-  Document emailed to Paul Taylor (paul.taylor@tidalbasingroup.com) for signature
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-  Document emailed to Andrew Hyatt (andyhyatt@fmbgov.com) for signature
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-  Agreement completed.
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1. **Request:**

Meeting Date: April 21, 2025

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, PROVIDING NOTICE OF THE TOWN'S INTENT TO INITIATE THE PROCESS OF CREATING A COMMUNITY REDEVELOPMENT AGENCY; DIRECTING TOWN STAFF TO INITIATE A STUDY TO DETERMINE WHETHER CONDITIONS EXIST TO SUPPORT THE CREATION OF A COMMUNITY REDEVELOPMENT AGENCY IN THE TIMES SQUARE AREA; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

TOWN ATTORNEY'S ITEMS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Nancy Stuparich, Town
Attorney

5. **Background:**

At the March 13, 2025 Management & Planning meeting, the Town Council directed the Town Attorney to draft a resolution authorizing the Town staff to secure a qualified consultant or contractor to complete a study of the Times Square area of Fort Myers Beach to determine whether conditions exist which meet the criteria set forth in Section 163.340(7) or (8), Florida Statutes. The study shall specifically assess whether any of the factors listed in Section 163.340(7) or (8), Florida Statutes, are present and contributing to economic distress. The purpose of this study is to provide the Town Council with data and analysis to assist the Town Council in determining whether redevelopment of the Times Square area is necessary in the interest of public health, safety, morals, and welfare pursuant to Section 163.355, Florida Statutes.

The Resolution is also intended to document the Town's intent to begin the process of creating a Community Redevelopment Agency for its Times Square area, contingent upon the findings of the study in anticipation of forthcoming legislation that would prohibit the creation of new CRAs after July 1, 2025.

Attachments:

1. 25-123, Resolution for CRA Study
2. 3.13.25 Management & Planning Minutes

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Lizzette Roman, Town Clerk Administrative Coordinator
nancy stuparich, Town Attorney

Created/Initiated - 4/8/2025
Approved - 4/15/2025

Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Approved - 4/15/2025
Final Approval - 4/15/2025

RESOLUTION NO. 25-123

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, PROVIDING NOTICE OF THE TOWN'S INTENT TO INITIATE THE PROCESS OF CREATING A COMMUNITY REDEVELOPMENT AGENCY; DIRECTING TOWN STAFF TO INITIATE A STUDY TO DETERMINE WHETHER CONDITIONS EXIST TO SUPPORT THE CREATION OF A COMMUNITY REDEVELOPMENT AGENCY IN THE TIMES SQUARE AREA; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Community Redevelopment Act of 1969, codified in Part III of Chapter 163, Florida Statutes, authorizes municipalities to create Community Redevelopment Agencies (CRAs) as dependent special districts to carry out redevelopment in slum or blighted areas, or areas in which there is a shortage of affordable housing; and

WHEREAS, Section 163.355, Florida Statutes, provides that a municipality may not create a CRA until it adopts a resolution, supported by data and analysis, finding that one or more slum or blighted areas, or areas with a shortage of affordable housing, exist and that redevelopment of the area is necessary in the interest of public health, safety, morals, and welfare; and

WHEREAS, Section 163.340(8), Florida Statutes, defines "blighted area" to include areas with deteriorating structures and conditions that endanger life or property or lead to economic distress, where certain specified factors are present; and

WHEREAS, following the impact of hurricanes Ian and Helene, as well as continuing traffic congestion, the Town of Fort Myers Beach has observed conditions in its Times Square area that may meet the criteria for a finding that redevelopment of the area is necessary pursuant to Chapter 163, Florida Statutes; and

WHEREAS, pending legislation under consideration by the Florida Legislature, including HB 991 and SB 1242, would prohibit the creation of any new CRAs on or after July 1, 2025; and

WHEREAS, the Town Council of the Town of Fort Myers Beach desires to timely initiate the process to determine whether a CRA should be established for the Town's Times Square area, prior to any statutory deadline for the creation of a CRA.

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

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

Section 2. The Town staff is hereby directed to procure and retain, in accordance with the Town's procurement policies, a qualified consultant or contractor to conduct a study of the

Times Square area of the Town of Fort Myers Beach to determine whether conditions exist which meet the criteria set forth in Section 163.340(7) or (8), Florida Statutes. The study shall specifically assess whether any of the factors listed in Section 163.340(7) or (8), Florida Statutes, are present and contributing to economic distress. The purpose of this study is to provide the Town Council with data and analysis to assist the Town Council in determining whether redevelopment of the Times Square area is necessary in the interest of public health, safety, morals, and welfare pursuant to Section 163.355, Florida Statutes.

Section 3. The Town of Fort Myers Beach hereby provides notice of its intent to begin the process of creating a Community Redevelopment Agency for its Times Square area, contingent upon the findings of the study described in Section 2. This Resolution is adopted in anticipation of forthcoming legislation that would prohibit the creation of new CRAs after July 1, 2025. The Town intends for this Resolution to constitute evidence that the Town initiated the process to form a CRA before the potential statutory deadline.

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

The foregoing Resolution was adopted by the Town Council upon 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 April 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

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



Fort Myers Beach Management & Planning Session

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

Minutes

Thursday, March 13, 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. 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

Minutes adopted as presented, April 7, 2025. Motion by Council Member King and seconded by Council Member Safford. Passed 5-0.



Amy Baker, Town Clerk