



Fort Myers Beach Management & Planning Session

**Council Chambers
2525 Estero Blvd.
Fort Myers Beach, FL 33931**

Agenda

Wednesday, April 7, 2021

9:00 AM

ORDER OF BUSINESS

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. ITEMS FOR DISCUSSION

- A. Lee County Update - written report only
Update of Lee County projects on Fort Myers Beach
- B. Discuss Bay Oaks' site plan
Consideration of the Lee County School Board changes to Bay Oaks Recreational Campus' redevelopment site plan.
- C. Newsrack Ordinance 17-14
Review of current Newsrack Ordinance
- D. Discussion regarding the Town permitting additional Waterway Markers
Discussion regarding consent to permit additional Waterway Markers
- E. Bay Mar Drive Easement Discussion
Discussion regarding a neighborhood request for an observation pier at Bay Mar Drive the existing property ownership under the current easement agreement.
- F. American Rescue Plan
Preliminary discussion and planning of American Rescue Plan funds

IV. AGENDA MANAGEMENT

- A. April 7, 2021

V. ADJOURNMENT

NOTE: THIS MEETING IS TELEVISED LIVE ON COMCAST CHANNEL 98.

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



Help for the hearing impaired is available through the Assistive Listening System. Receivers can be obtained from the Town Clerk's Office.

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

1. **Requested Motion:**

Meeting Date: April 7, 2021

Update of Lee County projects on Fort Myers Beach

Why the action is necessary:

What the action accomplishes:

Facilitates communications between the Town and County

2. **Agenda:**

ITEMS FOR DISCUSSION

3. **Requirement/Purpose:**

5. **Background:**

Attachments:

1. Estero Blvd Update for 4.7.2021 M-P

Financial Impact:

6. **Alternative Action**

7. **Staff Recommendations:**

8. **Recommended Approval:**

Date: March 31, 2021

John R Herin Jr, Town Attorney

Date: March 31, 2021

Roger Hernstadt, Town
Manager

**Estero Boulevard Update to Town of Fort Myers Beach
Management & Planning 04/07/2021 Meeting
Estero Boulevard Segments 3 & 4 and 5 & 6**

Estero Boulevard Segments 3 and 4 - Current Status:

- Work is complete except for some added scope as follows:
 - Add flumes at designated side street inlets to improve drainage
 - Add concrete valve collars on all valves located in the asphalt. This includes Town potable water and LCU force main.

Estero Boulevard Segments 5 and 6 - Current Status:

- Construction activities in Segments 5 and 6 are taking place in four locations:
 1. **Albatross Street to Lenell Road - Northbound lane**
 - The northbound lane in this section is generally complete.
 2. **Lenell Road to Buccaneer Drive - Northbound lane**
 - CenturyLink work is complete.
 - Crews are installing storm drain pipe.
 - As storm drain pipe is installed, crews will follow with roadway, concrete curb lines, sidewalks, driveways and restoration.
 3. **Buccaneer Drive to Estrellita Drive - Northbound lane**
 - Crews are working south to north in this section.
 - Crews are clearing the right-of-way.
 - Crews are installing storm drain pipe from the south to the north in this section.
 - CenturyLink is working ahead of storm drain pipe crews relocating an existing phone line found to be in conflict with the new pipe.
 - Approximately 40% of storm drain pipe has been installed in this section (from Estrellita Drive to north of Tarpon).
 - Concrete, roadway, and restoration crews to follow once storm drain installation is complete.
 4. **Outfall between Santa Maria and Bella Lago**
 - The outfall at this location is completed.
 5. **Buccaneer Drive to 7853 Estero Boulevard - Bald Eagle Area** – Construction cannot be done in this area until May 15th due to the bald eagle nesting season. Crews will work up to the bald eagle area and pass through that section once the bald eagle nesting period ends.

1. **Requested Motion:**

Meeting Date: April 7, 2021

Consideration of the Lee County School Board changes to Bay Oaks Recreational Campus' redevelopment site plan.

Why the action is necessary:

Direction from Town Council regarding how town staff should proceed.

What the action accomplishes:

Provides an update of the Final Site Plan for the Bay Oaks Redevelop Project.

2. **Agenda:**

ITEMS FOR DISCUSSION

3. **Requirement/Purpose:**

Other

5. **Background:**

Attachments:

1. Bay Oaks Parcels Plan
2. Bay Oaks Draft Final Site Plan

Financial Impact:

6. **Alternative Action**

Do not discuss.

7. **Staff Recommendations:**

8. **Recommended Approval:**

Chelsea O'Riley, Public Works
Director

Date: March 18, 2021

John R Herin Jr, Town Attorney

Date: March 31, 2021

Amy Baker, Town Clerk

Date: March 31, 2021

Roger Hernstadt, Town Manager

Date: April 01, 2021

DRAFT



ensite
2401 FIRST STREET, SUITE 201
FORT MYERS, FLORIDA 33901
PH: (239) 228-0084 - FX:
(239) 228-0084
23-030-01 01-100000007

--

DATE						
15	16	17	18	19	20	21
DESCRIPTION						
REVISIONS						
SITE PLAN CHANGE PER 30% REVIEW & SURVEY						
NOR	R2	R3	R4	R5	R6	

DATE:	9.30.20
PROJECT NO.	1390-05
FILE NO.	
SCALE:	AS SHOWN

PARCELS PLAN

C-01



= AREA TO REMAIN WITH LEE COUNTY SCHOOL DISTRICT

= AREA TO BE ADDED TO LEE COUNTY SCHOOL DISTRICT CURRENT ROW VACATION LEGAL DESCRIPTION

= MODIFY CURRENT ROW VACATION LEGAL DESCRIPTION

= AREA TO BE REMOVED FROM LEE COUNTY SCHOOL DISTRICT CURRENT ROW VACATION LEGAL DESCRIPTION

= AREA FROM LEE COUNTY SCHOOL BOARD TO TOWN OF FORT MYERS BEACH

= TOWN OF FORT MYERS BEACH

DRAFT



2401 FIRST STREET, SUITE 201
FORT MYERS, FLORIDA 33901
PH: (239) 226-0264 - FX:
(239) 226-0264 - FAX: (239) 226-0264



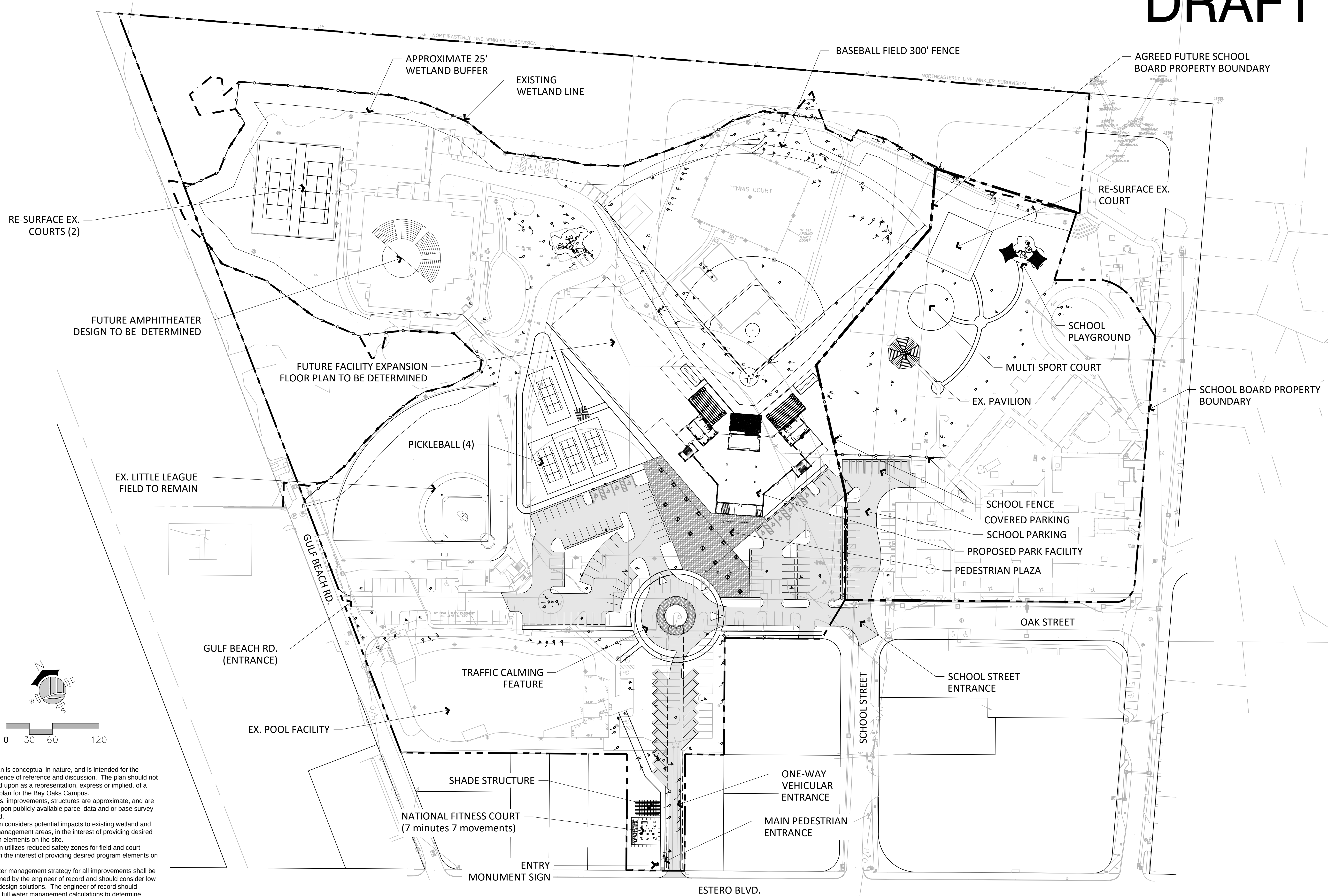
BAY OAKS CAMPUS PLAN
TOWN OF FORT MYERS BEACH, FLORIDA

REVISIONS		DATE
NO.	DESCRIPTION	
R1	SITE PLAN CHANGE PER 30% REVIEW & SURVEY	2-18-21
R2		
R3		
R4		
R5		
R6		

DATE:	9.30.20
PROJECT NO.	1390-05
FILE NO.	
SCALE:	AS SHOWN

CONCEPT PLAN

C-01



This plan is conceptual in nature, and is intended for the convenience of reference and discussion. The plan should not be relied upon as a representation, express or implied, of a master plan for the Bay Oaks Campus. All areas, improvements, structures are approximate, and are based upon publicly available parcel data and or base survey provided. The plan considers potential impacts to existing wetland and water management areas, in the interest of providing desired program elements on the site. The plan utilizes reduced safety zones for field and court sports in the interest of providing desired program elements on the site. The water management strategy for all improvements shall be determined by the engineer of record and should consider low impact design solutions. The engineer of record should perform full water management calculations to determine needs for the project.

1. Requested Motion:

Meeting Date: April 7, 2021

Review of current Newsrack Ordinance

Why the action is necessary:

Per Council direction this Town regulation is being placed on the agenda for review and discussion purposes

What the action accomplishes:

Provides the Council and staff the opportunity to review the efficacy of the current regulations and for Council to direct staff to revise the regulations if deemed appropriate and necessary

2. Agenda:

ITEMS FOR DISCUSSION

3. Requirement/Purpose:

5. Background:

At the request of Town Council, this item is on the agenda for review and discussion

Attachments:

1. 17-14, Ordinance Newsracks
2. Fort Lauderdale, FL Code of Ordinances-C1

Financial Impact:

6. Alternative Action

7. Staff Recommendations:

8. Recommended Approval:

John R Herin Jr, Town Attorney

Date: March 31, 2021

Roger Hernstadt, Town
Manager

Date: April 01, 2021

ORDINANCE NO. 17-14

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA REGULATING OUTDOOR NEWSRACK AND NEWSPAPER VENDING MACHINES AND ON- SITE PUBLICATION DELIVERY, PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Fort Myers Beach, Florida that:

Section 1: Authority. This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida and Chapter 166, Florida Statutes.

Section 2: Intent and Purpose. The Town Council of the Town of Fort Myers Beach finds and declares that:

(a) The purpose of this ordinance is to establish reasonable time, place and manner restrictions to further the Town's objective in public safety and aesthetics.

(b) The regulations herein are enacted in pursuance of securing and promoting the public health and general welfare of persons in the Town of Fort Myers Beach in their use of the public rights-of-way.

Section 3. Definitions.

(a) "Distributor" means the person responsible for placing, installing and maintaining a newsrack along or adjacent to a public right-of-way.

(b) "Newsrack" means any self-service or coin-operated box, container, storage unit or dispenser of any kind, in any outdoor location, installed, used or maintained for the display, sale or distribution, even if complimentary, of newspapers or other periodicals or magazines including the dissemination of any real estate or any advertising publications of any nature.

(c) "Parkway" means that area between any sidewalk and the curb of any street; or, if there is no sidewalk, then the area between the street or roadway and the property line adjacent thereto. "Parkway" also means any area within the roadway or street that is not open to vehicular travel.

(e) "Roadway" means that portion of a street that is improved, designed and ordinarily used for vehicular travel.

(f) "Sidewalk" means that area between property lines and roadways dedicated to public use by pedestrians.

(g) "Public Property" means parks, squares, plazas and any and all real property owned by the Town.

(h) "On-site" delivery means distribution of printed materials by delivery to homes and residences not placed in the US mail or by commercial delivery service.

(i) "Outdoor" means outside the confines of a building or shelter or in the open.

(j) "Right-of-Way" means lands, by deed, conveyance, agreement, easement, dedication, usage or process of law, reserved for dedication to the general public for street, highway, alley, pedestrian walkway, storm drainage, bicycle path or other purposes.

Section 4. Indemnification.

All distributors of any publication utilizing newsracks with the Town shall execute an indemnification on a form developed by the Town Attorney holding the Town, its officers, employees and agents harmless against any claims of loss, liability or damage, including expenses and costs for personal injury or property damage arising out of or resulting from the placement of any newsrack on or in or over a public right-of-way.

Section 5. General Standards

(a) Any distributor who places or maintains a newsrack within the Town of Fort Myers Beach shall:

(1) Register, on a form developed by the Town, each and every newsrack and its location within the Town.

(i) Upon registration, the Town shall issue to the distributor a weather-resistant decal no larger than 2 inches by 2 inches to be affixed on the newsrack on the lower right portion of the front window or door. If the newsrack has no window or door, the decal shall be affixed to the front of the newsrack so as to be easily visible.

(b) No newsrack shall exceed 55 inches in height, 24 inches in width or 24 inches in depth (*i.e.* 55" x 24" x 24").

(c) Any coin-operated newsrack shall utilize a coin-return mechanism for any malfunctions. Every such newsrack shall display a telephone number to contact for refunds.

(d) Newsracks may not display advertising for any product or service except for the publication displayed within the newsrack.

(e) Newsrack shall not sell, offer for sale, hold or maintain any publication in any manner as to expose the public to any photograph, cartoon or drawing contained within such publication displaying any of the following:

(1) the genitals, pubic hair, buttocks, anal cleft, perineum, anal region or pubic hair region of any person.

(2) any portion of the female breast at or below the areola.

Section 6. Location Standards

(a) No person shall place, use or maintain a newsrack which projects onto, into or over any part of a roadway; or, which rests, wholly or in part upon or over any portion of a roadway.

(b) No person shall place, use or maintain any newsrack within a distance of nine (9) feet to the edge of any roadway, street or parkway owned by the Town. Newsracks shall not include more than four (4) individual dispensing boxes; and, shall not be located closer than 1000 feet to any other newsrack. No more than two sets of newsracks may be located on any single parcel of property unless permitted otherwise pursuant to subsection (g) following.

(c) Any newsrack placed in or upon the right of way of Lee County within the confines of the Town of Fort Myers Beach shall adhere to the rules and regulation of the County for newsracks in the public right of way.

(1) All newsracks shall be removed within 24 hours of an evacuation order that includes the Town of Fort Myers Beach; or, be anchored by one of these methods: (i) ballast to the maximum level possible within the base of the newsrack; or, (ii) be anchored to a concrete pad of a minimum size of 24 inches by 24 inches by 2 inches thick (24" x 24" by 2"); said attachment to be by four 3/8-inch diameter galvanized lag bolts.

(d) No more than eight (8) newsracks are permitted in any single location and must be separated by a minimum 100 feet from any other set of eight (8) newsracks.

(e) No newsrack shall be installed on public land, if so permitted, that is improved with flowers, shrubs, trees or other landscaping.

(f) Newsracks shall not be placed, installed or maintained:

(1) within 15 feet of any marked crosswalk.

(2) within 15 feet of the curb return of any unmarked crosswalk.

(3) within 15 feet of any fire hydrant.

(4) within 15 feet of any driveway.

(5) within 15 feet of any bus stop.

(6) within 15 feet of a "No Parking" sign or "No Parking" zone.

(7) in any position in a public right of way or on private property so that the newsrack obstructs any drivers' views or otherwise creates a dangerous condition.

(g) If a newsrack location does not meet criteria established herein, distributors may request administrative review and approval of alternate locations by the Town Manager in a manner to be established by the Town Manager with any related fees or costs to be borne by the distributor. Appeal of any denial may be made as provided by Section 34-86 of the Town Land Development Code.

Section 7. Maintenance Standards. Each newsrack shall be maintained in a neat and clean condition, and in good repair at all times. Without limiting the foregoing, each newsrack shall be serviced and maintained such that:

- (a) It is reasonably free of dirt, mud, grease and grime.
- (b) It is reasonably free of chipped, faded, peeling or cracked paint or finish.
- (c) It is reasonably free of cracked, dented or discolored plastic or glass parts.
- (d) Structural parts are not broken or misshapen.

Section 8. Enforcement.

Code Enforcement Officers or other Town employees so designated by the Town Manager are responsible for enforcement. If any newsrack is found or reported to be in violation of this ordinance:

- (a) the newsrack distributor as identified from the affixed identification decal shall be notified by email of the violation.
- (b) such notice shall describe the location of the newsrack, the nature of the violation and shall state the corrective action necessary to cure the violation; said corrective action to occur within five (5) business days after the date of notice from the Town.
- (c) if the email notice is ineffective or returned as undeliverable, notice of the violation shall be affixed to the newsrack.
- (d) if uncorrected after the five (5) day period, the distributor shall be subject to a fine of \$100 per day per newsrack in violation.
- (e) any distributor so cited may take an appeal to the Town Special Magistrate.

Section 9. Abandonment.

Any newsrack that remains empty for any period of 30 continuous days, shall be deemed abandoned and may be summarily removed by order of the Special Magistrate.

Section 10. Distribution of Publications by On-site Delivery. Publications not delivered to homes and residences by either the US mail or a commercial delivery service, (e.g. FedEx or UPS) shall not make any such delivery if it reasonably appears that two or more of any publications to the same home or residence have not been received, accepted or picked up. Code Enforcement Officers may cite any person or business in violation of this section.

Section 11. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the ordinance as a whole, or any part thereof, other than the part so declared.

Section 12. Inclusion into the Code of Ordinances.

The Town Council intends that this ordinance be made a part of the Town Code of Ordinances, that sections herein may be renumbered or re-lettered and words may be changed to accomplish codification; and, regardless of whether this ordinance is codified, the ordinance may be renumbered or re-lettered and typographical errors that do not affect the intent herein can be corrected with the authorization of the Town Manager without the need for public hearing.

Section 13. Conflict.

Whenever the requirements or provisions of this ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

Section 14. Effective Date.

This Ordinance shall take effect immediately upon its adoption. All newsracks are required to be in compliance with the provisions herein within sixty (60) days following the effective date.

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

Dennis Boback, Mayor	ay	Tracey Gore, Vice Mayor	aye
Anita Cereceda, Council Member	ay	Joanne Shamp, Council Member	aye
Bruce Butcher, Council Member	aye		

DULY PASSED AND ADOPTED THIS 6TH DAY OF NOVEMBER, 2017 BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH.

By: 
Dennis C. Boback, Mayor

ATTEST:

By: 
Michelle D. Mayher, Town Clerk

Approved as to form and legal
sufficiency

By: 
The Peterson Law Group,
Town Attorney

ARTICLE II. - HANDBILLS

Sec. 3-26. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Commercial handbill shall mean and include any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, paper, booklet, or any other printed or otherwise reproduced original or copies of any matter or literature:

- (1) Which advertises for sale any merchandise, product, commodity, or thing; or
- (2) Which directs attention to any business or mercantile or commercial establishment, or other activity, for the purpose of either directly or indirectly promoting the interests thereof by sales; or
- (3) Which directs attention to or advertises any meeting, theatrical performance, exhibition, or event of any kind, for which an admission fee is charged for the purpose of private gain or profit. The terms of this paragraph shall not apply where an admission fee is charged or a collection is taken up for the purpose of defraying the expenses incident to such meeting, theatrical performance, exhibition, or event of any kind, when either of the same is held, given or takes place in connection with the dissemination of information which is not restricted by law; provided, however, that nothing contained in this paragraph shall be deemed to authorize the holding, giving or taking place of any meeting, theatrical performance, exhibition, or event of any kind, without a license, where such license is or may be required by any law of this state, or under any ordinance of this city; or
- (4) While, containing reading matter other than advertising matter, is predominately and essentially an advertisement, and is distributed or circulated for advertising purposes, or for the private benefit and gain of any person so engaged as advertiser or distributor.

Handbill distributor shall mean and include any person engaging or engaged in the business for hire or gain of distributing commercial or noncommercial handbills, other than newspapers distributed to subscribers thereof, and any person receiving compensation directly or indirectly for the distribution of such handbills.

Newspaper shall mean and include any newspaper of general circulation as defined by general law, any newspaper duly entered with the United States Postal Service, in accordance with any federal statute or regulation, any newspaper filed and recorded with any recording officer as provided by general law and, in addition thereto, shall mean and include any periodical or current magazine regularly published with not less than four (4) issues per year and sold to the public.

Noncommercial handbill shall mean and include any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, newspaper, magazine, paper booklet, or any other printed or otherwise reproduced original or copies of any matter or literature not included in the definitions of a commercial handbill, or a newspaper.

Private premises shall mean and include any dwelling, house, building, or other structure, designed or used either wholly or in part for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and shall include any yard, grounds, walk, driveway, porch, steps, vestibule or mail box belonging or appurtenant to such dwelling, house, building, or other structure.

Public place shall mean and include any and all streets, boulevards, avenues, lanes, alleys, or other public ways, and any and all public parks, squares, spaces, plazas, grounds and buildings in the city.

(Code 1953, § 3-1)

Sec. 3-27. - Exclusions.

The provisions of this article shall not be deemed to apply to the distribution of mail by the United States, or to newspapers.

(Code 1953, § 3-18)

Sec. 3-28. - Compliance with article required to distribute handbills for hire.

It shall be unlawful for any person to engage in business as a handbill distributor for hire, or for any person to distribute commercial or noncommercial handbills, without first complying with the terms of this article and all other relevant laws and regulations; provided, that nothing contained in this section shall apply to any person advertising his business or activity upon his own premises, if such business or activity is regularly established at a definite location in such city, and also if a license has been obtained therefor, if such license be required under the terms of any applicable law or ordinance.

(Code 1953, § 3-2)

Sec. 3-29. - Reserved.

Sec. 3-30. - Distributing in public place.

It shall be unlawful for any person to deposit, place, throw, scatter or cast any commercial handbill in or upon any public place within this city. It shall also be unlawful for any person to hand out or distribute or sell any commercial handbill in any public place; provided, however, that it shall not be unlawful for any person to hand out or distribute, without charge to the receiver thereof, any handbill in any public place to any person willing to accept such handbill.

(Code 1953, § 3-9)

Sec. 3-31. - Placement on vehicles.

No person shall place or deposit any handbill upon any vehicle except in a manner that will prevent it from being blown about or scattered by the elements.

(Code 1953, § 3-10)

Sec. 3-32. - Distributing, depositing, etc., on vacant or uninhabited premises.

It shall be unlawful for any person to distribute, deposit, place, throw, scatter or cast any commercial or noncommercial handbill in or upon any private premises which are temporarily or continuously uninhabited or vacant.

(Code 1953, § 3-11)

Sec. 3-33. - Distributing, depositing, etc., on posted property.

It shall be unlawful for any person to distribute, deposit, place, throw, scatter or cast any commercial or noncommercial handbill upon any premises, if requested by anyone thereon not to do so, or if there is placed on such premises in a conspicuous position near the entrance thereof, a sign bearing the words: "No Trespassing," "No Peddlers or Agents," "No Advertisement," or any similar notice, indicating in any manner that the occupants of such premises do not desire to be molested or to have their right of privacy disturbed, or to have any such handbills left upon such premises.

(Code 1953, § 3-12)

Sec. 3-34. - Distributing, depositing, etc., on inhabited premises.

It shall be unlawful for any person, whether licensed under the provisions of this article or unlicensed, to distribute, deposit, place, throw, scatter or cast any commercial or noncommercial handbill in or upon any private premises which are inhabited, except by handing or transmitting such handbill directly to the owner, occupant, or any other person then present in or upon such private premises; provided, however, that in case of inhabited private premises which are not posted as provided in section 3-33, the aforesaid licensed or unlicensed person, unless requested by anyone upon such premises not to do so, may place or deposit any such handbill in or upon such inhabited private premises, if such handbill is so placed or deposited as to secure or prevent such handbill from being blown or drifted about such premises or elsewhere, except that mailboxes may not be so used when so prohibited by federal postal laws or regulations.

(Code 1953, § 3-13)

Sec. 3-35. - Posting on building or structure.

It shall be unlawful for any person to post any advertisement, handbill, or paper whatever on any private house or building or wall, or fence, without the consent of the owner.

(Code 1953, § 3-15)

1. Requested Motion:

Meeting Date: April 7, 2021

Discussion regarding consent to permit additional Waterway Markers

Why the action is necessary:

Pursuant to F.S. 327.41(4), "No person or municipality, county, or other governmental entity shall place any regulatory markers in, on, or over the waters of the state or the shores thereof without a permit from the division pursuant to s. 327.40"

The Idle Speed No Wake (ISNW) waterway markers posted at the private docks and pilings of the Waterside Dock Association do not meet the statutory requirements for waterway markers. Town staff proposes to submit an amendment to FUWM-002 to permit Slow Speed Minimum Wake (SSMW) markers to replace the illegal markers.

Authorization is required to permit the sign replacements and provide direction on funding responsibilities for the cost of posting and maintaining the SSMW waterway markers in accordance with FWC Guidelines.

What the action accomplishes:

Brings the waterway markers into compliance with Florida Statutes to provide for more effective enforcement of boat speeds in the back bay.

2. Agenda:

ITEMS FOR DISCUSSION

3. Requirement/Purpose:

5. Background:

Staff conducted a sign inventory in the Southern Back Bay Waters of Estero Island. Summary:

- 6 waterway markers authorized by FWC permit FUWM-21-002 have been installed.
- Markers on south border of Manatee Protection Zone (MPZ) to be moved to the inside of the MPZ by Lee County.
- Piling of Marker 63 has become dislodged and washed up on Coon Key. Boats reported to be running aground on the shoal #63 delineated. Lee County staff are aware of the downed piling. A buoy reported to have been installed until the piling can be replaced.
- Town staff received a complaint regarding new Idle Speed No Wake markers posted on Waterside docks. The dock association has been informed that the markers are not legal. The Dock Association requested to replace Idle markers with Slow Speed markers. For permitting with FWC, the Town can amend FUWM-21-002 to include new Slow Speed markers on the private dock and piling structures.

Attachments:

1. 210326 Waterway Marker Sign Survey

Financial Impact:

The FWC application to amend the current permit is free. Staff proposes that the Waterside Dock Association pay for the posting and maintenance of the signs in accordance with FWC Guidelines.

6. **Alternative Action**

Do not permit Slow Speed waterway markers to replace the Idle Speed markers at the private docks of the Waterside Dock Association.

7. **Staff Recommendations:**

Give staff direction to permit the waterway markers with the caveat that the Waterside Dock Association pay for the posting and maintenance of the signs in accordance with FWC Guidelines.

8. **Recommended Approval:**

Amy Baker, Town Clerk

Date: April 01, 2021

Roger Hernstadt, Town
Manager

Date: April 01, 2021



Legend

-  MANATEE PROTECTION ZONE
-  WATERWAY MARKER



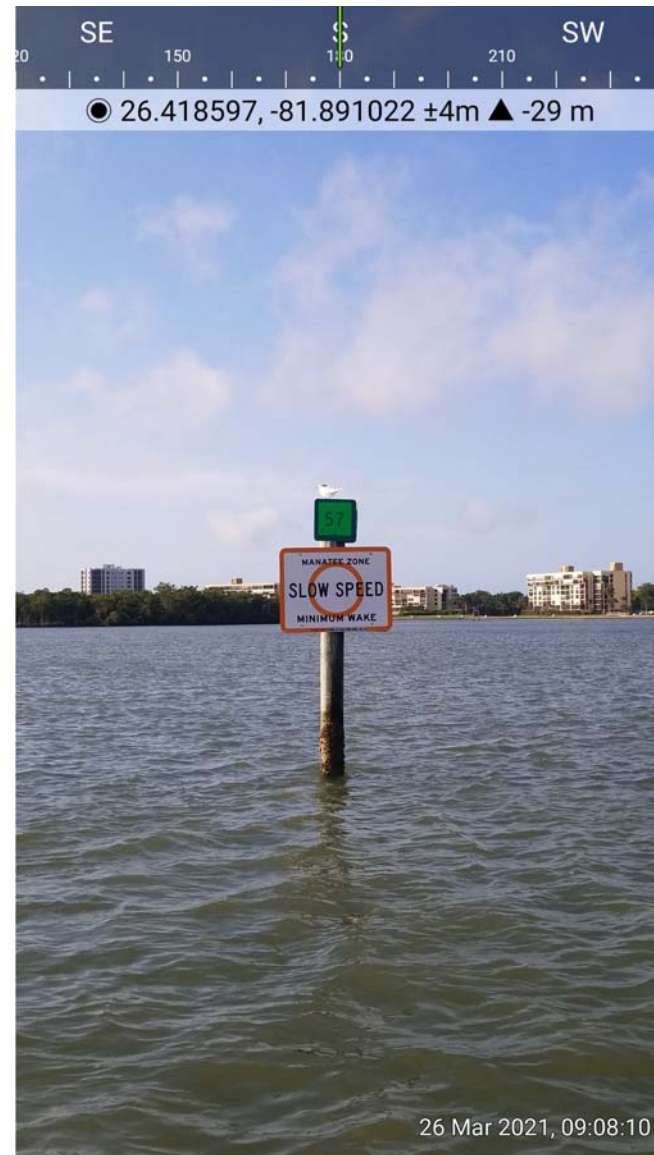
MZSSMW Near Marker 66, Sign facing SE



MZSSMW Marker 67, Sign facing E



MZSSMW Marker 61, Sign facing SW



MZSSMW Marker 57, Sign facing N



MZSSMW Near Canal, Sign facing E



MZSSMW Near Canal, Sign facing W

Legend

 Idle Speed No Wake Signs





1. Requested Motion:

Meeting Date: April 7, 2021

Discussion regarding a neighborhood request for an observation pier at Bay Mar Drive the existing property ownership under the current easement agreement.

Why the action is necessary:

Direction from Town Council to expend Town funds to attempt to implement the project by resolving land issues, if possible, and cost of design, permitting, construction and inspection to be done by residents in town.

What the action accomplishes:

Provides staff with instructions on how to proceed based on the Bay Mar Drive easement agreement.

2. Agenda:

ITEMS FOR DISCUSSION

3. Requirement/Purpose:

Other

5. Background:

Attachments:

1. Bay Mar Drive Easement
2. Bay Mar History

Financial Impact:

6. Alternative Action

Do not discuss.

7. Staff Recommendations:

8. Recommended Approval:

Chelsea O'Riley, Public Works
Director

Date: March 29, 2021

John R Herin Jr, Town Attorney

Date: March 31, 2021

Amy Baker, Town Clerk

Date: March 31, 2021

Roger Hernstadt, Town Manager

Date: April 01, 2021

Prepared By:
Richard W. Pringle, P.A.
Post Office Box 1545
Fort Myers, Florida 33901

STRAP No.: 29-46-24-W2-00155.1000

EASEMENT AGREEMENT

KNOW ALL MEN BY THESE PRESENTS that **MICHAEL D. BARNES and EVIE J. BARNES, husband and wife**, as Grantors, whose post office address is 5700 University Avenue, Suite 200, West Des Moines, IA 50266, in consideration of the sum of one dollar and other good and valuable consideration, including but not limited to, the full and complete dismissal, with prejudice, of the Grantors as Defendants in the pending civil action filed in the Twentieth Judicial Circuit in and for Lee County, Florida, as Case No. 16-CA-001178, receipt of which is hereby acknowledged, do hereby grant to **DAVID MICHIELINI and JAMES S. REED, JR. and REBECCA L. REED, husband and wife**, and all of the residential lot property owners of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 on the north side of Bay Mar Drive, and Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 on the south side of Bay Mar Drive (dominant estates), as described in the unrecorded plat of the Lot 55 Case Subdivision, a copy of which is attached hereto and made a part hereof as Exhibit A, as Grantees, and to their successors, assigns, guests, and invitees, for their sole benefit and use, a perpetual, private (not public), non-exclusive easement, for the use as a pedestrian walkway over and across the lands of the Grantors situated in the County of Lee and State of Florida and being more particularly described as follows (servient estate):

the legal description and a survey sketch of the servient estate boundaries is attached hereto and made a part hereof as Exhibit B,

together with the right and privilege, but not the obligation, from time to time to maintain the servient estate described above as a pedestrian walkway with all rights and privileges necessary or convenient for the full enjoyment or the use thereof for the purposes described herein, including, but not limited to, the right to trim, cut, and keep clear all trees and undergrowth and other obstructions.

within said servient estate (easement) that may interfere with the proper use and maintenance of such pedestrian walkway or any part of it. At no time shall Grantors have any legal obligation or responsibility to maintain the servient estate (easement) for the benefit of the Grantees.

This easement shall be subject to the right of Grantors, or their successors and assigns, to design, construct, and use improvements in the servient estate (easement) area as long as said improvements and use do not restrict or interfere with Grantee's easement and the rights conveyed to Grantees pursuant to this instrument.

By the execution hereof, Grantors covenant that they have the right to convey this easement and that the Grantees and their successors and assigns shall have quiet and peaceful possession, use, and enjoyment of this easement on the servient estate and the rights granted hereby.

Except for the easement created hereby, Grantors do not recognize or acknowledge, and specifically deny, the existence of any other easements in favor of Grantees or anyone else, either actual or prescriptive, on or across any of their real property, including, but not limited to, the servient estate, said real property of Grantors being described in Exhibit C attached hereto and made a part hereof, and Grantors deny the existence of any and all alleged easements of any sort, regardless of how said easements were allegedly created. There is no intention by Grantors to amend or clarify or reinstate or validate any alleged easement on or across Grantors' real property, including, but not limited to, the servient estate.

Grantors covenant and agree that there are no mortgages or liens on the real property involved in, or subject to, this Easement Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[NEXT FIVE PAGES FOR SIGNATURES]

IN WITNESS WHEREOF, the Grantors have executed this Agreement this ____ day of _____ 2016.

SIGNED, SEALED, AND DELIVERED
IN THE PRESENCE OF:

WITNESSES:

GRANTOR:

Signature

Scott Burnham
Print Name

JoBeth Ellenwood
Signature

JoBeth Ellenwood
Print Name

Michael D. Barnes
MICHAEL D. BARNES

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this 12 day of October, 2016, SUBSCRIBED AND SWORN before me by, MICHAEL D. BARNES, who is ☐ personally known to me or ☒ has produced Drivers license and as identification.

(NOTARIAL SEAL)



Brittney Burrell
Notary Public (Signature)

Brittney Burrell
Name of Notary (Typed/Printed)

My commission expires: 02/23/2018

IN WITNESS WHEREOF, the Grantors have executed this Agreement this 12 day of October, 2016.

SIGNED, SEALED, AND DELIVERED
IN THE PRESENCE OF:

WITNESSES

GRANTOR:

Cindy S. Sotkowsky
Signature

CINDY S SOTKOWSKY
Print Name

[Signature]
Signature

Link D. Myers
Print Name

[Signature]
EVIE J. BARNES

STATE OF FL
COUNTY OF Lee

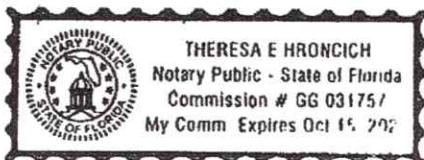
The foregoing instrument was acknowledged before me this 12 day of October, 2016, SUBSCRIBED AND SWORN before me by, EVIE J. BARNES, who is ☒ personally known to me or ☐ has produced _____ and as identification.

(NOTARIAL SEAL)

[Signature]
Notary Public (Signature)

Theresa E Hroncich
Name of Notary (Typed/Printed)

My commission expires: 10-16-2020



IN WITNESS WHEREOF, the Grantors have executed this Agreement this 19th day of OCTOBER, 2016.

SIGNED, SEALED, AND DELIVERED
IN THE PRESENCE OF:

WITNESSES:

Patricia A. Taylor
Signature

Patricia A. Taylor
Print Name

Anne R. Pavese
Signature

Anne R. Pavese
Print Name

GRANTOR:

David Michielini
DAVID MICHELINI

STATE OF FLORIDA
COUNTY OF LEE

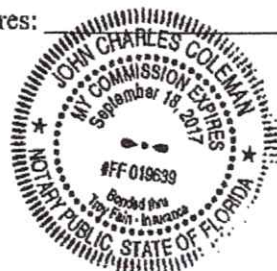
The foregoing instrument was acknowledged before me this 19th day of OCTOBER, 2016, SUBSCRIBED AND SWORN before me by, DAVID MICHELINI, who is ☒ personally known to me or ☐ has produced _____ and as identification.

(NOTARIAL SEAL)

John Charles Coleman
Notary Public (Signature)

JOHN CHARLES COLEMAN
Name of Notary (Typed/Printed)

My commission expires: _____



IN WITNESS WHEREOF, the Grantors have executed this Agreement this 19th day of OCTOBER, 2016.

SIGNED, SEALED, AND DELIVERED
IN THE PRESENCE OF:

WITNESSES:

Patricia A. Taylor
Signature

Patricia A. Taylor
Print Name

Anne R. Pavese
Signature

Anne R. Pavese
Print Name

GRANTOR:

James S. Reed, Jr.
JAMES S. REED, JR.

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 19th day of OCTOBER, 2016, SUBSCRIBED AND SWORN before me by, JAMES S. REED, JR., who is ☒ personally known to me or ☐ has produced _____ and as identification.

(NOTARIAL SEAL)

John Charles Coleman
Notary Public (Signature)

JOHN CHARLES COLEMAN
Name of Notary (Typed/Printed)

My commission expires:



IN WITNESS WHEREOF, the Grantors have executed this Agreement this 19th day of OCTOBER, 2016.

SIGNED, SEALED, AND DELIVERED
IN THE PRESENCE OF:

WITNESSES:

Patricia L. Taylor
Signature

Patricia A. Taylor
Print Name

Anne R. Pavese
Signature

Anne R. Pavese
Print Name

GRANTOR:

Rebecca L. Reed
REBECCA L. REED

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 19th day of OCTOBER, 2016, SUBSCRIBED AND SWORN before me by, REBECCA L. REED, who is ☒ personally known to me or ☐ has produced _____ and as identification.

(NOTARIAL SEAL)

John Charles Coleman
Notary Public (Signature)

JOHN CHARLES COLEMAN
Name of Notary (Typed/Printed)

My commission expires: _____



1945-1946 1st 7th European

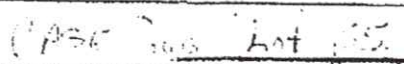


EXHIBIT B

LEGAL DESCRIPTION

A STRIP OF LAND BEING A PORTION OF LOT 55, CASE'S SUBDIVISION, AS RECORDED IN DEED BOOK 131, PAGES 300 THROUGH 304, INCLUSIVE, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

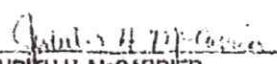
COMMENCE AT THE SOUTHEAST CORNER OF LOT 55, OF SAID CASE'S SUBDIVISION; THENCE N74°57'00"W ALONG THE NORTHEAST RIGHT-OF-WAY LINE OF ESTERO BOULEVARD (COUNTY ROAD 865 - 65 FOOT WIDE) FOR 126.50 FEET TO A POINT OF INTERSECTION WITH THE CENTERLINE OF THAT CERTAIN ROAD RIGHT-OF-WAY OF BAY MAR DRIVE, AS RECORDED IN OFFICIAL RECORD BOOK 970, AT PAGE 22, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE N30°12'40"E, ALONG SAID CENTERLINE AND AN EXTENSION THEREOF, FOR 1172.21 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE N30°12'40"E FOR 101.99 FEET TO THE WATERS OF OSTEGO BAY; (THE PRECEDING COURSE ALSO BEING THE COMMON PROPERTY LINE BETWEEN THE LANDS DESCRIBED IN INSTRUMENT #2014000185800 AND IN OFFICIAL RECORD BOOK 2698, PAGE 2631, RESPECTIVELY, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA); THENCE N73°59'29"W, ALONG SAID WATERS OF OSTEGO BAY, FOR 5.65 FEET; THENCE S28°31'37"W FOR 101.23 FEET TO A POINT ON THE ARC OF A NON-TANGENT CIRCULAR CURVE, CONCAVE TO THE SOUTHWEST; THENCE SOUTHEASTERLY, ALONG THE ARC OF SAID CURVE, HAVING FOR ITS ELEMENTS A RADIUS OF 50.00 FEET, A CENTRAL ANGLE OF 02°66'28", AN ARC DISTANCE OF 2.57 FEET, A CHORD DISTANCE OF 2.57 FEET, AND A CHORD BEARING OF S72°47'48"E TO THE POINT OF BEGINNING.

CONTAINING 407 SQUARE FEET, MORE OR LESS.

SURVEYOR'S NOTES

- 1) BEARINGS SHOWN HEREON ARE BASED UPON FIXING THE CENTERLINE OF BAY MAR DRIVE, AS N30°12'40"E.
- 2) THIS MAP IS NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
- 3) SUBJECT TO EASEMENTS, RESERVATIONS, RESTRICTIONS AND RIGHTS-OF-WAY OF RECORD.

PREPARED BY:

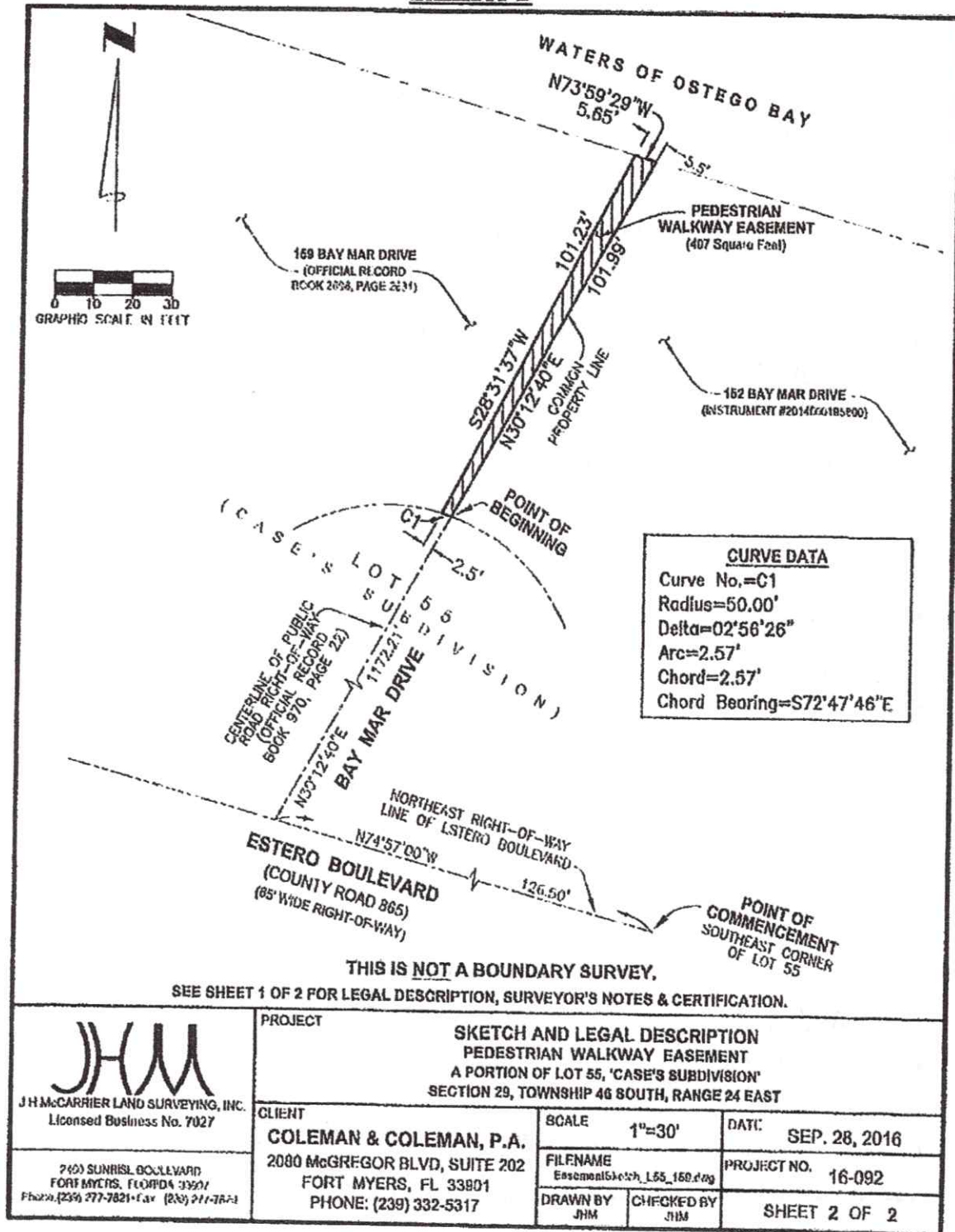

JUDITH H. MCCARRIER
PROFESSIONAL SURVEYOR & MAPPER
FLORIDA LICENSE NO. 6021

DATE: SEPTEMBER 29, 2016

SEE SHEET 2 OF 2 FOR SKETCH.

 J H McCARRIER LAND SURVEYING, INC. Licensed Business No. 7027	PROJECT	SKETCH AND LEGAL DESCRIPTION PEDESTRIAN WALKWAY EASEMENT A PORTION OF LOT 55, 'CASE'S SUBDIVISION' SECTION 28, TOWNSHIP 46 SOUTH, RANGE 24 EAST	
	CLIENT	SCALE	DATE
2460 SUNSHINE BOULEVARD FORT MYERS, FLORIDA 33907 Phone: (239) 277-7821 or (239) 277-7823	COLEMAN & COLEMAN, P.A. 2080 MCGREGOR BLVD, SUITE 202 FORT MYERS, FL 33901 PHONE: (239) 332-5317	N.A.	SEP. 28, 2016
	FILENAME EasementSketch_L55_153.dwg	PROJECT NO. 16-092	
DRAWN BY JHM		CHECKED BY JHM	SHEET 1 OF 2

EXHIBIT B



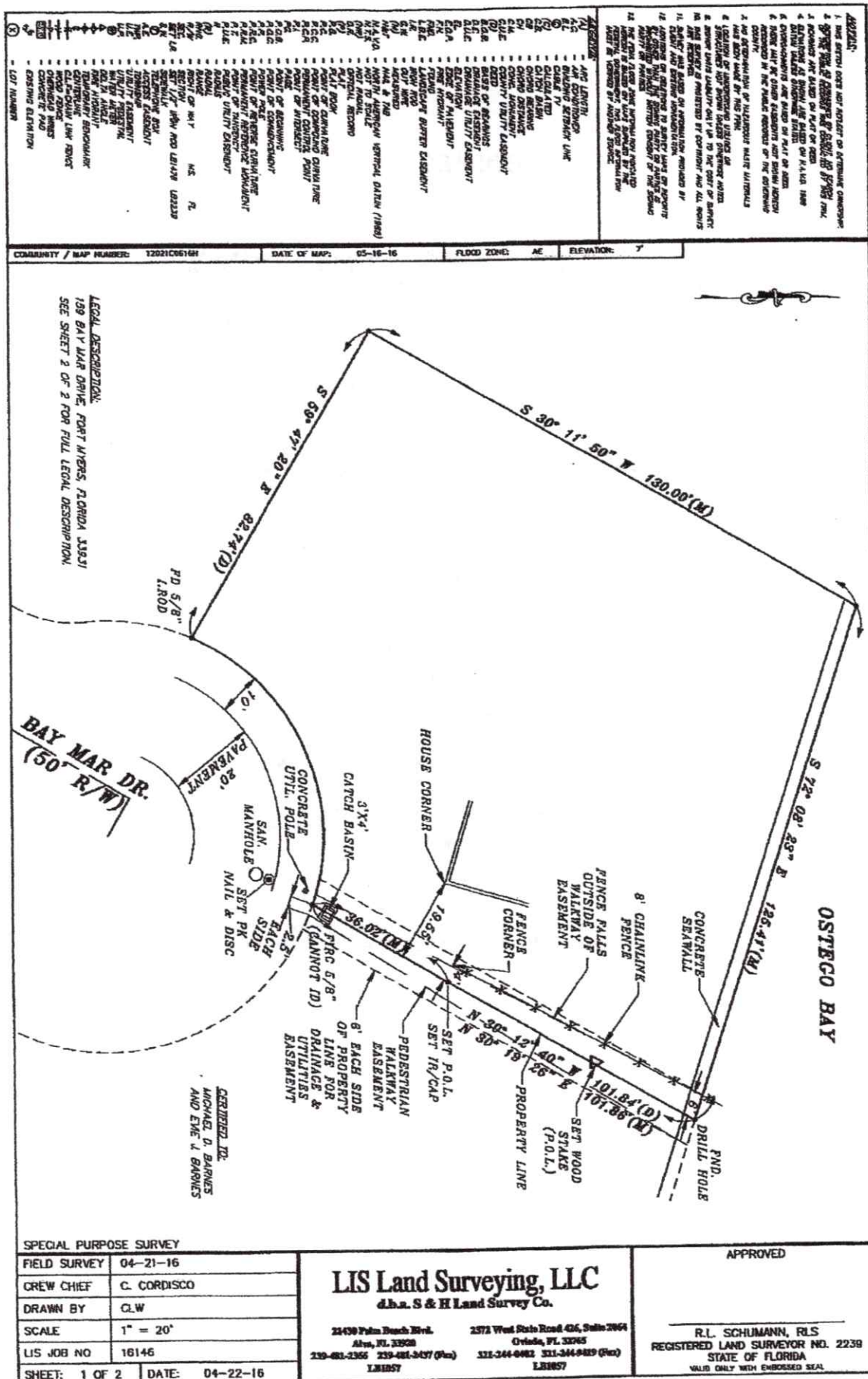


EXHIBIT C

A tract or parcel of land lying in Lot 55, Case's Subdivision, recorded in Deed Book 151 at Pages 303 to 304 of the Public Records of Lee County, Florida, which tract or parcel is described as follows:

From the concrete monument marking the southerly corner of Lot 55, Case's Subdivision, run N 74°57'00" W along the northeast right-of-way line of Estero Boulevard (S.R. #8-865) for 162.40 feet;

Thence run N 30°12'40" E along the northwesterly line of a roadway easement 50 feet wide parallel with and 147.10 feet northwesterly of the southeast line of said Lot 55 for 1677.32 feet to a point of curvature;

Thence run northeasterly along said northwesterly line of said roadway easement and along the arc of a curve to the left of radius 50 feet for 27.74 feet (chord bearing N 14°19'01" E - chord distance 27.35 feet) to a point of reverse curvature;

Thence run northeasterly along said northwesterly line of said roadway easement 50 feet wide along the arc of a curve to the right of radius 50 feet for 21.73 feet (chord bearing N 10°52'15" E - chord distance 21.56 feet) to the POINT OF BEGINNING of said lands herein described.

From said POINT OF BEGINNING continue northeasterly and easterly along said northwesterly line of said roadway easement and along the northerly line of said roadway easement along the arc of a curve to the right of radius 50 feet for 74.49 feet (chord bearing N 85°59'47" E - chord distance 67.78 feet);

Thence run N 30°12'40" E to the waters of Osceola Bay;

Thence run northwesterly along said waters of Osceola Bay to an intersection with the northwesterly line of said Lot 55, Case's Subdivision;

Thence run S 30°11'50" W along said northwesterly line of Case's Subdivision to an intersection with a line bearing N 59°47'20" W passing through the POINT OF BEGINNING;

Thence run S 59°47'20" E for 82.74 feet to the POINT OF BEGINNING.

Bearings hereinabove mentioned are from the plat of Leland Subdivision, according to the plat recorded in Plat Book 4, at Page 23, of said Public Records of Lee County, Florida.

1

7.30
150.00
55.00
212.00

FORM 1104 WARRANTY DEED (Ordinary Form) 1176245

TUTTBLANK RECORDED & INDEXED OFFICE
TUTTLE LAW FIRM PUBLISHED BY THE

This Indenture,

OFF REC 1331 1875

Wherever used herein, the term "party" shall include the heirs, personal representatives, successors and assigns of the parties herein; the use of the singular number shall include the plural, and the plural the singular; the use of any gender shall include all genders; and, if used, the term "state" shall include all the states herein described if more than one.

Made this 1st day of February, A. D. 1979
Between H. W. MARSH and CAROL D. MARSH, husband and wife

of the County of Lee in the State of Florida
party of the first part, and CARL G. DuBOIS, whose mailing address is
151 BAYMAR DRIVE FT MYERS BEACH 33931

of the County of LEE in the State of FLORIDA
party of the second part,

Witnesseth that the said party of the first part, for and in consideration of the sum of ---TEN DOLLARS AND OTHER VALUABLE CONSIDERATIONS---Dollars, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said party of the second part his heirs and assigns forever, the following described land, situate lying and being in the County of Lee, State of Florida, to wit:

SEE SCHEDULE "A" ATTACHED HERETO AND, BY REFERENCE, MADE A PART HEREOF.

Subject to easements, restrictions, reservations of record and taxes subsequent to the year 1977.

Subject to a six (6) foot easement for drainage, utility and pedestrian walkway purposes along the southeasterly boundary line.

DOCUMENTARY SUR TAX
FLORIDA
FEB 21 1979
55.00
50.00

RECORD VERIFIED - SAL GERACI CLERK
CATHY MURPHY D.C.

This instrument was prepared by:
RONALD W. SMALLEY, Attorney at Law
2100 Second St., Fort Myers, FL 33901

And the said party of the first part does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.
In Witness Whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

Signed, Sealed and Delivered in Our Presence:

H. W. Marsh
Carol D. Marsh

H. W. Marsh
Carol D. Marsh

State of Florida

County of LEE

I, **Notary Public**, do hereby certify that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, H. W. MARSH and CAROL D. MARSH, husband and wife

to me well known and known to me to be the individuals described in and who executed the foregoing deed, and they acknowledged before me that they executed the same freely and voluntarily for the purposes therein expressed.

Witness my hand and official seal at Fort Myers, Lee County, State of Florida, this 1st day of February, A. D. 1979.

My Commission Expires
My Commission Expires February 16, 1982

Vernae J. Blanco
Notary Public



OFF. REC 1331 1876

SCHEDULE "A"

DESCRIPTION
PARCEL IN
SECTION 29, T46S, R24E.
LEE COUNTY, FLORIDA

I CERTIFY THIS DOCUMENT TO BE A
TRUE AND CORRECT COPY OF THE
ORIGINAL ON FILE IN MY OFFICE
LINDA DOBETT, CLERK OF CIRCUIT COURT,
STATE OF FLORIDA, COUNTY OF LEE
☐ REDACTED COPY PER F.S. 19.071
BY: *Janne Miller*
DATED: *12/10/15*

Deputy Clerk



A tract or parcel of land lying in Lot 55, Case's Subdivision,
recorded in Deed Book 131 at Pages 300 to 304 of the public
records of Lee County, Florida, which tract or parcel is de-
scribed as follows:

From the concrete monument marking the southerly
corner of Lot 55, Case's Subdivision, run
N 74°57'00" W along the northeast right of way
line of Estero Boulevard (S.R. #S-865) for 152.40
feet; thence run N 30°12'40" E along the north-
westerly line of a roadway easement 50 feet wide
parallel with and 147.10 feet northwesterly of
the southeast line of said Lot 55 for 1077.32 feet
to a point of curvature; thence run northeasterly
along said northwesterly line of said roadway ease-
ment and along the arc of a curve to the left of
radius 50 feet for 27.74 feet (chord bearing
N 14°19'01" E - chord distance 27.39 feet) to a
point of reverse curvature; thence run northeasterly
along said northwesterly line of said roadway ease-
ment 50 feet wide along the arc of a curve to the
right of radius 50 feet for 21.73 feet (chord
bearing N 10°52'15" E - chord distance 21.56 feet)
to the point of beginning of the lands herein de-
scribed. From said point of beginning continue
northeasterly and easterly along said northwesterly
line of said roadway easement and along the northerly
line of said roadway easement along the arc of a
curve to the right of radius 50 feet for 74.49 feet
(chord bearing N 65°59'47" E - chord distance 67.78
feet; thence run N 30°12'40" E to the waters of
Oscego Bay; thence run northwesterly along said
waters of Oscego Bay to an intersection with the

northwesterly line of said Lot 55, Case's
Subdivision; thence run S 30°11'50" W along
said northwesterly line of Case's Subdivision
to an intersection with a line bearing
N 59°47'20" W passing through the point of
beginning; thence run S 59°47'20" E for 82.74
feet to the point of beginning.

Bearings hereinabove mentioned are from the plat of
Leilani Subdivision, according to the plat recorded
in Plat Book 4 at page 21 of said public records of
Lee County, Florida.

(H.W. Marsh #77-3351: Lot F5, Block A, Unrecorded
Division of Lot 55, Case's Sub.)

FILED
FEB 21 3 22 PM '79
RECORDED
LEE COUNTY, FLORIDA
OFFICIAL VERIFIED

RETURN
TO
LINDA DOBETT
CLERK OF CIRCUIT COURT
LEE COUNTY, FLORIDA

10.50
825-

2323461

OFF REC 936P63606
This instrument was prepared by:
STEPHEN W. BUCKLEY
of the Law Office of
GOLDBERG, RUBINSTEIN & BUCKLEY, P.A.
Post Office Box 2366
FORT MYERS, FLORIDA 33902

Warranty Deed (STATUTORY FORM—SECTION 689.02 F.S.)

This Indenture, Made this 13 day of August 19 87, Between
CARL G. DuBOIS, a single man
of the County of Lee, State of Florida, grantor, and
CAROL J. BATISTA
whose post office address is 432 BONITA STREET FORT MYERS BEACH, FL 33932
of the County of Lee, State of Florida, grantee,

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

See legal description attached hereto and made a part hereof

Documentary Tax Pd \$ 825.00
By Charles G. DuBois Draft Cost

Subject to reservations, restrictions and easements of record, if any,
and taxes accruing subsequent to December 31, 1986.

and said grantor does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all
persons whomsoever
* "Grantor" and "grantee" are used for singular or plural, as context requires.

In Witness Whereof, Grantor has hereunto set grantor's hand and seal the day and year first above written
Signed, sealed and delivered in our presence:
Edward W. Coon (Seal)
Charles G. DuBois (Seal)
Carol J. Batista (Seal)

STATE OF California
COUNTY OF San Francisco
I HEREBY CERTIFY that on this day before me, an officer duly qualified to take acknowledgments, personally appeared
CARL G. DuBOIS, a single man
to me known to be the person described in and who executed the foregoing instrument and acknowledged before me that
he executed the same.
WITNESS my hand and official seal in the County and State last aforesaid this 13 day of August
19 87
My commission expires Jan 1, 1990
Charles W. Lawrence Notary Public



OFF 1028 1000
1028 1000

SCHEDULE A

A tract or parcel of land lying in Lot 55, Case Subdivision, located in Section 29, Township 46 South, Range 24 East, Lee County, Florida, more particularly described as follows:

From a concrete monument marking the southerly corner of Lot 55, Case Subdivision, as illustrated in Deed Book 131, pages 300 to 304, Lee County Public Records, being also in the northeasterly right-of-way line of Estero Boulevard (State Road S-865), run northwesterly along said right-of-way line for 100.60 feet; thence deflect 105°09'40" to the right and run northeasterly along the southeasterly line of a roadway 50 feet wide (being also parallel to the southeasterly line of said Lot 55) for 1040.47 feet to a point of curvature; thence run northeasterly and easterly along a curve to the right with a radius of 50.0 feet (central angle of 49°27'30" - chord distance of 41.83 feet) for 43.16 feet to a point of reverse curvature; thence run easterly along a curve to the left with a radius of 50.0 feet (central angle of 29°24'12" - chord distance of 25.38 feet) for 25.66 feet to the point of beginning of the herein described land; thence run northeasterly, northerly, and northwesterly along a curve to the left with a radius of 50.0 feet (central angle of 121°35'31" - chord distance of 87.29 feet) for 106.11 feet; thence run northeasterly along a line running parallel to the southeasterly line of said Lot 55 for 100.00 feet, more or less, to the waters of Ostego Bay; thence run southeasterly along the waters of Ostego Bay for 122.10 feet, more or less, to the southeasterly line of said Lot 55; thence run southwesterly along the southeasterly line of said Lot 55 for 175.45 feet, more or less, to a point on a line that is perpendicular to the southeasterly line of said Lot 55 and passes through the point of beginning; thence run northwesterly along said perpendicular line for 65.13 feet to the point of beginning. (Being Lot 14, Block B, of Marsh's unrecorded resubdivision of Lot 55, Case's Subdivision)

Subject to a 6 foot easement for drainage, utility and pedestrian walkway purposes along the northwesterly boundary line. Subject to a 6 foot easement for drainage and utility purposes along all other boundary lines.

Subject to easements, restrictions, and reservations of record.

CERTIFY THIS DOCUMENT TO BE A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT, STATE OF FLORIDA, COUNTY OF LEE
BY: Linda Doggett, Clerk
DATED: 2-4-16
Deputy



LEE COUNTY



APR 2 4 45 PM '14
LEE COUNTY, FLORIDA
RECORDS SECTION
OFFICIAL
CLERK OF CIRCUIT COURT
BY: [Signature]

Prepared by and Return To:
Charles R. Meador, Jr., Esquire
Post Office Box 2520
Fort Myers Beach, FL 33932-2520
Tax Folio (Strap) #: 29-46-24-01-00055.1000
Grantee Tax I.D. #:

Document Recording and
Tax Charges:
Recording: \$10.50
Doc. Stamps: \$2,975.00
Int. Tax: \$
Total: \$

(STATUTORY FORM - Section 689.02, F.S.)

WARRANTY DEED

THIS WARRANTY DEED, made this 22 day of April, A.D. 1996, between CAROL J. BATISTA, an unmarried woman, whose post office address is 159 Bay Mar Drive, Fort Myers Beach, FL 33931, hereinafter called Grantor, and MICHAEL D. BARNES and EVE J. BARNES, Husband and wife, as tenants by the entirety, whose post office address is 717 4th Street, Suite 100, Des Moines, IA 50309-1331, hereinafter called Grantee.

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

AS DESCRIBED IN THE ATTACHED EXHIBIT "A" - LEGAL DESCRIPTION

SUBJECT TO easements, restrictions and reservations of record and taxes for the current and subsequent years.

and said Grantor does hereby fully warrant the title to said land, and will defend the same against lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, Grantor has hereunto set Grantor's hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:

(W. #1) [Signature]
CHARLES R. MEADOR, JR.
Witness #1 name - typed or printed

Carol J. Batista (Seal)
CAROL J. BATISTA

(W. #2) [Signature]
ROBERT DENSLER
Witness #2 name - typed or printed

STATE OF Florida
COUNTY OF LEE

Documentary Tax Pd. \$ 2975.00
Intangible Tax Pd. \$
CHARLIE GREEN, CLERK, LEE COUNTY
By [Signature] Deputy Clerk

EXECUTION OF the foregoing instrument was acknowledged before me this 22 day of April, 1996, by CAROL J. BATISTA, an unmarried woman, who is (CHECK ONE OF THE FOLLOWING AS APPLICABLE) ☒ personally known to me, or ☐ who has produced sufficient evidence of identification described below.

Description of identification produced:

[Signature]
NOTARY PUBLIC - SIGNATURE ABOVE
NOTARY NAME - CHARLES R. MEADOR, JR.
COMMISSION NO. - 64458941
COMMISSION EXP. DATE - 10-23-99
Notary Name/Commission No./Exp. Date - typed or printed

OFFICIAL NOTARY SEAL
CHARLES R. MEADOR JR.
NOTARY PUBLIC STATE OF FLORIDA
COMMISSION NO. CC458941
MY COMMISSION EXP. OCT. 23, 1999

(Affix Notary Seal)



OR2698 PG2631

EXHIBIT "A" - LEGAL DESCRIPTION

A tract or parcel of land lying in Lot 55, Case's Subdivision, recorded in Deed Book 131 at Pages 300 to 304 of the Public Records of Lee County, Florida, which tract or parcel is described as follows:

From the concrete monument marking the southerly corner of Lot 55, Case's Subdivision, run N 74°57'00" W along the northeast right-of-way line of Estero Boulevard (S.R. #5-865) for 152.40 feet;

Thence run N 30°12'40" E along the northwesterly line of a roadway easement 50 feet wide parallel with and 147.10 feet northwesterly of the southeast line of said Lot 55 for 1077.32 feet to a point of curvature;

Thence run northeasterly along said northwesterly line of said roadway easement and along the arc of a curve to the left of radius 50 feet for 27.74 feet (chord bearing N 14°19'01" E - chord distance 27.39 feet) to a point of reverse curvature;

Thence run northeasterly along said northwesterly line of said roadway easement 50 feet wide along the arc of a curve to the right of radius 50 feet for 21.73 feet (chord bearing N 10°52'15" E - chord distance 21.56 feet) to the POINT OF BEGINNING of and lands herein described.

From said POINT OF BEGINNING continue northeasterly and easterly along said northwesterly line of said roadway easement and along the northerly line of said roadway easement along the arc of a curve to the right of radius 50 feet for 74.49 feet (chord bearing N 65°59'47" E - chord distance 67.78 feet);

Thence run N 30°12'40" E to the waters of Ostego Bay;

Thence run northwesterly along said waters of Ostego Bay to an intersection with the northwesterly line of said Lot 55, Case's Subdivision;

Thence run S 30°11'50" W along said northwesterly line of Case's Subdivision to an intersection with a line bearing N 59°47'20" W passing through the POINT OF BEGINNING;

Thence run S 59°47'20" E for 82.74 feet to the POINT OF BEGINNING.

Bearings hereinabove mentioned are from the plat of Lellani Subdivision, according to the plat recorded in Plat Book 4, at Page 21, of said Public Records of Lee County, Florida.

OR2698 PG2632

CHARLIE GREEN LEE CITY FL
96 APR 23 PM 4:43



THIS INSTRUMENT TO BE
RECORDED AND CORRECT COPY OF THE
SAME TO BE FILED IN MY OFFICE
AT TALLAHASSEE, FLORIDA, COUNTY OF LEE
IN RECORDED COPY PER F.S. 119.071

Dan Miller
Clerk

72/10/15

1/19/2017 4:55PM Filed Lee County Clerk of Courts

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

DAVID MICHIELINI, JAMES S. REED, JR.,)
and REBECCA L. REED, husband and wife,)

Plaintiffs,)
vs.)

CASE NO: 16-CA-1178

CARMELO NACCARATO and FRANCA
NACCARATO, husband and wife,)

Defendants.)

FINAL JUDGMENT AFTER DEFAULT
GRANTING DECLARATORY JUDGMENT AND MANDATORY INJUNCTION

This Final Judgment is rendered following entry of a Default against Defendants CARMELO NACCARATO, a/k/a CARMELLO NACCARATO, and FRANCA NACCARATO, husband and wife, for failure to serve or file any paper as required by law, and grants Plaintiffs a declaratory judgment and mandatory injunction based on the well-pleaded allegations of the Complaint, with this Court finding:

1. Plaintiff DAVID MICHIELINI, is sui juris and is a resident of Lee County, Florida; his residence is located at 131 Bay Mar Drive, Fort Myers, Beach, FL 33931.

2. Plaintiffs, JAMES S. REED, JR. and REBECCA L. REED, husband and wife, are sui juris and residents of Lee County, Florida; their residence is located at 112 Bay Mar Drive, Fort Myers, Beach, FL 33931.

3. Defendants, CARMELO NACCARATO AND FRANCA NACCARATO, husband and wife, are sui juris and residents of Lee County, Florida; their residence is located at 152 Bay Mar Drive, Fort Myers, Beach, FL 33931.

4. Venue is proper in Lee County, Florida, since the property which is the subject of this action is located in Lee County, Florida, the Defendants are residents of Lee County,

Florida, and the causes of action alleged herein accrued in Lee County, Florida.

5. Plaintiffs have standing to bring this action because they reside on Bay Mar Drive, and are directly affected by the actions of Defendants who have in the past, and continue to this day, to block and prevent Plaintiffs' use of a "pedestrian walkway purposes" easement established by a survey plat of properties owned by the Marsh family, referenced in deeds executed by the Marsh family, or an entity associated with them, and utilized for more than three (3) decades by residents of Bay Mar Drive and other members of the public.

6. Plaintiff MICHIELINI purchased his real property at 131 Bay Mar Drive, Fort Myers Beach, Lee County, Florida in 1994; Michielini had first purchased a residence at 135 Bay Mar Drive, Fort Myers Beach, Lee County, Florida, in September, 1985.

7. Before his purchase of said real property, Plaintiff Michielini was aware of the public easement at the end of Bay Mar Drive allowing pedestrian access to Ostego Bay.

8. Since moving to Bay Mar Drive, Plaintiff MICHIELINI continually used said pedestrian walkway access on a frequent, regular, and continuous basis, as did many other residents along Bay Mar Drive and members of the public.

9. Plaintiffs REED purchased their real property at 112 Bay Mar Drive, Fort Myers Beach, Lee County, Florida in 2000.

10. Like Plaintiff MICHIELINI, Plaintiffs REED were aware of the pedestrian walkway easement at the end of Bay Mar Drive prior to purchase, and relied on the pedestrian use easement as a reason to purchase their residence on Bay Mar Drive.

11. Plaintiffs REED have likewise used the pedestrian walkway easement continuously since their purchase in 2000.

12. Defendants CARMELO NACCARATO and FRANCA NACCARATO, husband and wife, purchased their residence at 152 Bay Mar Drive, Fort Myers Beach, Lee County, Florida, on September 19, 2014.

13. Defendant NACCARATO'S Deed, to wit: Instrument #2014000195800, Lee County Public Records, specifically includes the following language in the legal description:

Subject to a 6 foot easement for drainage, utility and pedestrian walkway purposes along the northwesterly boundary line. Subject to a 6 foot easement for drainage and utility purposes along all other boundary lines.

14. The parcel of real property purchased by Defendants NACCARATO was originally included in Lot 55 of Case's Subdivision.

15. Bay Mar Drive and the parcels of property adjacent to it from Estero Boulevard to Ostego Bay constituted Lot 55 of Case's Subdivision.

16. A survey plat of Lot 55 was prepared in 1971, and various lots adjacent to Bay Mar Drive were delineated on the document.

17. Defendant NACCARATO'S parcel adjacent to Ostego Bay is identified as "Lot 14".

18. On the survey plat is depicted a 12 foot drainage easement from the end of Bay Mar Drive to Ostego Bay, as well as a "pedestrian easement" on each side of the property line dividing Lot 14 and Lot 15.

19. Marsh Construction owned the Defendant NACCARATO'S parcel of real property in 1974, and sold said parcel of real property to the Hoenie's by Warranty Deed recorded in the Lee County Clerk's Office at OR Book 1028, Page 1998; the legal description of said warranty deed included the following language:

Subject to a 6 foot easement for drainage, utility and pedestrian walkway purposes along the northwesterly boundary line. Subject to a 6 foot easement for drainage and utility purposes along all other boundary lines.

20. Plaintiffs continued to use the "pedestrian walkway purposes" easement along the northwesterly boundary of Defendant NACCARATOS' parcel until Defendant CARMELO NACCARATO began to verbally assault and threaten residents of Bay Mar Drive and the public who sought to use, or were using, the "pedestrian walkway purposes" easement.

21. Defendants NACCARATO subsequently constructed, erected, and installed various barriers which prevent access to, and the use of, the "pedestrian walkway purposes" easement.

22. Plaintiffs notified Defendants NACCARATO of their right to use of the "pedestrian walkway purposes" easement to Ostego Bay along the northwesterly boundary of Defendant NACCARATOS' property, and requested that Defendants NACCARATO recognize the "pedestrian walkway purposes" easement and cease impeding and preventing its use; Defendants NACCARATO failed to take any action to remove the barriers, and in fact bolstered the physical impediments.

23. At the present time Plaintiffs have no opportunity to use the six foot "public walkway purposes" easement from Bay Mar Drive to Ostego Bay along the northwesterly boundary of Defendants NACCARATOS' property because of the impediments erected by Defendants NACCARATO and the abusive and uncivil words and actions of Defendant CARMELO NACCARATO.

24. Plaintiffs have no adequate remedy at law; Plaintiffs are now, and will continue in the future, to suffer irreparable harm unless relief is granted by this Court; further,

granting Plaintiffs a mandatory injunction will provide a clear public benefit.

25. Plaintiffs legal and equitable rights are affected by the wrongful actions of Defendants NACCARATO.

26. Plaintiffs are entitled to a declaratory judgment and mandatory injunction.

NOW, THEREFORE, it is Considered, Ordered and Adjudged that:

1. Plaintiffs, DAVID MICHIELINI, JAMES S. REED, JR. and REBECCA L. REED, husband and wife, their heirs, successors, and assigns, together with the general public, are entitled to full, complete, unimpeded, unobstructed, and unhindered use of the 6 foot public walkway purposes easement, as well as the easement for drainage and utility purposes, from Bay Mar Drive to Ostego Bay, along the northwesterly boundary line of the real property owned by Defendants CARMELLO NACCARATO, and FRANCA NACCARATO, husband and wife, and described in the warranty deed recorded as instrument number 2014000195800 in the Lee County Public Records.

2. Plaintiffs, DAVID MICHIELINI, JAMES S. REED, JR. and REBECCA L. REED, husband and wife, their heirs, successors, and assigns, together with the general public, are granted a mandatory injunction against Defendants CARMELLO NACCARATO and FRANCA NACCARATO, husband and wife, their heirs, successors, and assigns; Defendants CARMELLO NACCARATO, and FRANCA NACCARATO, husband and wife, shall remove within 15 days of the date of this Judgment any and all fences, barriers, and/or impediments of any kind preventing or obstructing access to the 6 foot public walkway purposes easement, as well as the easement for drainage and utility purposes, from Bay Mar Drive to Ostego Bay, along the northwesterly boundary line of the real property owned by Defendants CARMELLO NACCARATO and FRANCA NACCARATO, husband and wife, and described in the Warranty Deed recorded as instrument number 2014000195800 in the Lee County Public Records; and, Defendants CARMELLO NACCARATO and FRANCA

NACCARATO, their heirs, successors, and assigns, shall refrain from taking any action which would interfere with, or infringe on, the future use of the above-described pedestrian walkway purposes easement by Plaintiffs MICHIELINI and REED, their heirs, successors and assigns, as well as the general public.

3. Plaintiffs, DAVID MICHIELINI, JAMES S. REED, JR. and REBECCA L. REED, husband and wife, recover from Defendants CARMELO NACCARATO and FRANCA NACCARATO, husband and wife, court costs in the total sum of \$460.00, for which let execution issue.

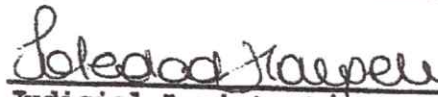
DONE and ORDERED in Chambers in Fort Myers, Lee County, Florida on this the 18 day of January, 2017.


JAY B. ROSMAN
Circuit Judge

Copies furnished to:

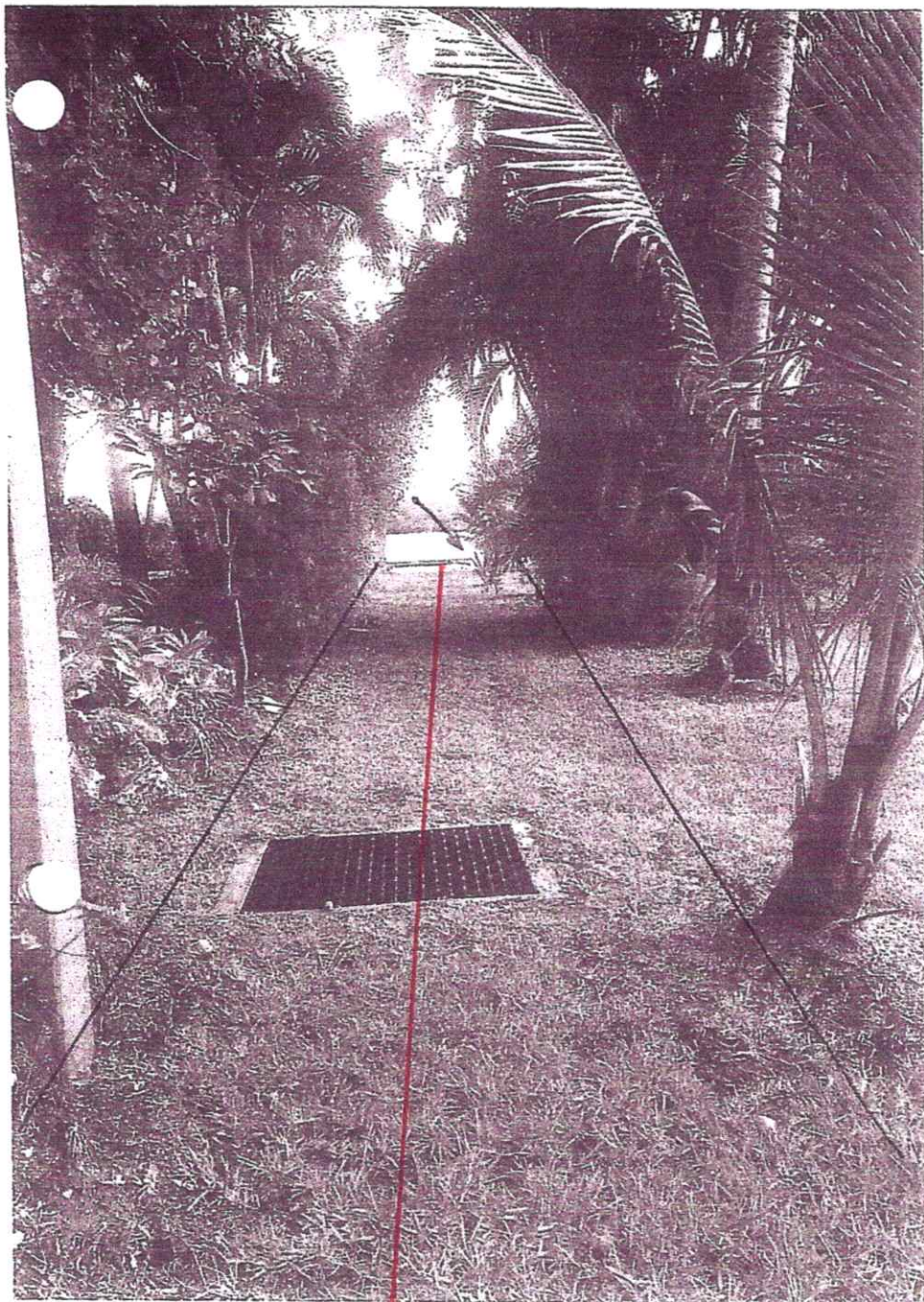
John Charles Coleman
Carmelo and Franca Naccarato

on this the 18 day of January, 2017.

By: 
Judicial Assistant/~~Deputy Clerk~~

I certify this document to be
a true and correct copy of the
record on file in my office,
Linda Doggett, Clerk Circuit/
County Court, Lee County, FL
Dated: 1-26-17
By: 
Deputy Clerk





152 BAY MAR SIDE
EASEMENT

← 6' →
159 BAY MAR SIDE
EASEMENT

18 50
4550
4568 50

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: 29-46-24-W2-00155.1150
Grantees SS #: _____ and _____

SPACE ABOVE THIS LINE FOR RECORDING DATA

THIS WARRANTY DEED, made the 19 day of September, 2014 by:

IDA TERESA WINSOR VARIANO, a single woman, herein called the grantor, to

CARMELO NACCARATO and FRANCA NACCARATO, Husband and Wife, whose post office address is
3220 Pine Cone Court, Milford, MI 48381, hereinafter called the Grantees:

(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.:

A tract or parcel of land lying in Lot 55, Case Subdivision located in Section 29, Township 46 South,
Range 24 East, Lee County, Florida, more particularly described as follows:
From a concrete monument marking the Southerly corner of Lot 55, Case Subdivision, and illustrated
in Deed Book 131, Pages 300 to 304, Lee County, Public Records, being also in the Northeasterly right
of way line of Estero Boulevard (State Road S-865), run Northwesterly along said right of way line for
100.60 feet; thence deflect 105 degrees 09'40" to the right and run Northeasterly along the
Southeasterly line of a roadway 50 feet wide (being also parallel to the Southeasterly line of said Lot
55) for 1040.47 feet to a point of curvature; thence run Northeasterly and Easterly along a curve to the
right with a radius of 50.0 feet (central angle of 49 degrees 27'30" - chord distance of 41.83 feet) for
43.16 feet to a point of reverse curvature; thence run Easterly along a curve to the left with a radius of
50.00 feet (central angle of 29 degrees 24'12" - chord distance of 25.38 feet) for 25.66 feet to the point of
beginning of the herein described land; thence run Northeasterly, Northerly and Northwesterly along
a curve to the left with a radius of 50.0 feet (central angle of 121 degrees 35'31" - chord distance of
87.29 feet) for 106.11 feet; thence run Northeasterly along a line running parallel to the Southeasterly
line of said Lot 55 for 100.00 feet, more or less, to the waters of Ostego Bay; thence run Southeasterly
along the waters of Ostego Bay for 122.10 feet, more or less, to the Southeasterly line of said Lot 55,
thence run Southwesterly along the Southeasterly line of said Lot 55 for 175.45 feet, more or less, to a
point on a line that is perpendicular to the Southeasterly line of said Lot 55 and passes through the
Point of Beginning; thence run Northwesterly along said perpendicular line for 65.13 feet to the Point
of Beginning.

Subject to a 6 foot easement for drainage, utility and pedestrian walkway purposes along the
northwesterly boundary line. Subject to a 6 foot easement for drainage and utility purposes along all
other boundary lines.

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 grantees 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, 2013.

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:

Jessie B. Stanford
Witness #1 Signature for Ida Teresa Winsor Variano

Jessie B. Stanford
Witness #1 Printed Name

William E. Shenko Jr.
Witness #2 Signature for Ida Teresa Winsor Variano

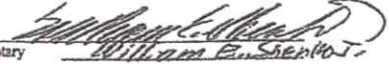
William E. Shenko Jr.
Witness #2 Printed Name

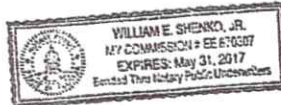
Ida Teresa Winsor Variano
IDA TERESA WINSOR VARIANO
163 Barkit Kennel Road, Pleasant Valley, NY 12569



STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 19 day of September, 2014 by IDA TERESA WINSOR VARIANO, who (X) is personally known to me or () has produced _____ as identification.

Signature of Notary 
Type/Print Name of Notary William E. Shenko, Jr.
Commission Number _____
Commission Expiration Date _____



I CERTIFY THIS DOCUMENT TO BE A
TRUE AND CORRECT COPY OF THE
ORIGINAL ON FILE IN MY OFFICE
LINDA DOGGETT, CLERK OF CIRCUIT COURT,
STATE OF FLORIDA, COUNTY OF LEE

☐ REDACTED COPY PER F.S. 119.071

BY: 
DATED: _____ Deputy Clerk

2-476



IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
LEE COUNTY, FLORIDA
ACTION

DAVID MICHIELINI, JAMES S. REED, JR.,)
and REBECCA L. REED, husband and wife,)
Plaintiffs,)

vs.)

CASE NO: 16-CA-1178

CARMELO NACCARATO and FRANCA)
NACCARATO, husband and wife,)
Defendants.)

**ORDER FINDING CIVIL CONTEMPT, DIRECTING COMPLIANCE WITH
MANDATORY INJUNCTION, IMPOSING CONDITIONS, AND FINDING
ENTITLEMENT TO ATTORNEY FEES**

THIS CAUSE having come on to be heard before the Honorable Alane C. Laboda, Circuit Court Judge, on the Order to Show Cause and Evidentiary Hearing rendered February 26, 2019, counsel having appeared, testimony and evidence having been introduced, argument having been heard, and the Court having been otherwise fully advised in the premises, the Court finds as follows:

1. Based on the clear and convincing evidence presented at the Evidentiary Hearing the Court finds the Defendants, CARMELO NACCARATO and FRANCA NACCARATO, are in violation of the mandatory injunction rendered January 19, 2017.
2. Defendants have failed to show good cause why they should not be held in civil contempt.
3. At the hearing on February 26, 2019, this Court heard the testimony of DAVID MICHIELINI, BARBARA LAMERS, CARMELO NACCARATO and FRANCA NACCARATO. The Court finds the more compelling, persuasive and credible testimony to be that of Mr. Michielini and Ms. Lamers.



4. Further, the Court finds based on the more persuasive substantial competent evidence that five trees depicted in Plaintiffs' Exhibit "D" are located inside the easement were planted by the Defendant and must be moved outside the easement by Defendants.

6. The Defendant's water/yard sprinkler system impedes the use of the easement and must be utilized in compliance with applicable ordinances.

7. The Defendants contact with Plaintiffs and the general public must be restricted to avoid future problems and issues.

8. Defendants were able to comply with the mandatory injunction and did not.

9. Defendants are responsible for attorney's fees incurred by Plaintiffs in pursuing this contempt proceeding.

Therefore, it is **ORDERED AND ADJUDGED** that:

Defendants CARMELO NACCARATO and FRANCA NACCARATO shall move, or cause to be moved, from the six (6) foot public walkway easement five (5) coconut trees depicted in Exhibit "D3", and aligned with the other coconut palm trees outside the easement within seven (7) calendar days of the date of this Order.

Defendants CARMELO NACCARATO and FRANCA NACCARATO shall adjust within 24 hours of the date of this Order their water/yard sprinkler system so that it activates only between the hours of 9 P.M. and 5 A.M. on Thursdays and Sundays, as long as said times and dates are compliant with applicable ordinances; if the times and/or days of the applicable ordinance change, Defendants shall adjust their water/yard sprinkler system to remain compliant as long as the use of the water/yard sprinkler system is done within the same evening hours.



Defendants CARMELO NACCARATO and FRANCA NACCARATO shall refrain from contact, direct or indirect, with Plaintiffs and other members of the general public who are utilizing the six (6) foot public walkway easement along the northwesterly boundary line of Defendant's property.

Defendants CARMELO NACCARATO and FRANCA NACCARATO shall pay attorneys fees and costs incurred by Plaintiff's counsel in pursuing this contempt proceeding; hearing on the amount of attorney fees and costs to be awarded Plaintiffs' counsel shall be scheduled with the magistrate within thirty (30) days of the date of this Order and limited discovery on said fees and costs shall be permitted.

Further violations of the mandatory injunction by either Defendant CARMELO NACCARATO or Defendant FRANCA NACCARATO may result in the issuance a Writ of Bodily Attachment whereby, if said Writ of Bodily Attachment is issued, Defendants CARMELO NACCARATO and/or FRANCA NACCARATO will be arrested and incarcerated in jail until further order of this Court.

DONE and ORDERED in Fort Myers, Lee County, Florida on this the 3 day of April, 2019.

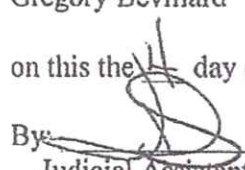


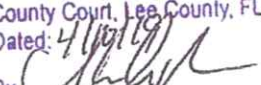
ALANE C. LABODA, Circuit Court Judge

Copies furnished to:

John Charles Coleman
Gregory Bevillard

on this the 11 day of April, 2019

By: 
Judicial Assistant/Deputy Clerk

I certify this document to be
a true and correct copy of the
record on file in my office,
Linda Doggett, Clerk Circuit/
County Court, Lee County, FL
Dated: 4/11/19
By: 
Deputy Clerk



BELOW INFORMATION PROVIDED BY RESIDENT, MR. TIMOTHY J. SHADLE:

I purchased my home on Bay Mar back in early 2013. Prior to purchasing the home, I had discussions with the former owner, and during those discussions, I was told that the public had a legal "public walkway easement" to the back bay through a small right of way between the two end of the street properties. This has been used for years and years, attested to by many current and former Bay Mar Property Owners, and people have fished from that area as well as launched kayak's since the homes were first built in the 70's.

Prior to my purchase, the late husband of the person I purchased the property from had discussions with several neighbors about having a pier built into the back bay extending out from the easement. I believe that the deceased former owner of my home was the one who initiated the conversation with another current owner that had a copy of the original plat of the street, in addition to copies of the current and root deeds of the two end properties, now owned by the Naccarato's and Barnes's. Shortly after those conversations were initiated, the husband of the former owner of my home contracted cancer and passed away so the conversation about the pier ceased for a brief time.

After me purchasing my home, I think in early to mid 2014, I learned that the one end property to the right, the one the Naccarato's own now, was for sale. I pulled the deed myself and read it carefully. I noticed that there was a 6' "public walkway easement" mentioned in that deed. I had a discussion with the seller and shortly afterwards I learned that the property was sold.

Since that time, I've been told by former tenants of mine of harassment by the Naccarato's when utilizing the "pedestrian walkway easement", I've been told by other homeowners and tenants on the street of harassment and I've seen documents and emails between town officials and several owners on Bay Mar from 2015 in which several owners are complaining of impeded access to the easement as well as harassment by the owners. It's been told by many Bay Mar Property Owners, tenants and visitors over the years that they have been sworn at, yelled at, threatened and sprayed with water. I've seen emails, including emails between E. Megan Will, Senior Planner back in 2015 and Kara Lyn Stewart, Program Developer back in 2015, in which several homeowners were complaining in those emails of impeded access to the easement.

In one email that I saw, Kara suggested that the owners retain an attorney to resolve the issue through the court. It was after that email, and suggestion to retain council, that a meeting was suggested and happened with many homeowners and representatives from the Town, and I think you were actually present at that meeting. After that meeting, apparently the Town's representatives were taking a hands off approach and shifting the enforcement responsibility to the homeowners of Bay Mar. This is what prompted the Reed's and David Michielini to file suit against both the Naccarato's and the Barnes's. The issue has now been adjudicated and there now is a Court Order and Civil Contempt Order that clearly shows there is an existing 6 foot pedestrian walkway easement. The exact wording of the ORDER in the January 18, 2017 "FINAL JUDGEMENT AFTER DEFAULT GRANTING DECLARATORY JUDGMENT AND MANDATORY INJUNCTION" states as follows, and I'm quoting;

"Plaintiffs, DAVID MICHIELINI, JAMES S. REED, JR.. and REBECCA REED, husband and wife, their heirs, successors, and assigns, together with the general public, are entitled to full, complete, unimpeded, unobstructed, and unhindered use of the 6 foot public walkway purposes easement, as well as the easement for drainage and utility purposes, from Bay Mar Drive, to Ostego Bay, along the northwesterly boundary line of the real property owned by Defendants

CARMELLO NACCARATO, and FRANCA NACCARATO, husband and wife, and described in the warranty deed recorded as instrument number 2014000195800 in the Lee County Public Records." There are two other ORDERS as well in this ORDER but I wont rewrite them.

There also is a subsequent "ORDER FINDING CIVIL CONTEMPT, DIRECTING COMPLIANCE WITH MANDATORY INJUNCTION, IMPOSING CONDITIONS, AND FINDING ENTITLEMENT TO ATTORNEY'S FEES" dated April 3, 2019, and there are 9 (nine) findings and the Court Order. That Order is very specific about access, vegetation, landscaping, sprinklers, watering and the six (6) foot public walkway easement.

I'm going to attach both the April 3, 2019 order and the January 18, 2017 orders to this and probably two subsequent emails as there are eleven documents that I need to send and I can only send five at a time.

The "pedestrian walkway easement" is also clearly stated in both the Naccarato's and neighboring property owners, the Barnes's, deeds. The Barnes's address is 159 Bay Mar Drive, Fort Myers Beach, FL 33931 and I believe you have copies of those deeds.

Shortly after I first was told by one of my former tenants of his experience with the current owner, I looked into the Barnes's root and subsequent deeds myself. I then spoke to a few knowledgeable and long time owners on the street, who showed me a copy of a plat plus copies of deeds of both end of the street properties that showed the 6' public easement. I then contacted the town and I spoke about the situation and was told that the issue would be looked into. I was contacted back and I was told there was indeed a "public walkway easement" and it would be enforced. I was asked if our neighborhood wanted the town to put up a sign, acknowledging there was a "public walkway easement" but it never happened.

There is an official record of application and permit for a fence that the Barnes's applied for and received, which includes a registered survey sketch submitted by the Barnes's, that showed the 6' "public walkway easement". I also have a copy of a Code Violation issued by the Town of Fort Myers Beach to the Barnes's, shortly after the town taking over permitting from Lee County, to remove the fence out of the existing easement.

In one email I saw dated May 6, 2015, I see that E. Megan Will, Senior Planner, acknowledges "The easement is public", referring to the easement on Naccarato's side. In that email, E. Megan also states that she spoke to at least two other residents, besides the person she's emailing to, Mrs. O'Riley, that at least two other property owners expressed "concern over access to the easement".

Many incidents over access have happened over time, since the current owners purchased the property, including sheriff's called and responding. After so many incidents is why the meeting was asked for and happened with town officials and Bay Mar Property Owners then a subsequent lawsuit. I think because of the the town refusing to take action was why the two owners on Bay Mar, James Reed, Rebecca Reed and Dave Michielini, filed suit against the Barnes's and Naccarato's. The Plaintiffs wanted to establish that there is indeed a "public walkway easement" of 6' on each property and to stop further obstruction or harassment when that easement was used. That issue has now been determined by the Court in Lee County Florida so there now is no question of this 12' total easement, 6 foot on each side of the property line between the Barnes's and Naccarato's.

Subsequent to the court action, the Barnes's signed an agreement that there is an existing 6' right of way on their property and are allowing access. The Naccarato's did not sign an agreement but it was determined by the court that there is indeed an established 6' "public walkway easement" and that any further obstruction of access by any means, including landscaping, plus any harassment of any type, including sprinklers or spraying water, would constitute "contempt of court". I believe the agreement between the Plaintiffs and Barnes's was included in the material that I dropped off plus the entire court record of the lawsuit and outcome can easily be obtained through the Lee County Court website and the Case number is 16-CA-1178.

Back in December of 2020, I surveyed every home on Bay Mar Drive, spoke personally to 21 homeowners myself, and obtained written confirmation of support of a pier/observation deck into the back bay by all 21. I sent out 7 letters, with self addressed stamped envelopes, to 7 addresses listed for owners and received 5 back with "yes" in support also. I spoke with 1 Estero Blvd owner, across from Bay Mar, and that owner also signed "yes" in support. There is 1 owner that I have not spoken with, nor sent a letter to, the Naccarato's. I plan on talking to Carmelo in the coming days but am under the assumption that he will not be happy or supportive. In conclusion, out of 29 homeowners on Bay Mar, and 1 on Estero, there were 27 "yes" in support, 2 owners did not respond at all and 1 has not been asked as of yet.

It's our hope that the Town Council will agree with our neighborhood, and the Order by Lee County Court, and take the position that there is an established "6 foot pedestrian walkway easement" on each back bay property, for a total of 12', and enforce that right of way, including any obstructing landscaping. At this time there is a cluster of palm trees at approximately the 6 foot line on Naccarato's side and more coconuts keep being placed around the base of the cluster, which will soon, if not already, be encroaching into that easement, as well as Palm Fronds from those Palms. (Just an FYI, the easement under discussion is the same easement used for the towns storm water drain to the back bay.) As a note, to date, there has been no obstruction or harassment by the Barnes's and we're not asking that any enforcement action be taken against them, nor do we feel at this time there is any encroachment of vegetation or landscaping on their side. Our issue is with the Naccarato's solely at this time. That's not to say that there won't be any future encroachment or harassment by the Barnes's or subsequent owners of their, or Naccarato's property, so this is why a determination of the 6-ft easement on both sides of the property line should be acknowledged and enforced by the Town so this issue is settled once and for all.

It's also the hope of our neighborhood that the Town Council will permit the construction of a pier or observation deck, with railing, and an area where safe launching of a kayak can take place. The cost to do so we'd hope that the town would absorb in the interest of public safety and enjoyment, but this obviously will be part of any discussion. Acknowledgment of the easement is obviously required first before the pier/observation deck can be considered, so the first goal is to get this acknowledgement and commitment to enforce the easement by the Town Council. Once this is acknowledged, discussion can be had about design, cost and who pays for a pier/observation deck.

It is our neighborhood's desire to have a safe, peaceful area for viewing, fishing and launching, as intended by the original designer of lot 55, and drawn on the plat and clearly mentioned in both back bay deeds.

I have a copy of the plat, all deeds and other documentation but I think what you have should suffice, but if there's anything else you'd like me to supply, or you have any further questions, please feel free to get back to me.

Best regards,
Timothy J Shadle
105 Bay Mar Drive
Fort Myers Beach, FL 33931
570-424-0344

1. **Requested Motion:**

Meeting Date: April 7, 2021

Preliminary discussion and planning of American Rescue Plan funds

Why the action is necessary:

To begin to consider the best use of the ARP funds relative to the Town's unfunded priorities.

What the action accomplishes:

Positions Town staff to implement Town projects on a timely basis.

2. **Agenda:**

ITEMS FOR DISCUSSION

3. **Requirement/Purpose:**

5. **Background:**

The U.S. House of Representatives recently passed the American Rescue Plan COVID-19 relief package which will provide direct aid to all 411 of Florida's municipal governments. The Town is projected to receive almost \$3 million (\$2,981,056) in two payments.

Attachments:

Financial Impact:

This would allow Town Council to address unfunded or future priorities.

6. **Alternative Action**

7. **Staff Recommendations:**

Monitor rules and regulations, Florida and National League of Cities technical advice.

8. **Recommended Approval:**

John R Herin Jr, Town Attorney

Date: March 31, 2021

Amy Baker, Town Clerk

Date: March 31, 2021

Roger Hernstadt, Town
Manager

Date: April 01, 2021

AGENDA MANAGEMENT				
163	4th of July Fireworks/Parade	Parks & Rec	added 02.09.2021	04.19.2021
172	TECO Agreement	Attorney	added 02.23.2021	04.19.2021
177	Change Order: Phase 2, Part 1	Utilities	added 03.16.2021	04.19.2021
180	Change Order: Phase 4 / Bay View	Utilities	added 03.23.2021	04.19.2021
164	Town Council meeting schedule (August - December)	Town Clerk	added 02.09.2021	05.03.2021
155	Preliminary Millage	Finance		June
137	Presentation: FDOT SR865 Project	Pending FDOT	added 01.13.2021	May
123	Veteran Tribute @ Bayside Park (BV)	TC	added 12.03.2020	TBD M&P
139	Acquiring HOA Beach Accesses (RH)	TC	added 01.21.2021	TBD M&P
140	Discussion: Regulations regarding footprint of a property (RH)	TC	added 01.21.2021	TBD M&P
174	Work Force Housing Initiative (RH/BV)	TC	added 03.04.2021	TDB M&P

County Estero Blvd. Update at the first M&P of each month