



Fort Myers Beach Town Council

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

Agenda

Monday, December 6, 2021

9:00 AM

ORDER OF BUSINESS

- I. CALL TO ORDER**
- II. INVOCATION**
- III. PLEDGE OF ALLEGIANCE**
- IV. APPROVAL OF FINAL AGENDA**
- V. PUBLIC COMMENT**
- VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS**
- VII. ADVISORY COMMITTEES ITEMS AND REPORTS**
 - A. Cultural and Environmental Learning Center Advisory Board (CELCAB)
- VIII. APPROVAL OF MINUTES**
 - A. November 15, 2021 Town Council meeting
- IX. CONSENT AGENDA**
 - A. Utility Easement with Charlie's Boathouse
Authorize the Town Manager to execute a Utility Easement agreement for a new outfall between Charlie's Boathouse and the Town of Fort Myers Beach.
- X. PUBLIC HEARINGS**
 - A. VAR20210073 6036-38 Estero Boulevard Pool Setback
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/DENYING VARIANCE 20210066 TO ALLOW AN ACCESSORY STRUCTURE – POOL- IN FRONT OF THE PRINCIPAL STRUCTURE AND WITHIN THE STREET SETBACK FOR THE PROPERTY LOCATED AT 6036/38 ESTERO BLVD; AND PROVIDING FOR AN EFFECTIVE DATE

XI. ADMINISTRATIVE AGENDA

- A. Resolution 21-64: STA #17; CEI & Construction Admin - Downtown Sidewalks
Adopt Resolution 21-64, approving Supplemental Task Authorization #17 with Tetra Tech Inc. for construction inspection services and construction administration for the downtown sidewalks project in the not to exceed amount of \$73,640 and authorizing the Town Manager to execute the contract documents.
- B. LCSO Extra Duty Boat Detail(s)
Approve Lee County Sheriff's Office Extra Duty Boat Detail contract(s) for Fiscal Year 2021-2022 in the amount of \$50,000; Authorize the Town Manager to execute contract documents as approved in FY2022 budget. (Grant is \$25,000).

XII. FINAL PUBLIC COMMENT**XIII. TOWN MANAGER'S ITEMS****XIV. TOWN ATTORNEY'S ITEMS****XV. COUNCILMEMBERS ITEMS AND REPORTS****XVI. 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.



Fort Myers Beach Town Council

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

Minutes

Monday, November 15, 2021

9:00 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

Members present: Mayor Murphy, Vice Mayor Hosafros, Council Member Allers, Council Member Atterholt and Council Member Veach.

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Vice Mayor Hosafros moved to approve the final agenda with the addition of a special event permit as requested by Director Alison Giesen; second by Mayor Murphy.

Motion carried unanimously.

Director Giesen described the Mistletoe Market Craft special event and thanked Council for adding it to the agenda.

Vice Mayor Hosafros moved to approve the permit for the Mistletoe Market; second by Council Member Allers.

Motion carried unanimously.

V. REORGANIZATION OF COUNCIL

A. Selection of Mayor and Vice Mayor

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

Vice Mayor Hosafros moved to nominate Ray Murphy for Mayor; second by Council Member Veach.

Motion carried unanimously.

Council Member Veach nominated Rexann Hosafros for Vice Mayor; second by Council Member Allers.
Motion carried unanimously.

VI. PUBLIC COMMENT

Cindy Johnson, resident, commented on the lighting plan at Bayside Park and noted the 2010 lighting ordinance needed a few updates. She reviewed the ordinance.

Bill Snyder from SESCO Lighting assisted with the Bayside Park lighting design and controls and was available for questions.

Mayor Murphy recognized Michael Hughes, son of Dan Hughes.

VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Veach thanked staff for securing the Bay Oaks grant. He announced that the Baptist Church was hosting a walk-in vaccine clinic for first, second and booster shots on Nov. 16, 2021, from 9-12. He noted the vaccines were from Pfizer.

Council Member Atterholt congratulated the Pink Shell for their Four Palm award. He described the requirements for the award and stated they were one of seven hotel recipients in Florida. He commended the Fort Myers Beach Fire Department for their recent open house on Lenell Rd.

Vice Mayor Hosafros expressed condolences to the List family after the passing of Mark List, husband of Jo List. She recognized Council Member Veach for attending the second-level Florida League of Cities class.

No items from other members.

VIII. ADVISORY COMMITTEES ITEMS AND REPORTS

No reports.

IX. APPROVAL OF MINUTES

A. November 1, 2021 Town Council

Vice Mayor Hosafros moved to approve the minutes; second by Council Member Veach.

Motion carried unanimously.

B. November 1, 2021 Joint Session w/LPA

Correction: Scott Safford is an LPA Member, not a Town Council Member.

Vice Mayor Hosafros moved to approve the minutes as amended; second by Council Member Veach.

Motion carried unanimously.

C. November 4, 2021 Management & Planning Session

Vice Mayor Hosafros moved to approve the minutes; second by Council Member Veach.

Motion carried unanimously.

D. November 4, 2021 Joint Session w/PSC

The title of the minutes should read a joint session with the PSC, not a Management & Planning Session.

Vice Mayor Hosafros moved to approve the minutes as amended; second by Council Member Veach.

Motion carried unanimously.

X. PRESENTATION

A. FMB Camera Project - Greenwire Technology Solutions

Joe Parker from Greenwire Technology Services stated that his company worked closely with the Lee County Sheriff's Office. He utilized PowerPoint for his presentation. Slides included: FMB Camera/LPR Project; Pricing for License Plate Readers; Pricing for Cameras TBD; San Carlos Blvd./Fifth St.; Pier/Times Square; 1250 Estero Blvd.; 1600 Estero Blvd. and Big Carlos Pass Bridge. A second presentation consisted of slides: System Objectives; Differences Between Real-Time and License Plate Systems; Project Planning: How Much Coverage?; Camera Selection; San Carlos at Fifth Street Coverage; 1250 Estero Blvd., Beach Side; PTZ at Wide View versus Full Zoom; 4 MP Camera, Nighttime with Object 150' Away; Project Planning: Mounting Locations; Example of Aluminum and Concrete Poles; Connectivity Options and Power Considerations. Town Manager Hernstadt stated that this system was intended to supplement the Flock system presented at an earlier Town Council meeting.

Town Manager Hernstadt mentioned partnering with private properties to install poles. Vice Mayor Hosafros supported installing both systems.

Council Members Atterholt and Veach agreed.

XI. CONSENT AGENDA

A. New Year's Eve Fireworks and Bridge Closure

Motion to approve the temporary south bound closure of the Matanzas Pass Bridge to southbound traffic on December 31, 2021 at midnight until January 1, 2022 at 1:30 am for the New Year's Fireworks Event

Council Member Atterholt moved to approve the temporary southbound closure; second by Vice Mayor Hosafros.

Motion carried unanimously.

XII. PUBLIC HEARINGS

A. Ordinance 21-07: Commercial Boulevard Zoning District

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, DIVISION 5, SUBDIVISION V, SECTIONS 34-701 THROUGH 34- 707 “CB ZONING DISTRICT” TO CLARIFY WHAT CONSTITUTES AN EXISTING USE AND HOW AND WHEN THAT EXISTING USE CAN BE CONTINUED OR MODIFIED; TO ALLOW THE CONTINUATION OF EXISTING USES; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER’S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE

DATE. Second reading for final adoption.

Mayor Murphy read the title of the ordinance. Town Attorney Herin, Jr. stated the item was properly noticed. Council Member Veach questioned whether they created a list of businesses and their history in the CB (commercial boulevard) district. Community Development Director Jason Green provided a draft of the requested changes.

Council Member Allers thought E. on page 30 of the packet was too vague. Director Green replied that they could look at the language. He reviewed the history of the CB district. Council Member Veach noted the list of businesses did not include the history of the properties. He recommended that they rethink the ordinance and discuss what the CB district needed. Council Member Atterholt questioned whether they could take the step today and then address the broader issues. Council Member Veach commented that there might be options for the client that they did not consider. Mayor Murphy suggested they continue the process and address future issues that come forward. Council Member Veach agreed as long as they added a discussion regarding the CB district and the vision for the town to an M&P Session.

Town Manager Hernstadt stated that they could deal with the zoning on that particular parcel. Mayor Murphy commented that he was willing to proceed with the issue to give the property owner some relief.

Vice Mayor Hosafros stated that the list of properties did not include the history and she questioned the ramifications of other properties. She supported giving relief to the property owner but hesitated to forge ahead without more information concerning ramifications for other properties.

Council Member Allers remarked they were not extending any use to a particular property based on what was currently there but what was used in the past. Director Green agreed.

Town Attorney Herin, Jr. noted they could approve the revised ordinance with the proposed language or continue the matter to the next meeting. Council Member Allers supported moving forward with the modified ordinance.

Public comment:

Attorney Beverly Grady from Roezel and Andress represented the owner of the affected parcel. She stated that the square footage of the outdoor display would be limited to 1,482 square feet. Kara Stewart explained how she calculated the square footage. Attorney Grady requested that they adopt the ordinance.

Public comment closed.

Town Attorney Herin, Jr. suggested that subsection E. be changed from "outdoor display may" to "outdoor display shall be located in the area." The discussion went back and forth regarding helping one property versus the possible ramifications for other properties. Town Attorney Herin, Jr. explained that subsection E. would only affect a specific parcel of land.

Council Member Veach moved to strike all the modifications from the ordinance except for 3. E., Scrivener's corrections addressed by the Town Attorney, the corrected section cited on page 31 and the outdoor display would be limited to 1,500 square feet; second by Council Member Atterholt. Motion carried unanimously by roll call vote.

B. VAR20210039: 71 Chapel Street Setback Variance

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/DENYING VARIANCE 20210039 TO ALLOW A 10 FEET REDUCTION OF THE 25 FEET STREET SETBACK TO ALLOW A SETBACK OF 15 FEET AT 71 CHAPEL STREET; AND PROVIDING FOR AN EFFECTIVE DATE

Mayor Murphy read the title of the resolution. Town Attorney Herin, Jr. swore in those providing testimony. Ex parte communications: Council Member Allers - drive-by; Vice Mayor Hosafros - drive-by; Mayor Murphy - drive-by; Council Member Atterholt - phone conversation with applicant and Council Member Veach - watched the LPA (Local Planning Agency) meeting.

Assistant Community Development Director Carl Bengé reviewed the variance request. The LPA unanimously voted to approve the request with conditions and the staff recommended approval with conditions. Director Green stated that the applicant was confused about the conditions. Property owner Ron Yanke explained his confusion and noted that he thought he was receiving a 10-foot setback with a 15-foot encroachment. He indicated that he was getting 8 feet, but that was not enough and he was not in agreement with this condition. He agreed with an extra buffer and removing the driveway entrances. Town Manager Hernstadt stated that staff recommended a 10-foot encroachment into the 25-foot area, but the applicant requested a 15-foot encroachment. Director Green added that the LPA discussed how much of an overhang to allow. Council Member Allers noted that the applicant was asking for more on the front end but gave back more on the side and rear. Vice Mayor Hosafros pointed out that the variance request was not de minimus.

Mr. Yanke described his proposed home design and setback challenges. He noted that he was planning on enclosing the ground level. Council Member Veach questioned whether it would be acceptable to remove the vegetation barrier if the applicant kept the ground level open. Town Manager Hernstadt replied that there was no sight advantage with the property. Mr. Yanke stated that he would eventually install a pool in the back.

No public comment.

Vice Mayor Hosafros moved to approve Resolution 21-63 based on the information in the staff report and the testimony; the resolution met the standards in the Comprehensive Plan and Land Development Regulations as presented with conditions; second by Council Member Veach. Council Member Veach discussed adding a condition that the ground level had to remain open. He did not receive support.

Motion carried unanimously by roll call vote.

XIII. ADMINISTRATIVE AGENDA

A. Resolution 21-62; Court Street Name Change

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, SUPPORTING THE RESIDENTS OF COURT STREET REQUEST TO CHANGE THE STREET NAME TO FLAMINGO COURT; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Murphy read the title of the resolution.

Council Member Allers moved to approve the resolution; second by Vice Mayor Hosafros.

Town Manager Hernstadt stated that if the name change was approved, the sign change would cost the Town around \$100.00.

Motion carried unanimously.

B. LCSO Extra Duty Traffic Detail(s)

Approve Lee County Sheriff's Office Extra Duty Traffic Detail contract(s) for Fiscal Year 2021-2022 in the amount of \$70,580.00; Authorize the Town Manager to execute contract documents as approved in FY2022 budget.

Town Manager Hernstadt stated that this authorization was for the traffic detail, not an increased presence for holidays and peak periods, which is a separate issue. The item was on the agenda because it exceeded his spending authority. An officer would be stationed at the new traffic signal at Old San Carlos and Fifth Street during Thanksgiving and Christmas to help people adjust to the new signal. Council Member Veach recommended that they not include posting an officer at the light. Council Member Allers noted the diagonal crosswalks were unusual and he felt an officer would help to direct pedestrians.

Council Member Allers moved to approve the Town Manager moving forward with the contract documents; second by Vice Mayor Hosafros. Motion carried unanimously.

- C. Resolution 21-61; Community Aesthetic Feature Agreement with FDOT
Adopt Resolution 21-61; Community Aesthetic Feature Agreement (Town entrance sign) with FDOT for the welcome sign and allowing for all associated documents to be executed by the Town Mayor and/or Town Manager or his designee.
Mayor Murphy read the title of the resolution.
Vice Mayor Hosafros moved to approve Resolution 21-61; second by Council Member Veach.
Motion carried unanimously.
- D. Resolution 21-59; Parking Shade Structure
Approve Resolution 21-59 to allocate and appropriate funds for the purchase of a parking shade structure and accessory items for Fort Myers Beach Elementary Parking Lot pursuant to the Town's agreement with the Lee County School Board in the amount of \$82,942 as budgeted in FY22 budget, piggybacking Lee County School District Contract, C177288LN - Walkway Covers Contract Number.
Mayor Murphy read the title of the resolution.
Council Member Allers moved to approve Resolution 21-59; second by Council Member Veach.
Motion carried unanimously.
- E. STA #11; CEI & Construction Admin - Bayside Park
Approve Supplemental Task Authorization #11 with DRMP, Inc. for construction inspection services and construction administration to Bayside Park in the not to exceed amount of \$42,500 and authorize the Town Manager to execute the contract documents.
Vice Mayor Hosafros moved to approve the supplemental authorization; second by Council Member Allers.
Motion carried unanimously.
- F. Lighting Purchase - Bayside Park
Approve, allocate and appropriate funds in the FY22 budget, for the purchase of lights and accessory items for Bayside Park in the amount of \$112,771.25, waiving the procurement policy as these lights are manufactured by a sole-source, SESCO Lighting.
Mayor Murphy moved to approve; second by Vice Mayor Hosafros.

Council Member Veach questioned whether the lights conformed with their lighting ordinance. Town Manager Hernstadt replied that they would verify before purchasing the lights.
Bill Snyder from SESCO Lighting described the lights and noted the controls were in a cabinet onsite. He stated that they tried to be environmentally sensitive, and they ran photometrics to make sure they provided safe lighting

levels. Council Member Veach questioned uplighting. Mr. Snyder replied that the lights were meant to light something. Paul Benvie from DRMP stated that the lights were approved by staff and complied with town codes. He added that all lights or uprights would be targeted at a shade sail or a tree.

Motion carried unanimously.

XIV. FINAL PUBLIC COMMENT

No public comment.

XV. TOWN MANAGER'S ITEMS

Discussion was held regarding the different types of ground cover.

XVI. TOWN ATTORNEY'S ITEMS

Town Attorney Herin, Jr. saluted the veterans and wished everyone a happy Thanksgiving.

XVII. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Allers questioned whether bike racks would be placed under the bridge. Town Manager Hernstadt will look into the issue. Council Member Allers requested an update regarding issues with the owner of parking spaces at the Key Estero Shops. Town Attorney Herin, Jr. stated that staff was creating a list of people who violated codes and accrued large fines. He reviewed the parking situation and noted the owner was still not compliant and was accruing daily fines.

Vice Mayor Hosafros questioned whether she had support to ask the Public Safety Committee to check and report burnt-out street lights to Director O'Riley. She received support and Council Member Allers will bring it up at the next PSC meeting.

Mayor Murphy wished everyone a happy and safe Thanksgiving.

No items from other members.

A. Council Representation to Town Advisory Committees

Designation of a Council representative to the six Town advisory boards/committees.

All Council Members were happy with their current assignments.

B. Council Representation on Outside Committees

Designation of a Council representative and alternate to the seven outside committees on which Council members have previously served.

All Council Members were happy with their current assignments.

XVIII. ADJOURNMENT

Council Member Allers moved to adjourn; second by Vice Mayor Hosafros.

Motion carried unanimously.

The meeting was adjourned at 11:50 a.m.

1. Requested Motion:

Meeting Date: December 6, 2021

Authorize the Town Manager to execute a Utility Easement agreement for a new outfall between Charlie's Boathouse and the Town of Fort Myers Beach.

Why the action is necessary:

To authorize an agreement with Charlie's Boathouse for a Utility Easement for stormwater improvements.

What the action accomplishes:

Provides stormwater drainage improvements for Bahia Via.

2. Agenda:

CONSENT AGENDA

3. Requirement/Purpose:

4. Submitter of Information:

5. Background:

Bahia Via is a side street with recurring excess flooding. The easement agreement with Charlie's Boathouse will provide stormwater improvements through the installation of an inlet that provides direct drainage into the bay.

Attachments:

1. Bahia Via Easement Sketch
2. STORMWATER DRAINAGE EASEMENT

Financial Impact:

6. Alternative Action

7. Management Recommendations:

Approve.

8. Recommended Approval:

Sarah Lisenko, Administrative Officer
Christy Cory, Utilities Director
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 12/1/2021
Approved - 12/1/2021
Approved - 12/2/2021
Approved - 12/2/2021
Final Approval - 12/2/2021

PARCEL I.D.: 34-46-24-W4-00018.0000
OWNER:COLORADO SOUTHERN INC

SKETCH OF DESCRIPTION

(NOT A BOUNDARY SURVEY)

LEGAL DESCRIPTION:

A 15.0' EASEMENT LYING WITHIN LOT 5, SANTINI-CROSS, AN UNRECORDED SUBDIVISION, LEE COUNTY, FLORIDA, BEING MORE DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEASTERLY CORNER OF BLOCK "I" OF MCPHIE PARK SUBDIVISION UNIT NO. 2., ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 8, PAGE 59, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE SOUTHEASTERLY ALONG THE LINE WHICH IS AN EXTENSION OF THE SOUTHEASTERLY LINE OF SAID BLOCK "I" TO THE WATERS OF THE GULF OF MEXICO; THENCE SOUTHEASTERLY ALONG THE WATERS OF SAID GULF TO A POINT 590 FEET, AS MEASURED AT RIGHT ANGLES TO THE LAST MENTIONED COURSE; THENCE NORTHEASTERLY ON A LINE PARALLEL TO THE SOUTHEASTERLY LINE OF THE AFOREMENTIONED BLOCK "I" TO THE EASTERLY SIDE OF THE COUNTY ROAD, THE POINT ON THE SAID COUNTY ROAD ON THE EASTERLY SIDE THEREOF BEING IN ACCORDANCE WITH THAT CERTAIN DEED FROM LEONARD SANTINI AND WIFE TO THE LEE COUNTY, FLORIDA, DATED MARCH 24, 1949, AND BEING OF RECORD IN DEED BOOK 193 ON PAGE 583 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE SOUTHEASTERLY ALONG THE EASTERLY SIDE OF SAID COUNTY ROAD A DISTANCE OF 50.52 FEET TO THE POINT OF BEGINNING OF THE LAND HEREINAFTER DESCRIBED; THENCE NORTHEASTERLY PARALLEL TO THE SOUTHEASTERLY SIDE OF THE AFOREMENTIONED BLOCK "I" AND ALONG THE EASTERLY SIDE OF A FIFTY-FOOT STREET A DISTANCE OF 136.19 FEET TO THE NORTHEAST CORNER OF SAID LOT 5, SAID POINT BEING THE POINT OF BEGINNING; THENCE SOUTHEASTERLY AT RIGHT ANGLES TO THE LAST MENTIONED COURSE, A DISTANCE OF 120 FEET TO THE WATERS OF A CANAL; THENCE SOUTHWESTERLY AT RIGHT ANGLES TO THE LAST MENTIONED COURSE AND ALONG THE NORTHWESTERLY SIDE OF SAID CANAL, A DISTANCE OF 15.00 FEET; THENCE NORTHWESTERLY AT RIGHT ANGLES TO THE LAST MENTIONED COURSE, A DISTANCE OF 120 FEET TO THE AFOREMENTIONED EASTERLY SIDE OF A FIFTY-FOOT STREET; THENCE NORTHEASTERLY ALONG SAID EASTERLY SIDE OF A FIFTY-FOOT STREET A DISTANCE OF 15.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 1800 SQUARE FEET, MORE OR LESS.

SURVEYOR'S NOTES:

1. THERE MAY BE EASEMENTS AND RESTRICTIONS OF RECORDS AND/OR PRIVATE AGREEMENTS NOT FURNISHED TO THIS SURVEYOR THAT MAY AFFECT PROPERTY RIGHTS AND/OR LAND USE RIGHTS OF THE LANDS SHOWN HEREON.
2. NO UNDERGROUND INSTALLATIONS, FOUNDATION FOOTINGS OR IMPROVEMENTS HAVE BEEN LOCATED EXCEPT AS NOTED.
3. NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
4. THIS SURVEY WAS PERFORMED IN ACCORDANCE WITH THE STANDARDS OF PRACTICE FOR SURVEYS AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS, CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE.

LAWRENCE E. JENKINS
PROFESSIONAL
SURVEYOR AND MAPPER
FLORIDA REGISTRATION #5364
TETRA TECH - LB #26



TETRA TECH

www.tetrattech.com

201 EAST PINE STREET, SUITE 1000
ORLANDO, FL 32801
PHONE: 407.839.3955 FAX: 407.839.3790

CITY OF
FORT MYERS BEACH
LEE COUNTY

PROPOSED
15' UTILITY EASEMENT

Project No.: 200-74765-22002

Date: 09-22-2021

Designed By: BLS / LEJ

Drawing No.

V-101

SHEET 1 OF 3

LEGEND

◆	BM	BENCHMARK
⊙	ND	NAIL & DISK
△	TP	TRAVERSE POINT
●	F	FOUND IRON (TYPE)
○	S	SET IRON (TYPE)
■	F	FOUND MONUMENT (TYPE)
□	S	SET MONUMENT (TYPE)
⊕	SC	SECTION CORNER
○	CO	CLEANOUT
☁		DECIDUOUS TREE
⚡		ELECTRIC TRANSFORMER
☀		EVERGREEN TREE
⦿		FIRE HYDRANT
✱		FLAG (AS SHOWN)
⋈		GUY ANCHOR
☀		LIGHT POLE
Ⓜ		MAIL BOX
☀		PALM TREE
○	P	POST
Ⓜ		SATELLITE DISH
⊕		SPIGOT
☀		SPRINKLER HEAD
Ⓜ		TRAFFIC SIGN
□		UTILITY MARKER (AS SHOWN)
○		UTILITY MANHOLE (AS SHOWN)
□		UTILITY METER (AS SHOWN)
■		UTILITY RISER (AS SHOWN)
⊗		UTILITY VALVE (AS SHOWN)
⊕		UTILITY POLE (AS SHOWN)
⊙		WELL

ABBREVIATIONS

ANT	ANTENNA	(M)	MEASURED
BM	BENCHMARK	MB	MAILBOX
BFP	BACKFLOW PREVENTER	MH	MANHOLE
(C)	CALCULATED	MW	MONITORING WELL
CO	CLEANOUT	ND	NAIL & DISK
CONC	CONCRETE	NL	NAIL
CLF	CHAIN LINK FENCE	OE	OVERHEAD UTILITY LINES
CM	CONCRETE MONUMENT	OR	OFFICIAL RECORDS
CMP	CORRUGATED METAL PIPE	OUC	ORLANDO UTILITIES COMMISSION
CPP	CORRUGATED PLASTIC PIPE	P	POST
(D)	AS DESCRIBED	(P)	PER PLAT
DIP	DUCTILE IRON PIPE	PB	PLAT BOOK
DH	DRILL HOLE	PG	PAGE
EB	ELECTRIC RISER	PK	PK NAIL
ELEC	ELECTRIC	RCP	REINFORCED CONC PIPE
EM	ELECTRIC METER	RR	RAILROAD
ET	ELECTRIC TRANSFORMER	RW	RECLAIMED WATER
EP	EDGE OF PAVEMENT	S	SET
ESMT	EASEMENT	SC	SECTION CORNER
F	FOUND	SH	SPRINKLER HEAD
FDC	FIRE DEPT CONNECTION	SPIG	WATER SPIGOT
FF	FINISHED FLOOR	SS	SANITARY SEWER
FH	FIRE HYDRANT	SD	STORM DRAIN
FO	FIBER OPTIC	SV	SANITARY SEWER VALVE
G	GAS	TB	TELEPHONE RISER
GM	GAS METER	TEL	TELEPHONE
GV	GAS VALVE	TP	TRAVERSE POINT
INV	INVERT	TSC	TRAFFIC SIGNAL CONTROL
IP	IRON PIPE	TSP	TRAFFIC SIGNAL POLE
IR	IRON ROD	TV	CABLE TELEVISION
IRR	IRRIGATION VALVE	UE	UNDERGROUND UTILITY LINES
JBL	JURISDICTIONAL BOUNDARY LINE	W	WATER
		WM	WATER METER
		WV	WATER VALVE
		XC	X CUT



TETRA TECH

www.tetrattech.com

201 EAST PINE STREET, SUITE 1000
ORLANDO, FL 32801
PHONE: 407.839.3955 FAX: 407.839.3790

CITY OF
FORT MYERS BEACH
LEE COUNTY

PROPOSED
15' UTILITY EASEMENT

Project No.: 200-74765-22002

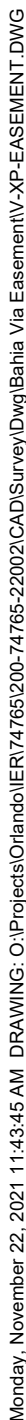
Date: 09-22-2021

Designed By: BLS / LEJ

Drawing No.

V-101

SHEET 2 OF 3



Prepared by and After Recording Return to:
Town of Fort Myers Beach, Florida
2525 Estero Blvd.
Fort Myers Beach, FL 33931
Attn: Mrs. Christy Cory

STORMWATER DRAINAGE EASEMENT

THIS DRAINAGE EASEMENT ("Agreement") is made as of this ____ day of December 2021, by and between COLORADO SOUTHERN INC, whose mailing address is 6200 ESTERO BOULEVARD, Fort Myers Beach, FL. 33931, ("Grantor") and the TOWN OF FORT MYERS BEACH, a Florida municipal corporation whose address is 2525 Estero Blvd., Fort Myers Beach, Florida 33931 ("Grantee"). Wherever used herein, the terms, "Grantor" and "Grantee" shall include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations, partnerships (including joint ventures), public bodies and quasi-public bodies.

WHEREAS, Grantor is the owner of certain real property in the Town of Fort Myers Beach, Lee County, Florida ("Town"), more particularly described in the attached Exhibit "A" with accompanying sketch of description and made a part hereof ("Grantor's Land"); and

WHEREAS, Grantee desires a perpetual, non-exclusive easement for public use and other appropriate purposes incidental thereto, in, on, over, under, and across a portion of Grantor's Land; and

WHEREAS, the Grantor is willing to grant a Stormwater Drainage Easement on a portion of Grantor's Land to the Grantee; and

WHEREAS, the Grantee, at its expense, shall cause stormwater drainage improvements with all the fills, cuts, drains, ditches, and other incidents which Grantee may deem necessary to be constructed, maintained, replaced, and repaired on a portion of Grantor's Land, which portion is more particularly described in the attached Exhibit "B" with accompanying sketch of description and made a part hereof ("Easement Land").

WHEREAS, this Stormwater Drainage Easement shall be subject to the right of Grantor, its successors and assigns, to design, construct and cover this Stormwater Drainage Easement with concrete, asphalt or other similar surface pavements or materials for the purpose of providing parking and allowing ingress and egress across, over, upon and through this Stormwater Drainage Easement. Such rights to make surface improvements to the subject property shall not interfere with the rights granted to Grantee, pursuant to this instrument.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, Ten Dollars (\$10.00) and other good and valuable considerations the receipt and sufficiency of which are hereby acknowledged, the Grantor does grant the Grantee, subject to the terms hereof, a stormwater drainage easement for the public use, in perpetuity, in, on, over, under, and across the Easement Land.

1. Recitals. The recitals set forth above are hereby incorporated as if fully set forth herein.
2. Grant of Easement. The Grantor hereby grants Grantee a perpetual, nonexclusive easement in, on, over, under, and across the Easement Land described in Exhibit "B" for stormwater drainage improvements in perpetuity. This grant of easement is not a dedication to the public of the underlying fee simple ownership of the Easement Land.
3. Construction and Maintenance of Stormwater Drainage Improvements. At Grantee's sole cost and expense, Grantee shall construct stormwater drainage improvements within the Easement Land pursuant to a site plan approved for Grantor's Land, and maintain, replace, and repair the facilities as necessary.
4. Termination/Relocation. Should the Grantee voluntarily cease using the Easement Land for a drainage outfall for a period of more than twelve (12) months (excluding acts of God, force majeure, construction activity, or other similar activities or causes outside the Grantee's control), this Agreement shall automatically terminate. The Grantee, through its Utility Department, in their reasonable discretion, may approve a request by Grantor to relocate this easement as described in Exhibit "B," to other lands owned by the Grantor.
5. Use by Grantor. Grantor, its successors and assigns, reserves the right to use and enjoy the Easement Land for all purposes consistent with this Agreement; provided, that, Grantor shall not construct or place or permit to be constructed or placed any structure or obstruction on the Easement Land.
6. Easement Runs with the Land. So long as this Agreement remains in effect, this Agreement, and the easements, covenants, conditions and provisions herein, shall run with the Grantor's Land and the Easement Land and will be binding upon the Parties hereto and their respective heirs, devisees, personal representatives, successors, transferees and assigns, except as otherwise provided herein.
7. Title Warranties. Grantor warrants that Grantor has good and indefeasible fee simple title to and possession of the Easement Land and that it has good and lawful right to grant this Easement. Grantor represents that execution and delivery of this Agreement and performance of its obligations pursuant to this Agreement will not violate any agreement, instrument, order, judgment, decree, permit, approval, license, law, regulation or ordinance to which Grantor is a party or by which Grantor or Grantor's assets or the Grantor Property is bound or which otherwise affects the Grantor Property. Grantor shall indemnify, defend and hold Grantee and its successors and assigns harmless from and against all claims, damages, liabilities, losses, costs and expenses, including, without limitation, reasonable attorneys' fees arising from a breach of the representations, warranties, guarantees or covenants of Grantor contained in this Agreement.
8. Authority. The undersigned person executing this Agreement on behalf of Grantor represents and certifies that he or she has been fully empowered to execute and deliver this Agreement; that Grantor has full capacity to convey the Easement and other rights herein; and that all necessary action for the making of such conveyance has occurred. The undersigned person

executing this Agreement on behalf of Grantee represents and certifies that he or she has been fully empowered to execute and deliver this Agreement; and that all necessary action for the execution of this Agreement has occurred.

9. Notices. All notices, demands and requests required or permitted to be given under this Agreement must be in writing and addressed to the appropriate Party at the appropriate address as set forth below and shall be deemed given and received (i) when hand delivered to the intended recipient, by any means; (ii) three (3) business days after the same is deposited in the United States mails, with adequate postage prepaid, and sent by registered or certified mail, with return receipt requested; (iii) one (1) business day after the same is deposited with an overnight courier service of national or international reputation having a delivery area encompassing the address of the intended recipient, with the delivery charges prepaid; or (iv) when received via electronic mail at the intended recipient's email address set forth below (provided such email delivery and receipt is confirmed via return receipt of the noticing Party). The initial addresses of the parties shall be:

If to Grantor:	Colorado Southern Inc 6200 Estero Boulevard Fort Myers Beach, FL. 33931 Attn: XXXXXXXXXXXX Email: XXXXXXXXXXXX
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If to Grantee:	Town of Fort Myers Beach 2525 Estero Blvd. Fort Myers Beach, FL 33931 Attn: Mrs. Christy Cory Email: christy@fmbgov.com
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A Party may change its address, intended recipient party or email address by notice given in accordance with this Section.

10. Amendment and Termination. This Agreement may only be amended or terminated by a written agreement signed by the Parties.

11. Counterparts. This Agreement may be executed in one or more counterparts, each of which when executed shall be deemed an original, all of which together shall constitute one instrument.

12. Enforcement; Attorneys' Fees. In the event that any Party is required to commence any action or proceeding against the other in order to enforce or interpret the provisions hereof, the prevailing Party in such action shall be awarded, in addition to any amounts or relief otherwise awarded, all reasonable costs incurred in connection therewith, including attorneys' fees.

13. Severability. If any provision in this Agreement is held invalid, illegal, or unenforceable in any jurisdiction, the validity, legality, and enforceability of the remaining provisions of this Agreement shall not be impaired thereby.

14. Governing Law and Recordation. This Agreement shall be governed by the laws of the State of Florida.

15. Interpretation. Nothing contained herein is to be construed as creating a joint venture or partnership between Grantee and Grantor.

16. Headings. The Section headings are included only for convenience and shall not be construed to modify or affect the covenants, terms, or provisions of any Section.

17. No Third-Party Rights. Nothing contained in this Agreement shall create a contractual relationship with or duties, obligations or causes of action in favor of any third party.

18. Remedies Cumulative. The rights and remedies given in this Agreement and by law to a non-defaulting party shall be deemed cumulative, and the exercise of one of such remedies shall not operate to bar the exercise of any other rights and remedies reserved to a non-defaulting party under the provisions of this Agreement or given to a non-defaulting party by law.

19. No Waiver. One or more waivers of the breach of any provision of this Agreement by any party shall not be construed as a waiver of a subsequent breach of the same or any other provision, nor shall any delay or omission by a non-defaulting party to seek a remedy for any breach of this Agreement or to exercise the rights accruing to a non-defaulting party of its remedies and rights with respect to such breach.

20. **WAIVER OF JURY TRIAL.** EACH PARTY WAIVES ALL RIGHTS TO ANY TRIAL BY JURY IN ALL LITIGATION RELATING TO OR ARISING OUT OF THIS AGREEMENT.

21. Miscellaneous.

a. The Parties hereto covenant and agree that they will from time to time, upon the request of another Party, and without further consideration, execute, acknowledge, and deliver in proper form any further instruments, and take such other actions, as such Party may reasonably require in order to carry out the intent of this Agreement.

b. This Agreement is the final expression of the complete and exclusive agreement between the Parties with respect to the subject matter hereof.

c. As soon as reasonably practicable after the execution and acknowledgment hereof, the Parties shall cause this Agreement to be recorded in the Official Records of Lee County, Florida.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, this Stormwater Drainage Easement is entered into as of the date first set forth above.

GRANTOR:

Colorado Southern Inc

WITNESSES:

By: _____
Its: _____

Name: _____

Name: _____

STATE OF FLORIDA

)

)

ss.

COUNTY OF LEE

)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, by _____, of Estero Bay Hotel Company., a State of Florida corporation, on behalf of the corporation; who (check one) ☐ is personally known to me or ☐ produced a valid _____ driver's license as identification.

Print or Stamp Name: _____

Notary Public, State of Florida at Large

Commission No.: _____

My Commission Expires: _____

1. Requested Motion:

Meeting Date: December 6, 2021

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/DENYING VARIANCE 20210066 TO ALLOW AN ACCESSORY STRUCTURE – POOL- IN FRONT OF THE PRINCIPAL STRUCTURE AND WITHIN THE STREET SETBACK FOR THE PROPERTY LOCATED AT 6036/38 ESTERO BLVD; AND PROVIDING FOR AN EFFECTIVE DATE

Why the action is necessary:

An application has been submitted to reduce the street setback for a pool along Shelby Lane.

What the action accomplishes:

Approval of the application will permit the property owner to construct a pool closer to Shelby Lane than allowed by Table 34-3. Approval of this variance will also require the property owner to access their property from Estero Boulevard.

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

Resolution to be reviewed by
the Town Council

4. Submitter of Information:

5. Background:

Eran Epstein, the applicant for 6036/38 Estero Blvd, is requesting a variance from the Town's Land Development Code (LDC). LDC Table 34-3, establishes a minimum street setback in the RC zoning district of 25 feet. The applicant is requesting to reduce 25 feet street setback by 18 feet 11 inches along the Shelby Lane, resulting in a 6 feet 1 inch street setback to pool edge. The house was built in 1996. The current owners bought the house in 2021.

The lot is through-lot with a street on each end of the parcel. LDC Sec. 34-1174.(b)(8), on through lots, accessory uses, buildings, and structures may be placed closer to the street opposite the street that provides principal vehicular access than the principal building as long as the minimum setbacks for street setbacks are maintained. The property owner has been provided a driveway onto Estero during the Estero Boulevard redevelopment. This action has switched their front and primary access away from Shelby Lane. The proposed pool improvements will further that effort by closing any access to Shelby Lane and converting the area adjacent to Shelby Lane into their functioning rear yard.

Town staff have coordinated with Lee County and were informed that the driveway on Estero is conditional. The property owner needs to provide evidence that at least two cars can turn around on the site and pull out forward facing, not reverse, onto Estero Boulevard. Staff has incorporated similar conditions related to providing evidence and attempting to ensure that the maximum impervious surface ratio (67%) is maintained. This may require the property owner to remove existing concrete, pavement, or pavers in order to achieve a sufficient area to accomplish the Lee County driveway condition.

The LPA voted 5-0 to recommend approval with conditions, but also added conditions related to stormwater requirements in an effort to ensure that the proposed improvements do not make matters worse along Shelby Lane. The LPA recommended condition requires the property owner to provide evidence that post-development conditions are the same or better than pre-development (existing) conditions.

This application was continued from the October to the November LPA meeting due to the applicant not being present.

Attachments:

1. 21-65, Resolution 21-65 re 6036-38 Estero Blvd. Pool Variance(128457368.1)-C
2. VAR20210073 - 6036-38 Estero Blvd - Staff Report - TC
3. 9221117-Proposed Pool Plan - Final
4. 9221121-6036-38 estero application of public hearing
5. 9535083-Variance Supplement PH-B
6. 9221120-6036 survey

Financial Impact:

6. Alternative Action

Deny, Approve, Approve with conditions

7. Management Recommendations:

Approve with conditions

8. Recommended Approval:

Carl Benge, Assistant Community Development Director
Jason Green, Community Development Services
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk

Created/Initiated - 11/29/2021
Approved - 12/1/2021
Approved - 12/2/2021
Final Approval - 12/2/2021

RESOLUTION NUMBER 21-65

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/DENYING VARIANCE 20210066 TO ALLOW AN ACCESSORY STRUCTURE – POOL- IN FRONT OF THE PRINCIPAL STRUCTURE AND WITHIN THE STREET SETBACK FOR THE PROPERTY LOCATED AT 6036/38 ESTERO BLVD; AND PROVIDING FOR AN EFFECTIVE DATE

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

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

WHEREAS, applicant Eran Epstein is requesting a variance from Sec. 34-1174(b) of the Town of Fort Myers Beach Land Development Code (“LDC”), to allow a pool forward of the principal structure, and Table 34-3 of the LDC to allow the pool to encroach into the required 25 feet setback by 19 feet, resulting in approximately a 6 feet setback; and

WHEREAS, the STRAP number for the subject property is 33-46-24-W3-00600.0060 (“Property”); and

WHEREAS, the Property is in the “Boulevard” category of the Future Land Use Map of the Comprehensive Plan and the “Residential Conservation” zoning district of the Official Zoning Map of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was legally noticed and held before the Local Planning Agency (“LPA”) on November 17, 2021, and at said hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Section 34-87 of the LDC. The LPA voted 5-0 to recommend approval with conditions.

WHEREAS, on December 6, 2021 the Town Council held a duly noticed public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by Section 34-87 of the LDC; and

WHEREAS, the Town Council determined it is in the best interest of the Town to approve/deny the request.

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

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

Section 2. The Town Council determines the Applicant did/did not meet its burden of proof that the requested Variance does meet the requirements of the Town Comprehensive Plan and LDC and approving/denying the Variance is in the best interest of the Town. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties and public, the Town Council APPROVES/DENIES the Variances from Sec. 34-1174(b) of the LDC, to allow a pool forward of the principal structure, and from Table 34-3 of the LDC, to allow the pool to encroach into the street setback by 19 feet.

Section 3. In approving/denying the Variance, the Town Council makes the following findings and conclusions in accordance with the requirements of Sections 34-84 and 34-87 of the LDC:

- A. There are/are not exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request is/is not for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.
- B. The conditions justifying approval/denial of the variance are/are not the result of actions of the Applicant taken after the adoption of the regulation in question.
- C. The variance is/is not the minimum variance that will relieve the Applicant of an unreasonable burden caused by the application of the regulation(s) to the Property.
- D. The granting/denial of the variance will/will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- E. The conditions or circumstances on the Property are/are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

Section 4. If the Town Council approves the requested variance, the following conditions of approval are imposed on the Applicant and the Property:

- A. Approval of this variance does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
- B. A 10' Type B Buffer shall be installed along Shelby Lane with a reduction to six feet along the pool area. All buffers shall also be consistent with the site visibility triangle requirements of the LDC.
- C. The pool shall be constructed as an in-ground pool at existing grades. The approved location and variance to setbacks does not apply to any elevated pool or structures.

D. The site improvements are subject to the Town's maximum impervious surface requirement of 67% and no net increase greater than 500 square feet unless an Approved on-site stormwater management system is provided. The property owner is responsible for demonstrating that the site complies with this requirement, along with removing existing compacted soils that qualify as impervious surfaces in the rear yard if additional impervious surfaces are added to complete the Estero Boulevard driveway requirements and conditions of approval required by Lee County. The Shelby Lane ROW shall be restored.

E. The variances shall only apply to the pool as shown on the provided site plan. Alterations or substantial damage to the structure shall render their respective variance to be null and void.

F. Property must obtain Lee County approval for driveway ingress/egress before applying for permits through the Town of Fort Myers Beach.

G. New drainage must address the proposed alterations to the site by providing stormwater as found in Sec. 6-14 of the LDC, if applicable. The proposed drainage plan and support documents shall provide evidence that post-development conditions are the same or improved from the pre-development (existing) conditions.

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

Raymond P. Murphy, Mayor	_____
Rexann Hosafros, Vice Mayor	_____
Dan Allers	_____
Bill Veach	_____
Jim Atterholt	_____

[SIGNATURES ON FOLLOWING PAGE]

ADOPTED this 6th day of December 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Raymond P. Murphy, Mayor

ATTEST:

Amy Baker, Town Clerk

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

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of December 2021.



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Variance

CASE NUMBER: VAR20210073

CASE NAME: 6036/38 Estero Blvd, to allow accessory structure in front of principle structure and within the street setback.

LPA

HEARING DATE: November 17, 2021 at 1:30PM

STAFF

RECOMMENDATION: Approve with conditions

**PREPARED/
SUBMITTED BY:** Carl Benge/ Jason Green AICP

I. APPLICATION SUMMARY

Applicant/Owner: Eran Epstein

Request: The applicant is seeking a variance of 19 feet from Table 34-3 Street Setback, to allow a pool within six feet of Shelby Lane, and a variance from LDC Sec. 34-1174.(b) to allow an accessory structure in front of the principal structure.

Subject property: See attached site plan

Physical Address: 6036/38 Estero Blvd

STRAP #: 33-46-24-W3-00600.0060

FLU: Boulevard

Zoning: Residential Conservation (RC)

Adjacent zoning and land uses:

North:	INSTITUTIONAL (IN) Diocese of Venice
South:	RESIDENTIAL CONSERVATION (RC) Single-Family Houses
East:	RESIDENTIAL CONSERVATION (RC) Single-Family Houses
West:	RESIDENTIAL CONSERVATION (RC) Single-Family Houses

II. BACKGROUND AND ANALYSIS

Background:

Eran Epstein, the applicant for 6036/38 Estero Blvd, is requesting two variances from the Town's Land Development Code (LDC). First, the applicant is seeking a variance from LDC Sec. 34-1174.(b), to allow an accessory structure (pool) in front of the principal structure (home). Second, LDC Table 34-3, establishes a minimum street setback in the RC zoning district of 25 feet. The applicant is requesting to reduce 25 feet street setback by 18 feet 11 inches along the Shelby Lane, resulting in a 6 feet 1 inch street setback to pool edge. The house was built in 1996. The current owners bought the house in 2021.

Analysis:

The lot is through-lot with a street on each end of the parcel. LDC Sec. 34-1174.(b)(8), on through lots, accessory uses, buildings, and structures may be placed closer to the street opposite the street that provides principal vehicular access than the principal building as long as the minimum setbacks for streets setbacks are maintained. The property owner has been provided a driveway onto Estero during the Estero Boulevard redevelopment. This action has switched their front and primary access away from Shelby Lane. The proposed pool improvements will further that effort by closing any access to Shelby Lane and converting the area adjacent to Shelby Lane into their functioning rear yard.

Since the October meeting, Town staff has learned that Lee County staff conditionally approved the driveway on Estero Boulevard by requiring the property owner to provide evidence that they can turn around at least two vehicles in order to exit the property forward facing onto Estero Boulevard. This is to prevent backing out onto Estero Boulevard, which the County staff determined to be a safety hazard.

Neighborhood Compatibility:

In review of the aerial photography of the neighborhood, staff found some examples of properties with similar layouts as that found at 6036/38 Estero Blvd. Shelby Lane, the street from which the setback is measured from, is a low traffic area that will see little to no negative effects to neighboring properties.

Findings and Conclusions:

LDC Sec. 34-87 sets forth the required findings and conclusions for the approval of a variance:

- a. *That there **are**/are not exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is/**is not** for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.*

The property is a through lot, which means the lot has a 25 feet street setback on each side (front and back) of the property. The applicant's request includes locating the pool 6 feet 1 inch from the Shelby Lane setback. Adjusting the pool's orientation could add extra feet to the Shelby Lane setback. The proposed setback from Shelby Lane is consistent with typical rear yard setbacks. In addition, Shelby Lane has been occasionally referred to as an "alley" and under LDC Section 34-1174 (d)(1), properties not served by an alley require a five-foot setback for residential accessory structures. While this does not apply to pools, it is indicative of the flexibility provided by the LDC.

- b. *That the conditions justifying the variance are/**are not** the result of actions of the applicant taken after the adoption of the regulation in question.*

These conditions are not the result of owner actions. The principal structure (house) was built in 1996, just after the Town adopted regulation prohibiting accessory structures forward of the primary structure. The current property owners acquired the property in 2021. The lot is a through lot and has been since it was created. The property owner is attempting to create a rear yard consistent with adjacent neighbors.

- c. *That the variance granted **is**/is not the minimum variance that will relieve that applicant of an unreasonable burden caused by the application of the regulation in question to his property.*

Yes, the requested variance is the minimum to relieve the applicant of the code requirement. The variance is from the requirement that the pool be 25 feet from the street setback. The location of the house does not allow for a pool of any size to be located 25 feet or greater from Shelby Lane. The proposed plan includes the pool area, including minor landscaping modifications, are similarly setback as other pools in the neighborhood and meeting the setback required of typical rear yards.

- d. *That the granting of the variance will/**will not** be injurious to the neighborhood or otherwise detrimental to the public welfare; and*

The granting of this variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare. Staff has included a condition to provide a Type B buffer along Shelby Lane.

- e. *That the conditions or circumstances on the specific piece of property for which the variance is sought are/**are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.*

This variance request is not uncommon for Gulf side properties located on Estero Blvd. However, it is generally unusual for lots within the Town to be built with houses pushed to the rear. Modern regulations require greater setbacks. The gulf front through lots are typically unique in their layout.

III. RECOMMENDATION

Staff finds that the variance of 18 feet inches inch from the 25 feet street setback to allow a setback of six feet and one inch adjacent to Shelby Lane is consistent with the standards required by Sect. 34-87.

Therefore, staff recommends **APPROVAL WITH CONDITIONS** of VAR20210073, to allow a variance of 18 feet and 11 inches for the pool to be within the street setback of Shelby Lane and maintain a setback of six feet and one inch.

IV. CONDITIONS OF APPROVAL

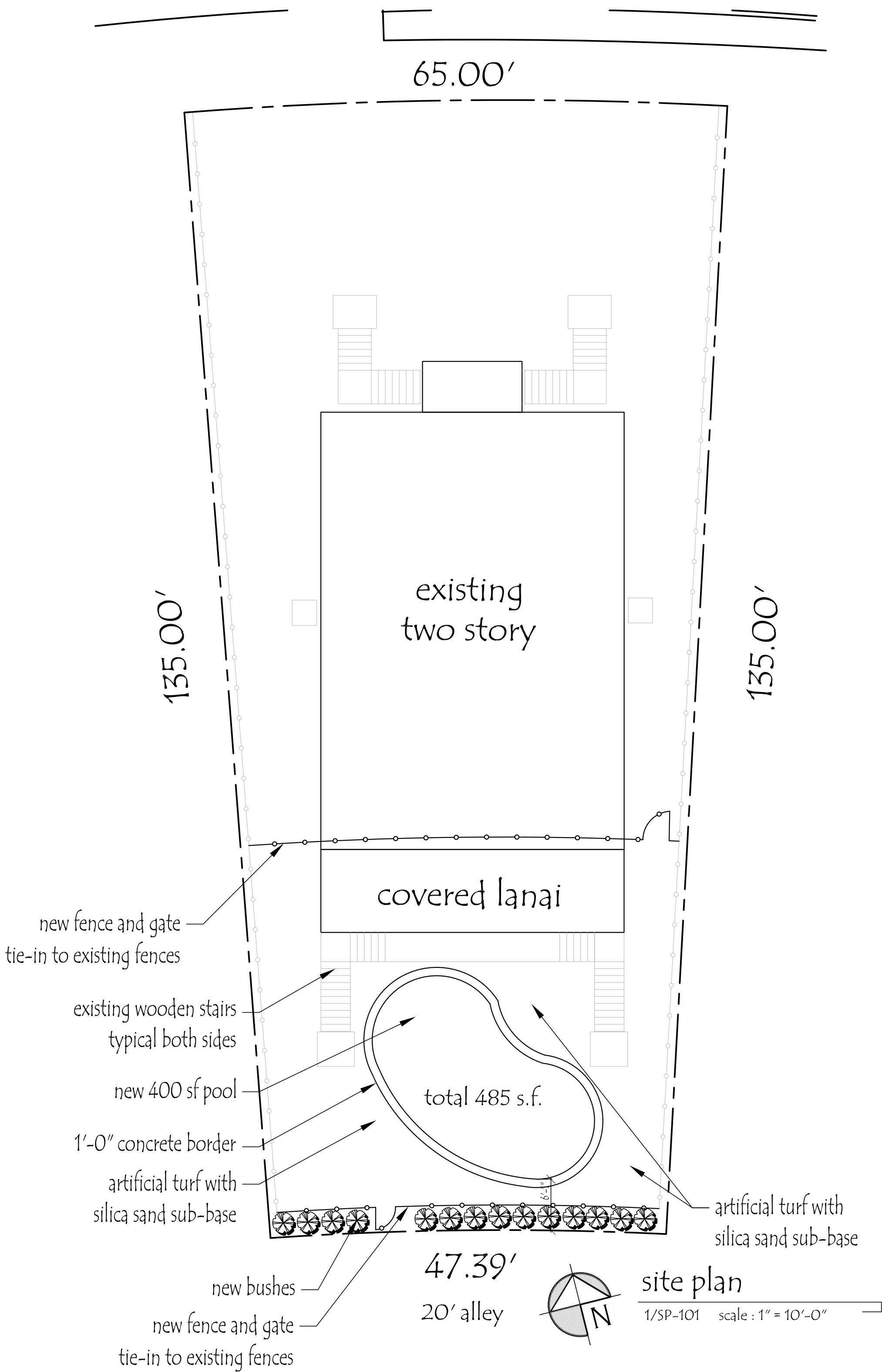
1. *Approval of this variance does not give the developer an undeniable right to permit approval. Development or redevelopment of the subject property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and Land Development Code in effect at the time of permit approval, except as specifically modified herein.*
2. *A 10' Type B Buffer shall be installed along Shelby Lane with a reduction to six feet along the pool area. All buffers shall also be consistent with the site visibility triangle requirements of the LDC.*
3. *The pool shall be constructed as an in-ground pool at existing grades. The approved location and variance to setbacks does not apply to any elevated pool or structures.*
4. *The site improvements are subject to the Town's maximum impervious surface requirement of 67% and no net increase greater than 500 square feet unless a on-site stormwater management system is provided. The property owner is responsible for demonstrating that the site complies with this requirement, along with removing existing compacted soils that qualify as impervious surfaces in the rear yard if additional impervious surfaces are added to complete the*

Estero Boulevard driveway requirements and conditions of approval required by Lee County.. Shelby Lane ROW shall be restored.

- 5. The variances shall only apply to the pool as shown on the provided site plan. Alterations or substantial damage to the structure shall render their respective variance to be null and void.*
- 6. Property must obtain Lee County approval for driveway ingress/egress before applying for permits through the Town of Fort Myers Beach.*
- 7. New drainage must address the proposed alterations to the site by providing stormwater as found in the Town's LDC Sec. 6-14, if applicable. The proposed drainage plan and support documents shall provide evidence that post-development conditions are the same or improved from the pre-development (existing) conditions.*

Staff Report Exhibits:

A – Site Plan





COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

This is a first part of a two-part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit a complete Public Hearing application with required, supplemental information, exhibits and documents to zoningpermits@fmbgov.com. Please do not submit the instructions at the end of the application.

Site Address: 6036 Estero Blvd
STRAP Number: 33-46-24-W3-00600.0060
Applicant: Pura Vida Vacation, LLC Phone: 239-230-2424
Contact Name: Eran Epstein Phone: 239-230-2424
Email: eran@escllc.com Fax: 212-656-1210
Current Zoning District: RC
Future Land Use Map (FLUM) Category: Mixed Residential
FLUM Density Range: _____ Platted Overlay: ☐ YES ☐ NO

ACTION REQUESTED

- ☐ Special Exception
- ☒ Variance
- ☐ Conventional Rezoning
- ☐ Planned Development ☐ Commercial ☐ Residential
- ☐ Master Concept Plan Extension
- ☐ Appeal of Administrative Action
- ☐ Vacation of Platted Right-of-way and Easement
- ☐ Other – cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

PH-A
PH-B
PH-C
PH-D
PH-E
PH-F
PH-G
attach on separate sheet

PART I - General Information

A. **Applicant***: Pura Vida Vacation, LLC Phone: 239-230-2424
**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.
Please see PART III to complete the appropriate Affidavit form for the type of applicant.*
Applicant Mailing Address: 8853 Stonebriar Drive, Clarence NY 14032
Email: eran@e2mcorp.com Fax: 212-656-1210
Contact Name: Eran Epstein Phone: 239-230-2424



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

- | | | |
|---|---|--|
| ☒ Owner* | ☐ Land Trust* | ☐ Partnership* |
| ☐ Corporation* | ☐ Association* | ☐ Condominium* |
| ☐ Subdivision* | ☐ Timeshare Condo* | ☐ Contract Purchaser* |
| ☐ Authorized Representative* | ☐ Other* (please indicate) _____ | |

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.
Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

C. Authorized Agent(s). Please list the name of Agent authorized to receive correspondence Agents

Name: Eran Epstein Phone: 239-230-2424
Address: 8853 Stonebriar Drive, Clarence NY 14032
Email: eran@e2mcorp.com Fax: 212-656-1210

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: _____ Phone: _____
Address: _____
Email: _____ Fax: _____

Name: _____ Phone: _____
Address: _____
Email: _____ Fax: _____

PART II - Nature of Request

Requested Action (each request requires a separate application)

- ☐ Special Exception
- ☒ Variance from LDC Section 34 - 638
- ☐ Conventional Rezoning from _____ to _____
- ☐ Planned Development
- ☐ Rezoning from _____ to ☐ Commercial PD ☐ Residential PD
- ☐ Amendment. List the project number: _____
- ☐ Extension/reinstatement of Master Concept Plan. List project number: _____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

☐ Appeal of Administrative Action

☐ Vacation

☐ Right-of-Way

☐ Easement

☒ Other. Please Explain: Setback Variance from section 34-638. 25 Foot setback
requirement from Shelby Lane. Prior Approval at 6041 Gulf Road which also abuts
Shelby Lane in the rear.

PART III – Waivers

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

Code Section: 34-638 Description: Setback
Reduce 25' Setback as previously approved at 6041 Gulf Road to permit a pool installation.

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV – Property Ownership (Single Owner)

☐ Single Owner (individual or husband and wife)

Name: _____ Phone: _____

Mailing Address: _____

Email: _____ Fax: _____

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, _____ swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;
All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

I have authorized the staff of the Town of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that

The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Signature

Printed Name

STATE OF _____ COUNTY OF _____

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

presence OR ____ online notarization, this ____ day of _____, 20____, by

_____, ☐ who is personally known to me OR ☐ who has produced

_____ as identification.

Notary Public Signature

PART V

Property Ownership (Multiple Owners)

☒ Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)

- ☒ Complete Disclosure of Interest Form (see below)
- ☒ Attach list of property owners as Exhibit 5-1
- ☐ Attach map showing property owners interests as Exhibit 5-2 (for multiple parcels)
- ☐ For condominiums and timeshares see Explanatory Notes Part V - Exhibit 5-3
- ☐ Letter of Opinion - Exhibit 5-4

DISCLOSURE OF OWNERSHIP INTEREST

If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address

Percentage Ownership



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address and Office	Percentage of Stock
Eran Epstein 8853 Stonebriar Drive, Clarence NY 14032 - Member	50%
Irina Epstein 8853 Stonebriar Drive, Clarence NY 14032 - Member	50%

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address	Percentage of Interest

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

Name and Address	Percentage of Ownership

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

Name, Address and Office	Percentage of Stock



COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING

Date of Contract: _____

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

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

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

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

_____ Signature	_____ Printed Name
--------------------	-----------------------

AFFIDAVIT

**APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.),
LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE**

I, Eran Epstein (name), as Member (title)
of Pura Vida Vacation, LLC (company), swear or affirm under oath, that I am the
owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.



COMMUNITY DEVELOPMENT DEPARTMENT

APPLICATION for PUBLIC HEARING

Pura Vida Vacation, LLC

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

Signature Eran Epstein

Eran Epstein

Typed or Printed Name

Member

Title

6/29/2021

Date

STATE OF New York COUNTY OF Erie

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence OR ☐ online notarization, this 12 day of July, 2021, by Eran Epstein ☐ who is personally known to me OR ☒ who has produced NYDL as identification.

Christa A Kenney
Notary Public Signature

CHRISTA A KENNEY
Notary Public, State of New York
Reg. No. 01KE8023824
Qualified in Niagara County
Commission Expires 4/26/2023

PART VI- Property Information

A. Legal Description:

STRAP: 33-46-24-W3-00600.0060

Property Address: 6036 Estero Blvd

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

☒ Yes. Property identified in subdivision: Estero Park

Book: 9 Page: 8 Unit: Block: Lot(s): 6

B. Boundary Survey:

☒ Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 6-2.

4/30/2021

Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

Page 7 of 11



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 56 feet
Depth (please provide an average width if irregular in shape) 135 feet
Frontage on street: 65 feet. Frontage on waterbody: 0 feet
Total land area: 7,560 ☐ acres ☒ square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

Across the street from the Church of Ascension.

☒ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

- ☒ There are no deed restrictions and/or covenants on the subject property.
☐ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 6-4.
☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

- ☒ Attach a list of surrounding property owners within 500 feet as Exhibit 6-6.
☒ Attach a map showing the surrounding property owners as Exhibit 6-7.
☒ Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

- | | |
|---|--|
| ☐ Low Density | ☐ Marina |
| ☒ Mixed Residential | ☐ Recreation |
| ☐ Boulevard | ☐ Wetlands |
| ☐ Pedestrian Commercial | ☐ Platted Overlay |



Case # _____

Date Received: _____

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-B

Additional Required Information for a Variance Application

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

Case Number:
Project Name:
Authorized Applicant:
LeePA STRAP Number:

Current Property Status:
Current Zoning:
Future Land Use Map (FLUM) Category:
Comp Plan Density: Platted Overlay? ☐ Yes ☐ No

Variance is requested from:

LDC Section Number

Title of Section or Subsection

Complete the narrative statements below for EACH variance requested.



Case # _____

Date Received: _____

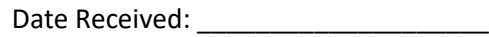
PART I
Narrative Statements

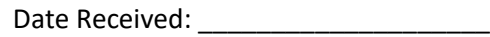
Request for variance from _____ (LDC Section number)

Explain the specific regulation contained in this section from which relief is sought:

Reasons for request

Explain why the variance is needed:

[illegible][illegible]

[illegible]

PART 2

Submittal Requirements

All applications for a variance must be submitted electronically through our Iworq portal - [iworq \(talktomycity.com\)](http://iworq.talktomycity.com)

Required Items

- Public Hearing Request Form
- Supplemental form PH-B
- Site Plan (to scale) including the current use of all existing structures on the site, and those on adjacent properties within 100 feet of the perimeter; and a clear illustration of the proposed variance
- Fee in the amount of \$1800.00 (residential)/Additional Variance \$500.00
- Variance (non-residential) \$2800.00/ Additional Variance \$700.00

Guide to filing PH-B Additional Required Information for a Variance Application

Cover page

Case Number will be inserted by Community Development staff.

Project Name must be the same as the name used on the Request for Public Hearing form.

Applicant must be the same as on the Request for Public Hearing form.

STRAP numbers must be the same as on the Request for Public Hearing form.

Current status of property must be the same as on the Request for Public Hearing form.

"Variance is requested from..." Provide the section number and title of each section of the Fort Myers Beach Land Development Code from which a variance is being sought.

Narrative statements

If the application is for multiple variances, complete all of the narrative statements for each variance that is requested.

Site plan

The site plan must show all existing structures on the site; all existing structures within 100 feet of the perimeter boundary of the site; and a clear illustration of the proposed variance.

LDC Section 34-87

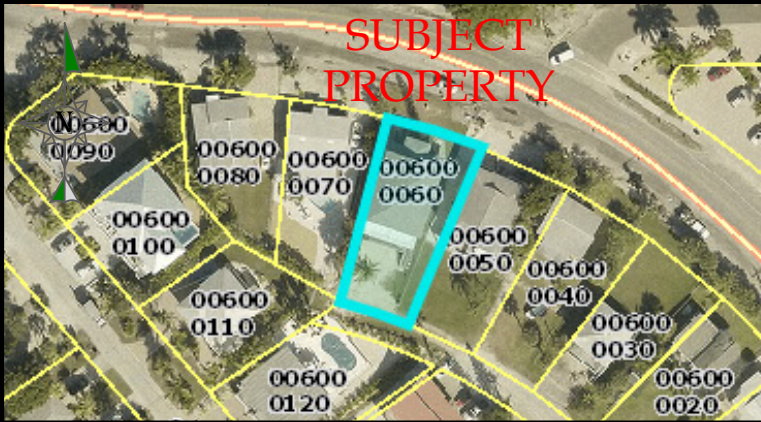
The guidelines for decision-making regarding a request for a variance are as follows:

1. Whether there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or whether the request is for a *de minimis* variance under circumstances or conditions where rigid compliance is not necessary to protect public policy;
2. Whether the exceptional or extraordinary conditions justifying the variance are or are not the result of actions of the applicant taken after the adoption of the regulation in question;
3. Whether the requested variance is the minimum variance to relieve the applicant of an unreasonable burden caused by the application of the regulation in question;
4. Whether granting the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare;
5. Whether the conditions or circumstances of the specific piece of property or the intended use of the property for which the variance is sought are of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.



GEOMETRIC SURVEYING INC.

2804 DEL PRADO BLVD S, SUITE 205
CAPE CORAL, FL 33904
ASSISTANCE@GEOMETRICSURVEYING.COM
(239)-540-6257
(239)-471-2237



LOCATION SKETCH
SCALE = N.T.S.



VIEW OF SUBJECT PROPERTY
6036/38 ESTERO BLVD, FORT MYERS, FLORIDA 33931

ABBREVIATIONS

A	= ARC.	ELEV.	= ELEVATION	PVMT.	= PAVEMENT	T	= TANGENT
A/C	= AIR CONDITIONER PAD	ENCR.	= ENCROACHMENT	PL	= PLANTER	TB	= TELEPHONE BOOTH
A.E.	= ANCHOR EASEMENT	F.H.	= FIRE HYDRANT	P.B.	= PLAT BOOK	T.B.M.	= TEMPORARY BENCHMARK
A.R.	= ALUMINUM ROOF	F.I.P.	= FOUND IRON PIPE	P.G.	= PAGE	T.U.E.	= TECHNOLOGY UTILITY EASEMENT
A.S.	= ALUMINUM SHED	F.I.R.	= FOUND IRON ROD	P.L.	= PROPERTY LINE	TSB	= TRAFFIC SIGNAL BOX
ASPH.	= ASPHALT	F.F.E.	= FINISHED FLOOR ELEVATION	P.C.C.	= POINT OF COMPOUND CURVATURE	T.S.P.	= TRAFFIC SIGNAL POLE
B.C.	= BLOCK CORNER	F.N.D.	= FOUND NAIL & DISK	P.C.P.	= PERMANENT CONTROL POINT	TWP	= TOWNSHIP
BLDG.	= BUILDING	FT.	= FEET	P.C.	= POINT OF CURVATURE	UTIL.	= UTILITY
B.M.	= BENCH MARK	NFIP.	= NATIONAL FLOOD INSURANCE PROGRAM	P.O.T.	= POINT OF TANGENCY	U.E.	= UTILITY EASEMENT
B.O.B.	= BASIS OF BEARING	F.N.	= FOUND NAIL	P.O.C.	= POINT OF COMMENCEMENT	U.P.	= UTILITY POLE
B.S.L.	= BUILDING SETBACK LINE	H.	= HIGH OR (HEIGHT)	P.O.B.	= POINT OF BEGINNING	W.M.	= WATER METER
(C)	= CALCULATED	IN.&EG.	= INGRESS AND EGRESS EASEMENT	P.R.C.	= POINT OF REVERSE CURVATURE	W.F.	= WOOD FENCE
C.B.	= CATCH BASIN	I.C.V.	= IRRIGATION CONTROL VALVE	P.W.Y.	= PARKWAY	W.P.	= WOOD PORCH
C.B.S.	= CONCRETE BLOCK STUCCO	ID?	= IDENTIFICATION ILLEGIBLE	P.R.M.	= PERMANENT REFERENCE MONUMENT	W.R.	= WOOD ROOF
C.B.W.	= CONCRETE BLOCK WALL	I.F.	= IRON FENCE	P.S.M.	= PROFESSIONAL SURVEYOR & MAPPER	W.V.	= WATER VALVE
CH.	= CHORD	L.B.	= LICENSED BUSINESS	P.L.S.	= PROFESSIONAL LAND SURVEYOR	M/L	= MONUMENT LINE
CH.B.	= CHORD BEARING	L.P.	= LIGHT POLE	P.P.	= POWER POLE	CL	= CENTER LINE
CL.	= CLEAR	L.F.E.	= LOWEST FLOOR ELEVATION	P.P.S.	= POOL PUMP SLAB	Δ	= DELTA
C.O.	= CLEAN OUT	L.M.E.	= LAKE MAINTENANCE EASEMENT	P.U.E.	= PUBLIC UTILITY EASEMENT		
C.L.F.	= CHAIN LINK FENCE	I	= MINUTES	(R)	= RECORD		
C.M.E.	= CANAL MAINTENANCE EASEMENT	(M)	= MEASURED	R.R.	= RAIL ROAD		
CONC.	= CONCRETE	M.B.	= MAIL BOX	RES.	= RESIDENCE		
C.U.P.	= CONCRETE UTILITY POLE	M.E.	= MAINTENANCE EASEMENT	R/W	= RIGHT-OF-WAY		
C.P.	= CONCRETE PORCH	M.H.	= MAINHOLE	RAD.	= RADIUS OR RADIAL		
C.S.	= CONCRETE SLAB	N.A.P.	= NOT A PART OF	RGE.	= RANGE		
C.W.	= CONCRETE WALK	NAVD	= NORTH AMERICAN VERTICAL DATUM 1988	R.O.E.	= ROOF OVERHANG EASEMENT		
D.E.	= DRAINAGE EASEMENT	NGVD	= NATIONAL GEODETIC VERTICAL DATUM 1929	SEC.	= SECTION		
D.H.	= DRILL HOLE	NO ID	= NO IDENTIFICATION	STY.	= STORY		
D.M.E.	= DRAINAGE MAINTENANCE EASEMENT	N.T.S.	= NOT TO SCALE	SWK.	= SIDEWALK		
DRIVE	= DRIVEWAY	# OR NO.	= NUMBER	S.I.R.	= SET IRON ROD		
o	= DEGREES	O/S	= OFFSET	S.I.P.	= SET IRON PIPE		
EB	= ELECTRIC BOX	O.H.	= OVERHEAD	S.N.D.	= SET NAIL & DISK		
E.T.P.	= ELECTRIC TRANSFORMER PAD	O.H.L.	= OVERHEAD UTILITY LINES	S	= SOUTH		
		O.R.B.	= OFFICIAL RECORDS BOOK	S.P.	= SCREENED PORCH		
		O.V.H.	= OVERHANG	S.V.	= SEWER VALVE		
				"	= SECONDS		

LEGEND

	= OVERHEAD UTILITY LINES
	= CENTERLINE
	= CONCRETE BLOCK STUCCO WALL
	= CHAIN LINK FENCE
	= IRON FENCE
	= WOOD FENCE
	= WIRE FENCE
	= BUILDING SETBACK LINE
	= UTILITY EASEMENT
	= LIMITED ACCESS R/W
	= RGE, TWP, SEC. 1/4 SEC LINE
	= NON-VEHICULAR
	= 0.00' ACCESS R/W
	= EXISTING ELEVATIONS

SURVEYOR NOTES :

- THIS SURVEY IS TO BE USED EXCLUSIVELY AS AN AID TO OBTAIN TITLE INSURANCE, NO OTHER WARRANTIES ARE HEREBY EXTENDED.
- THERE MAY BE EASEMENTS RECORDED IN THE PUBLIC RECORDS NOT SHOWN ON THIS SURVEY.
- EXAMINATIONS OF THE ABSTRACT OF TITLE WILL HAVE TO BE MADE TO DETERMINE RECORDED INSTRUMENTS, IF ANY, AFFECTING THE PROPERTY.
- THIS SURVEY MAY BE SUBJECT TO DEDICATIONS, LIMITATIONS, RESTRICTIONS, RESERVATIONS, ENCUMBRANCES OR EASEMENTS OF RECORD THE SAME THAT MAY NOT BE NOTED OR DEPICTED HEREON.
- LEGAL DESCRIPTIONS PROVIDED BY CLIENT OR ATTESTING TITLE COMPANY.
- BOUNDARY SURVEY MEANS A DRAWING AND/ OR A GRAPHIC REPRESENTATION OF THE SURVEY WORK PERFORMED IN THE FIELD, COULD BE DRAWN AT A SHOWN SCALE AND/OR NOT TO SCALE; THE WALLS OR FENCES MAY BE EXAGGERATED FOR CLARITY PURPOSES.
- EASEMENTS AS SHOWN ARE PER PLAT, UNLESS NOTED OR DEPICTED OTHERWISE.
- THE TERM "ENCROACHMENT" REFERS TO ABOVE GROUND INTRUSIONS OF IMPROVEMENTS ONTO SUBJECT PROPERTY FROM ADJOINERS PROPERTY OR ONTO ADJOINERS PROPERTY FROM SUBJECT PROPERTY.
- ARCHITECTS AND ENGINEERS SHALL VERIFY ZONING REGULATIONS, RESTRICTIONS, SETBACKS AND WILL BE RESPONSIBLE FOR SUBMITTING PLANS WITH CORRECT INFORMATION TO BUILDING AND ZONING OFFICIALS OR ANY OTHER AUTHORITIES FOR APPROVAL OF PLANS FOR NEW CONSTRUCTION. THEY WILL ALSO BE RESPONSIBLE FOR SUBMITTING PLANS WITH CORRECTPROPOSED BUILDING HEIGHTS AND PROPOSED FINISHED FLOOR ELEVATION WITH DATUM FOR NEW BUILDINGS TO THE PROPER AUTHORITIES IN NEW CONSTRUCTION.
- UNLESS OTHERWISE SHOWN RECORD AND MEASURED CALLS ARE IN SUBSTANTIAL AGREEMENT.
- UNDERGROUND UTILITIES ARE NOT DEPICTED HEREON
- UNLESS OTHERWISE NOTED, THIS FIRM HAS NOT ATTEMPTED TO LOCATE UNDERGROUND FOOTINGS AND/OR FOUNDATIONS.
- FENCE OWNERSHIP NOT DETERMINED.
- THIS PLAN OF SURVEY, HAS BEEN PREPARED FOR THE EXCLUSIVE USE OF THE ENTITIES NAMED HEREON, THE CERTIFICATE DOES NOT EXTEND TO ANY UNNAMED PARTY.
- FENCE TIES ARE TO CENTERLINE OF THE SAME.
- WALL TIES ARE TO THE FACE OF THE SAME.

FLOOD ZONE INFORMATION:

THE NFIP FLOOD MAPS HAVE DESIGNATED THE HEREIN DESCRIBED LOT TO BE SITUATED IN:
FLOOD ZONE: "AE"
BASE FLOOD ELEVATION: 13.00 FT.
COMMUNITY: 120673
PANEL: 0566
SUFFIX: F
DATE OF FIRM: 08/28/2008
THE SUBJECT PROPERTY LIES IN A SPECIAL FLOOD HAZARD AREA.

SURVEYOR'S CERTIFICATION:

THEREBY CERTIFY: THAT THE SKETCH OF THIS BOUNDARY SURVEY WAS PREPARED UNDER MY SUPERVISION AND THAT IT MEETS THE STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS & MAPPERS IN CHAPTER 5J-17.050.052 OF THE FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472 OF THE FLORIDA STATUTES AND THAT THE SKETCH HEREON IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

BY: MIGUEL J. GARAY 03/25/2021
(DATE OF FIELDWORK)

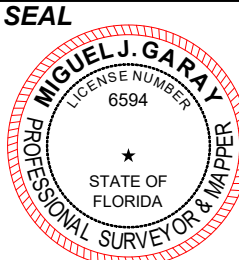
PROFESSIONAL SURVEYOR AND MAPPER LS# 6594 STATE OF FLORIDA
(NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER).

REVISED ON: _____

REVISED ON: _____

DRAWN BY:	EMV
FIELD DATE:	03/25/2021
SURVEY NO:	21-00299
SHEET:	1 OF 2

THIS PAGE IS NOT VALID WITHOUT ALL OTHERS



L.S.#6594 L.B.#8203



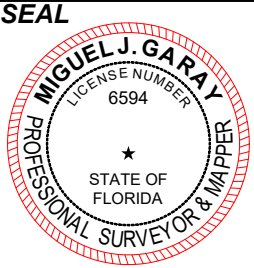
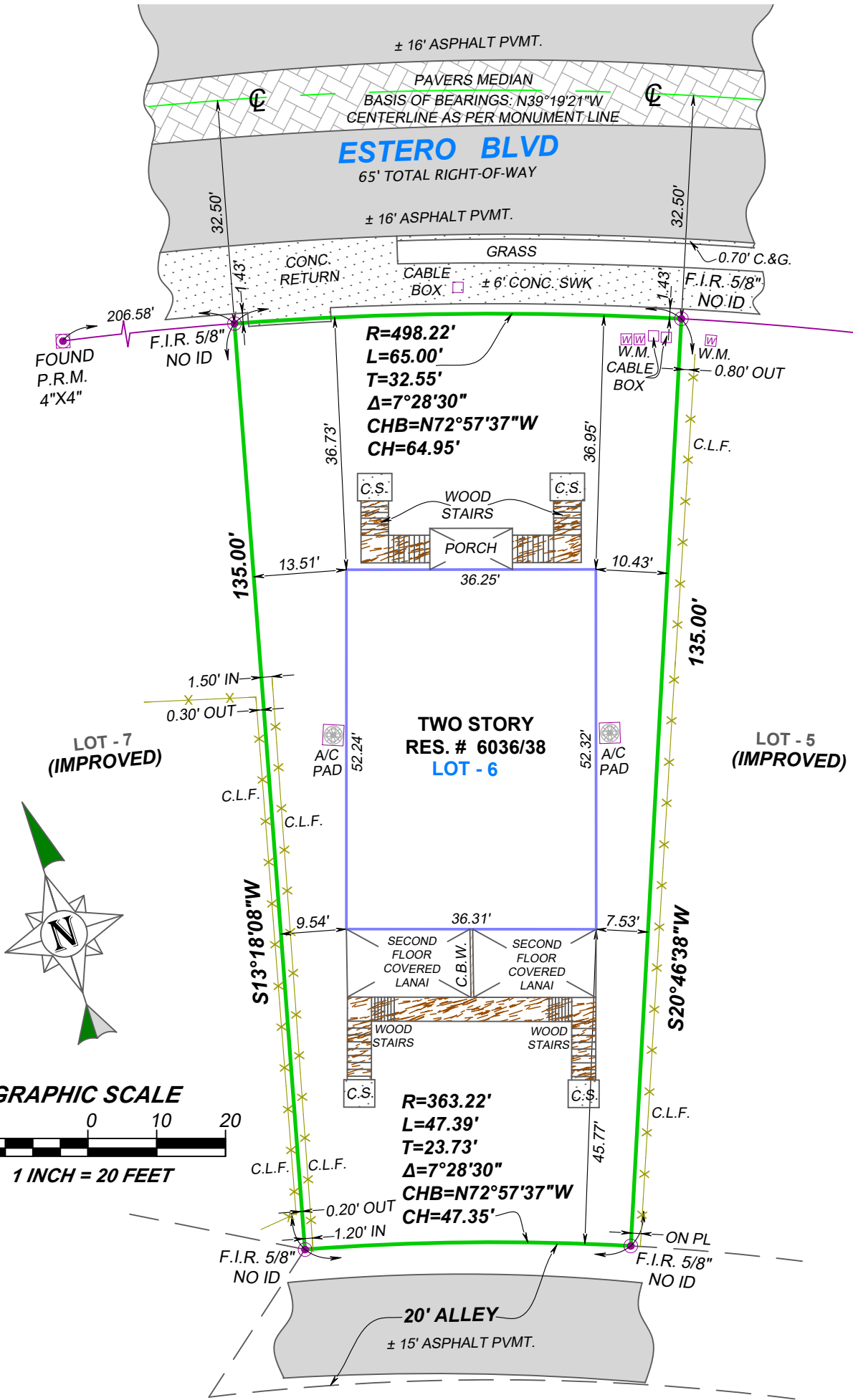
GEOMETRIC SURVEYING INC.

2804 DEL PRADO BLVD S, SUITE 205
CAPE CORAL, FL 33904
ASSISTANCE@GEOMETRICSURVEYING.COM
(239)-540-6257
(239)-471-2237



MAP OF BOUNDARY SURVEY

6036/38 ESTERO BLVD, FORT MYERS, FLORIDA 33931



LEGAL DESCRIPTION:
LOT 6 OF THAT CERTAIN SUBDIVISION KNOWN AS ESTERO PARK, ACCORDING TO THE MAP OR PLAT THEREOF ON FILE AND RECORDED IN PLAT BOOK 9, PAGE 8, PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

CERTIFICATION:
ERAN EPSTEIN AND IRINA EPSTEIN
SANIBEL CAPTIVA COMMUNITY BANK
OLD REPUBLIC NATIONAL TITLE INSURANCE
SUN NATIONAL TITLE COMPANY

THIS PAGE IS NOT VALID WITHOUT ALL OTHERS

DRAWN BY:	EMV
FIELD DATE:	03/25/2021
SURVEY NO:	21-00299
SHEET:	2 OF 2

1. Requested Motion:

Meeting Date: December 6, 2021

Adopt Resolution 21-64, approving Supplemental Task Authorization #17 with Tetra Tech Inc. for construction inspection services and construction administration for the downtown sidewalks project in the not to exceed amount of \$73,640 and authorizing the Town Manager to execute the contract documents.

Why the action is necessary:

To task Tetra Tech Inc. for Construction Engineering Inspection and Construction Administration services for the downtown sidewalks project.

What the action accomplishes:

Authorizes the Town Manager to execute the contract documents.

2. Agenda:

ADMINISTRATIVE AGENDA

3. Requirement/Purpose:

Other

4. Submitter of Information:

Chelsea O'Riley, Public Works
Director

5. Background:

The total contract for Mitchell & Stark to do all of the downtown sidewalks including lighting is a not to exceed amount of \$914,133.75. This contract is \$73,640 which is roughly 8% of the total contract price. CEI typically runs north of 10%.

Attachments:

1. 21-64, Resolution 21-64 re Allocation of Impact Fees for CEI and CA Services of Downtown Sidewalks Project(128455213.1)-C
2. STA 17-North Estero Phase 2 Streetscape CA and CEI-rev

Financial Impact:

\$73,640 from Road Impact Fees

6. Alternative Action

Do not approve.

7. Management Recommendations:

8. Recommended Approval:

Chelsea O'Riley, Public Works Director
Chelsea O'Riley, Public Works Director
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 11/16/2021
Approved - 11/16/2021
Approved - 12/2/2021
Approved - 12/2/2021
Final Approval - 12/2/2021

RESOLUTION NUMBER 21-64

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROPRIATING AND ALLOCATING ROAD IMPACT FEE REVENUE FOR CONSTRUCTION ENGINEERING INSPECTION AND CONSTRUCTION ADMINISTRATION SERVICES FOR THE CONSTRUCTION OF NEW SIDEWALKS IN THE DOWNTOWN ZONING DISTRICT, APPROVING AUTHORIZING THE TOWN MANAGER TO EXECUTE CONTRACT DOCUMENTS AS NECESSARY.

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

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

WHEREAS, the Town collects road impact fees to be utilized for new construction of infrastructure such as sidewalks; and

WHEREAS, the Town Council previously approved and allocated road impact fee funding in the amount of \$910,300.00 for new sidewalks to be installed in the Downtown Zoning District; and

WHEREAS, the Town Council approves and allocates an additional \$73,640.00 in road impact fee funding for Construction Engineering Inspection and Construction Administration (“CEI Services”) by Tetra Tech, Inc., for new sidewalks to be installed in the Downtown Zoning District (“Project”); and

WHEREAS, Tetra Tech, Inc. is currently under a continuing services contract for professional engineering services with the Town (“Contract”); and

WHEREAS, it is in the best interest of the Town, its business owners, property owners, residents, and visitors to issue a Supplemental Task Authorization (“STA”) to Tetra Tech, Inc., to provide CEI Services for the Project.

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

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

Section 2. The Town Council approves and allocates an additional \$73,640.00 in road impact fee funding for CEI Services by Tetra Tech, Inc., for the Project.

Section 3. The Town Manager is authorized to execute the STA for CEI Services by Tetra Tech, Inc., for the Project and expend allocated and budgeted funds on behalf of the Town.

Section 4. This Resolution shall become effective upon adoption by the Town Council.

The forgoing Resolution was adopted by the Town Council upon a motion by _____ and seconded by _____, and upon being put on a roll call vote, the results was as follows:

Raymond P. Murphy, Mayor	_____
Rexann Hosafros, Vice Mayor	_____
Dan Allers, Council Member	_____
Jim Atterholt, Council Member	_____
Bill Veach, Council Member	_____

ADOPTED this 6th day of December 2021 by the Town Council of the Town of Fort Myers Beach, Florida

TOWN OF FORT MYERS BEACH

Raymond P. Murphy, Mayor

ATTEST:

Amy Baker, Town Clerk

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

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of _____, 2021

**TOWN OF FORT MYERS BEACH SERVICE AGREEMENT
SUPPLEMENTAL TASK AUTHORIZATION**

X Supplemental Task Authorization

NO.: 17

CONTRACT/PROJECT NAME: North Estero Phase 2 Sidewalk and Lighting Construction

CONSULTANT: Tetra Tech

PROJECT NO.: _____

SOLICIT NO.: 20-22-AD

CONTRACT NO.: 20-22-AD

REQUESTED BY: Chelsea O'Riley, PW Director

DATE OF REQUEST: 11/12/21

PURCHASE ORDER NUMBER: _____

Upon the completion and execution of this Supplemental Task Authorization by both parties, the Consultant/Provider is authorized to and shall proceed with the following:

EXHIBIT "A" SCOPE OF PROFESSIONAL SERVICE: DATED: 11/12/21

EXHIBIT "B" COMPENSATION & METHOD OF PAYMENT: DATED: 11/12/21

EXHIBIT "C" TIME AND SCHEDULE OF PERFORMANCE: DATED: 11/12/21

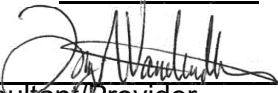
EXHIBIT "D" CONSULTANT'S/PROVIDER'S ASSOCIATED
SUB-CONSULTANT(S)/SUB-CONTRACTORS: DATED: 11/12/21

It is understood and agreed that the acceptance of this modification by the
CONSULTANT/PROVIDER constitutes an accord and satisfaction.

RECOMMENDED:

By: _____ Date: _____ By: _____ Date: _____
Department Director Contracts Manager

ACCEPTED: Tetra Tech

By:  11/16/21
Consultant/Provider Date

TOWN APPROVAL:

By: _____ Date: _____
Town Manager

Date to Proceed: _____

Cost of STA: \$ 73,640

Completion Due Date: _____

EXHIBIT A

SCOPE OF PROFESSIONAL SERVICES

NORTH ESTERO PHASE 2 SIDEWALK AND LIGHTING CONSTRUCTION

Overview

STA NO. 17: North Estero Phase 2 Sidewalk and Lighting Construction

The following services will be provided by Tetra Tech:

The Town of Fort Myers Beach (TOWN) previously approved professional services related to the addition of sidewalks and lighting for the Phase 2 Part 1 North Estero Side Streets – Water and Stormwater Improvements Project. Additional services related to the project are required. Areas designated as North Estero Phase 2 Part 1 consist of the following:

Part 1:

- First Street – 245 LF +/-
- Second Street – 385 LF +/-
- Third Street – 456 LF +/-
- Fifth Street – 675 LF +/-
- Crescent Street – 1,290 LF +/-

The work related to this scope of work will commence December 2021 and is anticipated for completion in February 2022.

Additional services necessary for the construction time are proposed for the duration of the project. The additional services are outlined below.

Scope of Services:

Task 1 – Construction Management

The CONSULTANT will assist the TOWN with Construction Administration and shall complete the following tasks based on a construction duration of 90 days (3 months) to final completion of Part 1. If construction is extended beyond the projected 3-month period, additional construction management services will be required.

- a. Attend progress and specially scheduled meetings throughout progress of the project. Up to 6 progress meetings will be held. CONSULTANT will be responsible for preparing and distributing meeting minutes.
- b. Make site visits to the construction site at intervals appropriate to the various stages of construction in order to observe the progress and quality of the Work. These will be scheduled during critical points during the construction of the project and will be determined based upon the Contractor's schedule. It is anticipated that 9 site visits with an average duration of approximately 2 hours will be required. These site visits

- will be to observe the progress and quality of the construction and its general conformance to the Contract Documents.
- c. Review shop drawings and other required Contractor submittals to determine conformance with the design concepts of the project and compliance with the requirements provided in the Contract Documents. Shop drawings will be reviewed up to two (2) times per submittal with additional review fees to be paid to CONSULTANT by the Contractor through the TOWN. (5) submittals are anticipated to be received for review.
 - d. Review requests for information (RFIs), provide interpretation of construction documents, and issue written clarifications or interpretations.
 - e. Assist TOWN with development of and approval of Change Orders required due to unforeseen conditions.
 - f. Review the Contractor's applications for payment and the accompanying data and schedules, determine the amounts owed to the Contractor, and advise the TOWN of the recommended payments to the Contractor.
 - g. Upon written request by the Contractor, conduct a substantial completion inspection of the project with the TOWN and distribute a punch list of observed deficiencies to be completed by the Contractor prior to the final completion date. The project will be certified substantially complete only if the work is sufficiently complete in accordance with the contract documents, so that the work can be utilized for the purposes for which it is intended.
 - h. Upon written request by Contractor, conduct a final completion inspection of the Project with the TOWN to determine if Work is finally complete or compile and distribute a punch list of items to be addressed. Upon written request by Contractor, conduct a re-inspection to confirm that final completion punch list items have been addressed and subsequently provide a final completion certification to the TOWN and recommend that the TOWN make final payment to the Contractor.
 - i. Review the Contractor's as-built submittals monthly for adequacy and review listing of deviations from the construction permit and approved construction documents. Prepare record drawings for TOWN's use from information provided by the Contractor delineating the location, and elevation of all facilities constructed. Provide the TOWN with one (1) CD-ROM electronic file of record drawings in PDF format and three (3) sets of prints of the record drawings for each construction contract.

Task 2 - Construction Engineering Inspection (CEI)

Upon commencing the construction phase, CONSULTANT will provide construction engineering inspection (CEI) services. Our scope of services is based on utilizing one (1) Resident Project Representative (RPR) as needed during the construction activity phases based on a 3-month construction period (60 work days) and 10 hours per day of inspection for a total of 600 hours. The RPR is to perform the following:

- a. RPR is to assist the TOWN in observing progress and quality of the Work.
- b. Through such additional observations of Contractor's work in progress and field checks of materials and equipment by the RPR, CONSULTANT shall endeavor to provide further protection for the TOWN against defects and deficiencies in the Work. However, CONSULTANT shall not, as a result of such observations of Contractor's work in progress, supervise, direct, or have control over the Contractor's Work nor shall CONSULTANT have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected by Contractor, for safety precautions and programs incident to the Contractor's work in progress, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's performing and furnishing the Work, or responsibility of

construction for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

- c. The duties and responsibilities of the RPR is limited to those specified within this scope of services and in the Contract Documents, and are further limited and described as follows:
 - 1. General: RPR to act as TOWN's agent at the Site, will act as directed by and under the supervision of TOWN, and will confer with the TOWN regarding RPR's actions. RPR's dealings in matters pertaining to the Contractor's work in progress shall in general be with the TOWN. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor.
 - 2. Schedules: Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and provide comments concerning acceptability.
 - 3. Conferences and Meetings: Attend meetings with Contractor, such as progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
- d. Liaison:
 - 1. Assist in serving as the TOWN's liaison with Contractor when Contractor's operations affect the TOWN's on-site operations.
 - 2. Assist in obtaining from the TOWN additional details or information, when required for proper execution of the Work.
- e. Review of Work and Rejection of Defective Work:
 - 1. Conduct on-site observations of Contractor's work in progress to assist in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - 2. Report to TOWN whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise TOWN of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
- f. Inspections, Tests, and System Startups:
 - 1. Consult with TOWN in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
 - 2. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate TOWN personnel, and that Contractor maintains adequate records thereof.
 - 3. Observe, record, and report to TOWN appropriate details relative to the test procedures and systems startups.
 - 4. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to TOWN.
- g. Records:
 - 1. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to TOWN.

2. Take photos daily of the project site(s) and work progress and provide electronically to TOWN.
 3. Record names, addresses and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
 4. Maintain records for use in preparing Project documentation.
 5. Upon completion of the Work, furnish original set of all CEI related project documentation to TOWN.
- h. Payment Requests: Review draft Applications for Payment in the field with Contractor for the purpose of confirming quantities in advance of Contractor forwarding final application to the TOWN.
- i. Completion:
1. Before TOWN issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.
 2. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public agencies having jurisdiction over the Work.
 3. Participate in a final inspection in the company of the TOWN, and Contractor and prepare a final list of items to be completed or corrected.
 4. Observe whether all items on final list have been completed or corrected and make recommendations to TOWN concerning acceptance and issuance of the Notice of Acceptability of the Work.
- j. RPR shall not:
1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
 2. Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.
 3. Advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.
 4. Advise on, issue directions regarding, or assume control over safety precautions and programs in connection with the activities or operations of the TOWN or Contractor.
 5. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by TOWN.

Total Cost (of Job): \$73,640.00

EXHIBIT BDate: November 12, 2021

COMPENSATION AND METHOD OF PAYMENT FOR
NORTH ESTERO PHASE 2 SIDEWALK AND LIGHTING CONSTRUCTION

Section 1. BASIC SERVICES/TASK(S)

The TOWN shall compensate the CONSULTANT for providing and performing the Task(s) set forth and enumerated in EXHIBIT "A", entitled "SCOPE OF PROFESSIONAL SERVICES", as follows:

NOTE: A Lump Sum (L.S.) or Not-to-Exceed (N.T.E.) amount of compensation to be paid the CONSULTANT should be established and set forth below for each task or sub-task described and authorized in Exhibit "A". In accordance with Agreement Article 5.02(2) "Method of Payment", tasks to be paid on a Work-in-Progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (W.I.P.P.)
#1	Construction Management	\$13,640.00	NTE	WIPP
#2	Construction Engineering Inspection	\$60,000.00	NTE	WIPP
TOTAL (Unless list is continued on next page)		\$73,640.00	NTE	

Section 2. ADDITIONAL SERVICES

The TOWN shall compensate the CONSULTANT for such ADDITIONAL SERVICES as are requested and authorized in writing for such amounts or on such a basis as may be mutually agreed to in writing by both parties to this Agreement. The basis and/or amount of compensation to be paid the CONSULTANT for ADDITIONAL SERVICES requested and authorized in writing by the TOWN shall be as set forth in Article 4 of this Agreement.

Should it be mutually agreed to base compensation for ADDITIONAL SERVICES on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained in ATTACHMENT NO. 1 hereto dated November 12, 2021, entitled "CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE".

Section 3. REIMBURSABLE EXPENSES AND COSTS

When the CONSULTANT'S compensation and method of payment is based on an hourly rate for professional and/or technical personnel, the CONSULTANT shall, in addition to such hourly rates as are set forth in Attachment No. 1 hereto, be entitled to reimbursement of out-of-pocket, non-personnel expenses and costs as set forth in ATTACHMENT NO. 2 hereto November 12, 2021 entitled "NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS".

ATTACHMENT NO. 1 TO EXHIBIT B

Date: November 12, 2021

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE FOR NORTH
ESTERO PHASE 2 SIDEWALK AND LIGHTING CONSTRUCTION

Consultant or Sub-consultant Name: Tetra Tech
(A separate Attachment No. 1 should be included for each Sub-Consultant)

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate	(3) Multiplier**	(4) Hourly Rate To Be Charged (Column 2x3)
Standard Rate Schedule As Included with Proposal			

*NOTE: Direct Payroll hourly rate means the actual gross hourly wage paid.

**NOTE: Indicate applicable multiplier for indirect personnel costs, general administrative & overhead costs, and profit.

***NOTE: A separate personnel hourly rate schedule should also be attached for each Sub-Consultant listed in Exhibit "D".

ATTACHMENT NO. 2 TO EXHIBIT B

Date: November 12, 2021

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS FOR NORTH ESTERO
PHASE 2 SIDEWALK AND LIGHTING CONSTRUCTION

CONSULTANT OR SUB-CONSULTANT NAME: Tetra Tech
(A separate Attachment No. 2 should be included for each Sub-Consultant)

[illegible]

NOTE: N.T.E. indicates Not-To-Exceed

EXHIBIT C

Date: November 12, 2021

TIME AND SCHEDULE OF PERFORMANCE FOR NORTH ESTERO PHASE 2 SIDEWALK AND LIGHTING CONSTRUCTION

This EXHIBIT "C" establishes times of completion for the various phases and tasks required to provide and perform the services and work set forth in EXHIBIT "A" of this Agreement. The times and schedule of performance set forth hereinafter is established pursuant to this Agreement.

Phase and/or Task Reference As Enumerated in EXHIBIT "A"	NAME OR TITLE Of Phase and/Task	Number Of Calendar Days For Completion Of Each Phase And/or Task	Cumulative Number Of Calendar Days For Completion From Date of Notice to Proceed
#1	Construction Management	90 days	90 days
#2	Construction Engineering Inspection	90 days	90 days

EXHIBIT D

Date: November 12, 2021

CONSULTANT'S ASSOCIATED SUB-CONSULTANT(S) AND SUBCONTRACTOR(S) FOR
NORTH ESTERO PHASE 2 SIDEWALK AND LIGHTING CONSTRUCTION

CONSULTANT has identified the following Sub-Consultant(s) and/or Subcontractor(s) which may be engaged to assist the CONSULTANT in providing and performing services and work on this Project:

(If none, enter the word "none" in the space below.)

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm				Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage	
					Yes	No
	Tetra Tech					

1. Requested Motion:

Meeting Date: December 6, 2021

Approve Lee County Sheriff's Office Extra Duty Boat Detail contract(s) for Fiscal Year 2021-2022 in the amount of \$50,000; Authorize the Town Manager to execute contract documents as approved in FY2022 budget. (Grant is \$25,000).

Why the action is necessary:

To enter into a contract with Lee County Sheriff's Office for additional boat patrols beyond their standard level of service.

What the action accomplishes:

Authorizes the Town Manager to execute the contract documents.

2. Agenda:

ADMINISTRATIVE AGENDA

3. Requirement/Purpose:

Other

4. Submitter of Information:

Chelsea O'Riley, Public Works
Director

5. Background:

Through the West Coast Inland Navigation District (WCIND), the Town was awarded \$25,000 for additional boat patrols. As required by the grant match requirements of 50/50, the Town's match was \$25,000 which was approved in this fiscal years budget.

Attachments:

1. 533 Agreement for Extra Duty Detail Services
2. 2022 Detail Request Form FMB Boat

Financial Impact:

\$25,000 as budgeted in Maritime.

6. Alternative Action

Do not approve.

7. Management Recommendations:

Approve the contract.

8. Recommended Approval:

Chelsea O'Riley, Public Works Director
Chelsea O'Riley, Public Works Director
Cheri Russ, Accounting Manager
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 11/16/2021
Approved - 11/16/2021
Approved - 12/1/2021
Approved - 12/2/2021
Approved - 12/2/2021
Final Approval - 12/2/2021

AGREEMENT FOR EXTRA-DUTY DETAIL SERVICES

This Agreement for **Extra-Duty Detail Services** ("The Agreement" or "Agreement"), effective upon the date of LCSO's signature, is made by and between Sheriff Carmine Marceno, in his official capacity as Sheriff in and for Lee County, Florida and the Lee County Sheriff's Office (hereinafter "LCSO"), and Town of Ft Myers Beach - Boat Patrols (987), (hereinafter "Entity"), and collectively as "the parties", hereby agree as follows:

WITNESSETH:

WHEREAS, Entity plans to engage in an event as set forth, and at a location set forth, in Exhibit A and desires, as a security measure, a law enforcement presence at said event; and

WHEREAS, the LCSO is willing to provide law enforcement personnel, acting in an extra-duty detail capacity, to provide services described herein and set forth in Exhibit A while wearing LCSO uniforms, utilizing LCSO vehicles, and other LCSO property; and

WHEREAS, Exhibit A attached hereto is a material part of the Agreement and is incorporated and merged as if fully set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and obligations undertaken by the parties as contained herein, and for other good and valuable consideration, the parties hereto agree as follows:

1. **Authority.**

The Entity expressly represents it or they are legally authorized to bind the Entity. The Entity fully comprehends and acknowledges the LCSO is acting in reliance on this, as well as other representations the Entity has made to members of the LCSO. The Entity further expressly represents that it or they has/have acquired all necessary applicable permits to engage in the event for which they are requesting LCSO law enforcement personnel as set forth in **Exhibit A**.

2. **Description and Schedule of Event.**

The description of the event, including the time, place, and duration, are set forth in Exhibit A, which is attached hereto and incorporated as if full set forth herein.

3. **Term of Agreement.**

The term of this Agreement shall begin on the first day of the event and terminate on the last day of the event as set forth in Exhibit A.

4. **Assessment of Security Needs and Authority Retained by LCSO.**

The Entity understands and consents to the LCSO conducting an assessment of the security needs of the Entity for the event location set forth in Exhibit A. The Entity understands the assessment of the referenced security needs by the LCSO is conducted by the LCSO, at their sole and absolute discretion, to allow LCSO to determine the minimum number of extra-duty detail law enforcement personnel adequate for the event. The Entity acknowledges the assessment of security needs by LCSO as set out herein does not constitute a representation, promise, guarantee or warranty by LCSO that LCSO will be able to supply the minimum number of off-duty or extra-duty detail law enforcement personnel which LCSO determines are required.

The Entity understands the extra duty detail services provided to the Entity are intended to offer an immediate presence of uniformed, sworn law enforcement personnel and to, by their presence alone, serve to potentially deter unruly or unlawful behavior. The Entity fully understands and accepts that by LCSO providing extra duty detail services pursuant to this Agreement LCSO is not assuming any duties of protection or care to any persons who may or may not be present at the location of the event as set forth in Exhibit A. The Entity acknowledges the extra-duty detail services provided by LCSO are merely to serve as a supplement to other measures and/or care provided or taken by the Entity and the Entity specifically DOES NOT expect or rely on LCSO to exclusively assume any duties of care.

5. **Scheduling and Command.**

The primary duties and essential functions of law enforcement personnel providing extra-duty detail services shall be as assigned by LCSO command.

The selection and scheduling of the law enforcement personnel providing extra-duty detail services shall be in accordance with the practices and policies of LCSO.

6. **Termination of Agreement.**

As set forth in Exhibit A.

7. **Compensation.**

As set forth in Exhibit A.

8. **Independent Relationships.**

The parties to this Agreement are solely independent of each other and are contracting with each other for the sole purpose of the obligations set forth in the Agreement. Nothing in this Agreement shall create a partnership, joint venture, agency, or employer/employee relationship. Neither party may make, or undertake, any commitments or obligations on behalf of the other.

9. **Waiver of Terms and Conditions.**

The failure of LCSO to insist on any one or more instances of performance of any of the terms and conditions of this Agreement or to exercise any right or privilege contained in this Agreement, or the waiver of any breach of the terms and conditions of this Agreement, shall not be considered as having waived any such terms, conditions, rights or privileges of the Agreement, and the same shall continue and remain in force and effect.

10. **Severability.**

It is the intention of the parties that this Agreement is in compliance with all relevant state and federal statutes, regulations, and governmental agency guidelines governing the relationship between the parties at the time of execution. If any provision of this Agreement is subsequently rendered invalid or unenforceable by any local, state or federal statute or regulation, or declared null and void by any court of competent jurisdiction, the remaining provisions of this Agreement will remain in full force and effect.

11. **Third Party Beneficiaries.**

This Agreement is intended solely for the benefit of the parties hereto and shall not, directly or by implication, create any rights, claims, obligations, or duties to any third party not a signatory to this Agreement.

12. **Assignment.**

This Agreement shall not be assigned in whole or in part by either party without the express prior written consent of the other party.

13. **Binding Effect.**

This Agreement shall be binding upon the parties hereto and shall inure to the benefit of the Entity or the LCSO, as applicable.

14. **Governing Law.**

This Agreement shall be controlled, interpreted, construed, and enforced in accordance with the laws of the State of Florida without regard to conflict of laws. The exclusive venue for any dispute arising out of this Agreement shall be in a court of competent jurisdiction in Lee County, Florida.

15. **Titles or Captions.**

The paragraph titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend, modify, amplify, or describe the scope of this Agreement or the intent of any provision hereof.

16. **Draftsmanship.**

Any conflict in the terms of this Agreement shall be construed in favor of LCSO.

17. **Amendments.**

This Agreement may only be modified or amended by the mutual written agreement of the parties. Any such modification or amendment shall be signed by each party and shall be attached to and become a part of this Agreement.

18. **Indemnification.**

The Entity agrees to indemnify and hold harmless LCSO, and its employees, volunteers, and agents for and from any and all claims (direct or derivative), damages, costs, expenses, demands of whatsoever kind or nature, and causes of action, arising from or related to the Entity's performance, nonperformance, action(s), omission(s), or failure to act related to any duty or obligation imposed upon LCSO pursuant to the Agreement. This indemnification obligation shall not be subject to any limitation as to the amount or type of recovery sought, or, on the amount or type of insurance coverage secured by the Entity. Further, the Entity shall require all their insurance carriers, with respect to all insurance policies to which they are a party, to waive all rights of subrogation against LCSO incidental to the extra-duty detail service described herein.

19. **Sovereign Immunity.**

Nothing herein contained in this Agreement is intended, nor shall be construed, to waive any of the limitations of liability and other defenses provided by sovereign immunity and the strict financial limitations set forth in Florida Statute 768.28.

20. **Extra-Duty Detail Indemnification.**

Nothing contained in this Agreement shall in any way limit or impeded application of the indemnification language in Florida Statute 30.2905.

21. **Recitals/Entire Agreement.**

The recitals above are incorporated herein as if fully restated. This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals, and undertakings with respect to the subject matter hereof.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first written above.

ENTITY

CARMINE MARCENO, SHERIFF O/BO/
THE LEE COUNTY SHERIFF'S
OFFICE

Town of Ft Myers Beach - Boat Patrols (987)
2525 Estero Blvd, Ft Myers Beach FL 33931

By: _____

By: _____
Sheriff/Designee

Print Name: _____

Print Name: _____

Date: _____

Date: _____

Carmine Marceno
Sheriff



State of Florida
County of Lee

"Proud to Serve"

Exhibit A
Detail Request Form

Please fill out the Extra Duty Request form attached to this document completely. All details are a minimum of four (4) hours with the exception of boat details which are a minimum of six (6) hours and a half hour drive time to and from the detail location. When five (5) or more deputies are assigned to an event, a supervisor with the rank of Sergeant or above will be assigned at an upgraded hourly charge. Depending on the type of event or crowd size, it will be at the discretion of the Sheriff's Office to determine the number of deputies needed.

The current detail rates are:

Security	\$48/hr	Traffic	\$58/hr
Funeral Escort	\$48/hr	Security Supervisor	\$58/hr
Escort	\$48/hr	Traffic Supervisor	\$68/hr
Boat	\$48/hr	Civil Stand-by	\$68/hr
Holiday/Last Minute	\$68/hr	Prisoner Transport	\$68/hr

Details are charged a \$15 per deputy vehicle rate (when applicable).
All boat details are charged a \$20 per hour boat rate (when applicable).

Extra Duty Details will not be provided to any person, firm or organization whose members, business or operations are of questionable nature; or for any event that will discredit the assigned Deputy, Sheriff's Office or County. The Sheriff's Office reserves the right to cancel the detail without notice and to recall the deputy(s) when necessary for community safety without penalty.

The Lee County Sheriff's Office will be the only armed personnel at any event where the detail is taking place. Any private security company that is hired to work alongside the Sheriff's Office will be a reputable, licensed and insured company whose employees are State D licensed unarmed security guards. Proof of the signed contract with private security company will be required.

In order to cancel a detail, notice must be given to the Detail Coordinator twenty-four (24) hours prior to the start of the detail either by phone or email. If the cancellation is less than twenty-four (24) hours, a four (4) hour charge per deputy will be billed. In the case of weather, notice of cancellation must be received within two (2) hours of the starting time otherwise a two (2) hour charge per deputy will be billed. In the event of a cancellation after business hours, please call 239-477-1000 and ask to have the on-call Detail Coordinator call you.

Unless otherwise specified, full payment of all details must be received one (1) week prior to the start of the event in the form of a cashier's check, money order, business check or cash. The Lee County Sheriff's Office does not accept credit cards or personal checks. **Payments can be sent to: The Lee County Sheriff's Office 14750 Six Mile Cypress Pkwy., Fort Myers, FL 33912 ATTN: Details Unit.**

LEE COUNTY SHERIFF'S OFFICE USE ONLY			
Total Deputy(ies) <u>1/2 per shift</u>	Total Hours <u>8</u>	Rate per Hour <u>\$48/\$68</u>	Vehicle Rate <u>\$20/per hour</u>
Supervisory Deputy(ies) _____	Total Hours _____	Rate per Hour _____	Vehicle Rate _____
Entity _____			



"The Lee County Sheriff's Office is an Equal Opportunity Employer"
14750 Six Mile Cypress Parkway • Fort Myers, Florida 33912-4406 • (239) 477-1000

Detail Request Form - continued

LCSO Details Main Phone Number: 239-477-1199		
Vendor Information		
Business Name: <u>Town of Ft Myers Beach - Boat Patrols (987)</u>		
Street: <u>2525 Estero Blvd</u>		
City: <u>Ft Myers Beach</u>	State: <u>FL</u>	Zip Code: <u>33931</u>
Business Contact: _____		Phone: <u>239-765-0202</u>
Email Address: _____		
Event Information		
Detail Location: <u>Waterways around Ft Myers Beach</u>		
Street: <u>Including Gulf of Mexico, Matanzas Pass & Bay areas</u>		
City: <u>Ft Myers Beach</u>	State: <u>FL</u>	Zip Code: <u>33932</u>
Contact During Event: _____		Phone: _____
Event Date: <u>various dates through 9/30/2022</u>		Event Time: <u>varies by day</u>
Anticipated Crowd Size : _____		Type of Event: <u>Boat Patrols</u>
Additional Security Working Detail: ☐ Yes ☒ No If Yes, how many? _____		
Permits Attached: ☐ Yes ☒ No		Alcohol Served: ☐ Yes ☒ No
Detail Information		
Security ☒	Traffic ☒	Prisoner Transport ☐
Escort ☐	Holiday ☒	Funeral Escort ☐
Last Minute ☐	Stand-by ☐	
Marked Vehicle ☒ Yes ☐ No	Unmarked Vehicle ☒ Yes ☐ No	
Uniformed Deputy ☒ Yes ☐ No	Plain Clothes Deputy ☐ Yes ☒ No	
Detail Description: Boat patrols throughout the waterways around Ft Myers Beach. An activity sheet will be sent for each detail worked with invoices. WCIND Grant ends 9/30/22. Budget for Marine Unit details is \$50,000. Boat details details are scheduled thru LCSO Marine Unit & are based on availability of deputies and vessels. An 8 hour boat detail on a non holiday costs \$508 per deputy/vessel & \$704 per deputy/vessel on holiday.		



"The Lee County Sheriff's Office is an Equal Opportunity Employer"
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