



Fort Myers Beach Town Council

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

Agenda

**Monday, November 2,
2020**

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. PRESENTATION**

Lobbyist Ronald L. Book

VIII. ADVISORY COMMITTEES ITEMS AND REPORTS

- A. Anchorage Advisory Committee (AAC)

IX. APPROVAL OF MINUTES

- A. October 15, 2020 Management & Planning Session
- B. October 19, 2020 Regular Town Council

X. PUBLIC HEARINGS

- A. VAR20200036: 5043 Williams Drive
Approve/ Approve with condition/ Deny VAR20200036 at a Parcel 5043 Williams Drive to Allow a Relief from LDC Table 34-3 for a Principal Structure Setback and from Sec. 34-1174 for an Accessory Structure Setback.
- B. VAR20200052: 4690/4700 Estero Blvd
Approve/ Approve with conditions/ Deny VAR20200052 at a Parcel 4690/4700 Estero Boulevard to allow a variance from LDC Sec.34-1174 for Accessory Structures, to allow an accessory structure to be located closer to the street right-of-way than the principal structure

XI. ADMINISTRATIVE AGENDA

- A. Sunset Celebration FY 21
Sunset Celebration Special Event Permit and Fees.
- B. Resolution 20-49; Mooring Field Strategic Plan
Motion to Approve Resolution 20-49, adopting the Mooring Field Strategic Action Plan
- C. Resolution 20-50; SRF Loan
Approve Resolution #20-50 authorizing the Town to finalize a loan agreement for the eligible Stormwater portions of the North Estero Phase 2 Part 2, Tier 1 Side Streets, and North Estero Phase 2 Part 1 projects and have the Town Manager finalize the application to the State of Florida Revolving Fund Loan.
- D. Res 20-51: Town Wide Capital Improvements Projects
Resolution No. 20-51; A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING A LOAN FROM FIRST FLORIDA INTEGRITY BANK, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$10,000,000 FOR THE PURPOSE OF FINANCING THE REDEVELOPMENT OF CERTAIN TOWN-WIDE CAPITAL IMPROVEMENT PROJECTS, AS DESCRIBED HEREIN; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF A TOWN OF FORT MYERS BEACH, FLORIDA CAPITAL IMPROVEMENT REVENUE NOTE, SERIES 2020 TO EVIDENCE THE TOWN'S OBLIGATIONS UNDER THE LOAN AGREEMENT, SUCH NOTE TO BE A LIMITED OBLIGATION OF THE TOWN, PAYABLE FROM AND SECURED BY A PLEDGE OF AND LIEN ON THE TOWN'S PUBLIC SERVICE TAX REVENUES AND IF EVER INSUFFICIENT TO PAY DEBT SERVICE ON THE NOTE, A PLEDGE OF AND LIEN ON THE TOWN'S COMMUNICATION SERVICE TAX REVENUES; PROVIDING FOR THE RIGHTS AND SECURITIES OF THE OWNER OF THE NOTE; MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

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



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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.

Anchorage Advisory Committee
Letter to Town Council
October 2020

1. **Upland Service Provider** – The AAC at its October meeting passed a motion to recommend that Town Council consider pursuing the two-unit option at Harbor House and all necessary inspections be done to take the upland service provider in-house.

2. **Strategic Plan** – The AAC at its October meeting passed a motion to accept our Strategic Plan drafted in February 2020. Over the next few months we will be reviewing the plan to adjust goals and dates due to Covid, and who is responsible for follow-through due to personnel changes.

I plan to attend the November 2nd council meeting to discuss and answer questions about the upland service provider recommendation.

Respectfully submitted,
Katherine Light, chair
Anchorage Advisory Committee



Fort Myers Beach Management & Planning Session

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

Minutes

Thursday, October 15, 2020

9:00 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

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

II. PLEDGE OF ALLEGIANCE

III. ITEMS FOR DISCUSSION

A. Stormwater Presentation

Stormwater Presentation by Tetra-Tech

Timothy Vanderwalker and Danny Nelson from Tetra Tech provided a history of stormwater on the utilizing a PowerPoint presentation.

Kaye Molnar, President Cella Molnar & Associates, noted that she provided updates to the community and has addressed trash in the construction zone.

B. New Year's Eve Fireworks

Initiate New Year's Eve Fireworks planning and permitting.

Town Manager Hernstadt questioned whether or not the Town should hold a fireworks display on New Year's Eve. Mayor Murphy stated that the pandemic was resurging and a vaccine was not imminent. Town Manager Hernstadt indicated that they would lose approximately \$10,000.00 if they did not hold fireworks by December 31, 2020. Vice Mayor Hosafros suggested contacting the company for alternative locations to keep people spread out.

Council Member Veach suggested working with the vendor to defer the fireworks to next year. Town Manager Hernstadt stated that he would contact the company and provide more information by the next meeting.

C. Discussion of Ordinance Prohibiting Turtle Sales

Review draft ordinance prohibiting the sale of turtles in the Town

Town Attorney Herin stated that the FWCC (Fish & Wildlife Conservation Commission) indicated that the Town had no jurisdiction to prohibit the sale of turtles. They provided a link for information to report wildlife violations.

Town Attorney Herin revealed that the business selling the turtles received a permit from FWCC. Turtles smaller than four inches were regulated by the FDA (Food and Drug Administration). Council Member Allers suggested writing a letter to the business owner requesting that they stop selling the turtles. Council Member Veach reported that the business owner appeared at a MRTF meeting and was open to educating the public. Vice Mayor Hosafros requested that they preempt the FWCC with the FDA because selling turtles less than four inches was prohibited at the federal level. Town Attorney Herin noted that he would look into it and report back. Robert Howell noted that he spoke to the owner of the shop selling the turtles, Mitch, about coming up with educational ideas. He thanked Council for contacting the FDA.

D. Criteria for Murals

Criteria for Murals - draft ordinance to LPA for review and recommendations

Community Development Services Director Jason Green provided a draft ordinance. Vice Mayor Hosafros noted that murals were an expanding area of litigation and she did not support spending legal fees to make case law. She stated that it was a complicated issue because rules had not been written yet. Council Member Allers agreed that liability was an issue. Town Attorney Herin added that one person's idea of art could be offensive to another and the First Amendment further complicated it. Discussion was held regarding obscenity, graffiti and sign regulations. Vice Mayor Hosafros noted that sign regulations were already litigated in the courts. She brought up creating a mural program with guidelines. Council Member Allers questioned including murals in the sign ordinance. Town Attorney Herin replied that some jurisdictions suggested that mural regulations stand-alone from sign regulations. Vice Mayor Hosafros suggested deferring the issue to the consultant reviewing the code. Town Attorney Herin suggested they could prioritize the issue for the consultant. Vice Mayor Hosafros and Council Member Allers did not support sending it to the LPA. Council Member Atterholt referred to existing murals and felt that it was a solution searching for a problem.

E. Nuisance Abatement Board

Discussion of implementation of the Nuisance Abatement Board Town Attorney Herin stated that the first step would be to notice two at-large positions. Vice Mayor Hosafros noted that qualifications had to be stated and an application would have to be filled out. Consensus was reached to advertise the positions, use the advisory committee application and add a NAB box to the form.

Discussion was held concerning the roles of the Nuisance Abatement Board attorney and prosecutor. Town Attorney Herin did not object to being either the Nuisance Abatement Board attorney or the prosecutor and suggested that an associate from his firm, Fox Rothschild & Assoc., could function in the other role. Town Manager Hernstadt noted that they would have to advertise whichever role the Town Attorney did not take. Vice Mayor Hosafros did not support hiring a member from the Town Attorney's law firm. Council Member Veach mentioned that they would have to pay a retainer for the prosecutor.

Council Member Allers questioned whether the Public Safety Committee (PSC) could investigate complaints before moving to the investigation portion. Town Attorney Herin responded that it was not in the ordinance, but they could add it. Vice Mayor Hosafros did not support involving the PSC. Council Members Veach and Allers supported Town Attorney Herin as the prosecutor. Vice Mayor Hosafros preferred hiring someone else as the prosecutor; otherwise, the public could perceive that the Town was after them.

Discussion was held regarding who initiated complaints, what comprised documentation and verification of complaints.

IV. AGENDA MANAGEMENT

October Agenda Management

Vice Mayor Hosafros questioned scheduling another hazardous waste collection. Town Manager Hernstadt responded that dates have been arranged with Lee County and they would be advertised.

Council Member Veach was interested in installing native plantings in the ROW in front of The Whale. He received support to work with the Native Plant Society, MRTF, Master Gardeners or similar groups.

Council Member Allers questioned whether the PSC should work with the Sheriff and Fire departments to monitor calls. Town Manager Hernstadt replied that they received monthly reports from the Sheriff and Fire Departments and he would share those reports with whoever needed them.

V. ADJOURNMENT

Mayor Murphy adjourned the meeting at 12:12 PM.



Fort Myers Beach Town Council

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

Minutes**Monday, October 19, 2020****9:00 AM**

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

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

II. INVOCATION

Deputy Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Vice Mayor Hosafros moved to remove D from the Consent Agenda and add it to the Administrative Agenda; second Council Member Veach
Motion carried unanimously.

V. PUBLIC COMMENT

- Mayor Murphy read an email from Tracy Brunner/Caper Beach Club into the record regarding a drainage issue on Seaview Street.
- Gail Mason discussed conversations regarding a location for the arches. She noted they did not need funding from any entity.
- Jason Ingreem, owner of Mango Ritas, expressed concern regarding shade structures in the final Times Square design. He questioned who would be responsible for maintaining the structures. He questioned losing parking spaces. He suggested that businesses be involved in future discussions.

- John Lallo, owner of Pete's Time Out, stated that they were notified of the changes last Friday but never consulted. The main issues were solving infrastructure problems, the stage with a backdrop that would block the sunset view, the permitting process, building the square footage price in the lease increase, and the lack of a maintenance program.
- Thomas Haughten, owner of La Ola Surfside Restaurant, agreed with the others. He was concerned that they were not involved at this stage. He brought up the lack of parking with the design and his unwillingness to give up parking spots. He discussed water drainage issues in the easement. He suggested that businesses own and maintain the shade structures and the price be included in their lease and paid for over time.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Atterholt recognized CVS Pharmacist Dr. Allie Kaplan for going out of her way for customers.

A. Employee Recognitions

Recognizing Town employees for their multiple years of dedicated service to the Town of Fort Myers Beach

Mayor Murphy distributed pins to employees and thanked them for their service.

VII. ADVISORY COMMITTEES ITEMS AND REPORTS

No items.

VIII. APPROVAL OF MINUTES

- A. October 5, 2020 Regular Town Council
Vice Mayor Hosafros had an amendment to the October 5th minutes, page 4 - she disclosed a drive-by for Resolution 20-44.
Vice Mayor Hosafros moved to approve the amended minutes; second by Council Member Allers.
Motion carried unanimously.

IX. PRESENTATION

A. Lee County Update

An update of Lee County projects on Fort Myers Beach

Lee County Director of Transportation Randy Cerchie utilized PowerPoint for his presentation. Slides included: Agenda, Traffic Model 1, Traffic Model 2 and Traffic Model 3. He explained Model 3 and noted that one moved traffic the best. He continued with a description of FMB Intersection Improvements. Director Cerchie stated that the County would share the 60%

design plans with Town Council in late November 2020. He noted they would also have a public hearing in February or March of 2021. He thought construction would start in 2022.

Lee County Manager Roger Desjarlais recapped the Estero Blvd. road project, noting it should be complete in 2021. Mayor Murphy requested an update on the Big Carlos Pass Bridge from Director Cerchie. He reported that a public hearing was scheduled for January 28, 2021 at Bay Oaks and the fishing pier would be discussed. Deputy Lee County Manager Dave Harner noted Lee County parks are designed with a specific purpose and it is difficult to find a location to put the arches in the parks but he was willing to work with the Town and the Restore FMB Arches group. Manager Desjarlais added that if the arches were to be located on County property they would have to be scaled down. Lee County Commissioner Ray Sandelli stated that they would work with the Town to find a solution.

X. CONSENT AGENDA

A. New Year's Eve Fireworks

Authorize the Town Manager to execute the associated documents with the New Year's Eve 2020 Fireworks Show.

Town Manager Hernstadt reported that Bay Oaks was not a suitable location for the fireworks display and a barge would double the budget. The vendor stated that they would charge the Town about \$4,000.00 to store the equipment for a later date. Council Member Aller was in favor of moving forward with the fireworks in 2020. Council Member Veach did not agree due to the spread of COVID-19. Council Member Atterholt supported moving forward in 2020. Vice Mayor Hosafros supported moving forward slowly and she noted that people were not wearing masks like they used to. She favored extending the fireworks to 2021. Mayor Murphy agreed. He stated that this was not the time to get lax because the pandemic was predicted to get worse. He was sorry to hear that people were not wearing masks and questioned whether they should investigate whether the ordinances were being followed. He stated that holding fireworks and cramming people in during the pandemic was not worth the risk. He noted that Miami Beach was exploding with the coronavirus because they opened everything up.

Vice Mayor Hosafros moved to pay the additional costs necessary to extend the contract under the terms indicated by Town Manager Hernstadt for just over \$4,000.00 and to give Town Manager Hernstadt the authority to try to negotiate the price of the barge to \$15,000.00; otherwise, extend the contract; second by Mayor Murphy.

Discussion was held regarding what other municipalities were doing. Council Member Atterholt suggested holding fireworks on an off-weekend if it was safe for people to gather. He noted it would provide an economic stimulus.

Council Member Veach agreed that people would be on the beach for July 4th anyway and moving fireworks to a slower time of year would benefit businesses.

Motion carried unanimously.

B. Newton Beach Cottage Restoration Repairs

Authorize acceptance of the proposal from International Fine Art Conservation Studios Inc. for restoration repairs for Newton Beach Cottage, estimated at \$56,800.

Vice Mayor Hosafros moved to approve; second by Council Member Veach. Motion carried unanimously.

C. IT Technical Support Services with Valeo Networks

Approve an agreement with Valeo Networks in the amount of \$77,520 for Technical Support Services for the Town and authorize the Town Manager to execute the required documentation.

Vice Mayor Hosafros moved to approve; second by Council Member Veach. Motion carried unanimously.

D. Community Development Professional Services

Approve three Supplemental Task Authorizations for FY21 exceeding \$25,000 for Professional Services for Community Development in the areas of Environmental Services, Planning/Zoning, and Building Services, and authorize the Town Manager to execute the required documentation.

Moved to the Administrative Agenda.

Vice Mayor Hosafros questioned the difference in rates between planners. Town Manager Hernstadt explained the difference in requirements and experience.

Vice Mayor Hosafros moved to approve the three supplemental task authorizations contained in section D; second by Mayor Murphy.

Motion passed unanimously.

XI. ADMINISTRATIVE AGENDA

A. Times Square, Bay Oaks and Bayside Park update

Presentation by DRMP Inc. of the design status for Times Square, Bay Oaks and Bayside Park.

DRMP Project Manager Paul Benvie utilized PowerPoint for his presentation of Times Square. Slides included: Aerial View of Times Square; Original Concept; Graphic and Computer Renderings. Manager Benvie described where parking was located. Town Manager Hernstadt discussed the timeline of the project and maintaining business continuity. Mayor Murphy commented that it was the second major project in Times Square and it would be fantastic. Vice Mayor Hosafros urged businesses to talk amongst themselves and come to Council with suggestions.

Manager Benvie continued with plans for Bay Oaks. Slides included: Original Concept; Second Concept; 30% Submittal and Computer Renderings. Manager Benvie displayed three versions of the façade for the main building and asked Council for a consensus on which version they liked best. He reported that BORCAB (Bay Oaks Recreational Campus Advisory Board) had not seen the new renderings.

Town Manager Hernstadt described how the building would function. Discussion was held regarding the ball fields, lighting, walking trail, national fitness court and potential convention space.

Consensus was reached to move forward with the asymmetrical façade design (third rendering).

Manager Benvie presented Bayside Park plans. Slides included: How we Arrived Here; Things We've Heard; Original Design and Rendering of a Pedestrian Park with Stage. The veteran's tribute was discussed.

B. STA #7: Times Square Final Design

To allocate and appropriate funds and approve the Supplemental Task Authorization #7, in the not to exceed amount of \$179,550 for Times Square 100% design which includes design, permitting and bidding assistance and authorize the Town Manager to execute the Supplemental Task Authorization with DRMP Inc.

Vice Mayor Hosafros moved to allocate and appropriate funds and approve the Supplemental Task Authorization #7, in the not to exceed amount of \$179,550 for Times Square 100% design which includes design, permitting and bidding assistance and authorize the Town Manager to execute the Supplemental Task Authorization with DRMP Inc.; second by Mayor Murphy. Motion carried unanimously.

C. STA #8 - Bay Oaks Recreational Campus Final Design

To allocate and appropriate funds and approve the Supplemental Task Authorization #8, in the not to exceed amount of \$479,960 for Bay Oak's 100% design which includes campus design, permitting and bidding assistance to 100% and authorize the Town Manager to execute the Supplemental Task Authorization with DRMP Inc.

Council Member Veach moved to allocate and appropriate funds and approve the Supplemental Task Authorization #8, in the not to exceed amount of \$479,960 for Bay Oak's 100% design which includes campus design, permitting and bidding assistance to 100% and authorize the Town Manager to execute the Supplemental Task Authorization with DRMP Inc.; second by Vice Mayor Hosafros.

Motion carried unanimously.

D. Mooring Field Upland Services Renewal

Authorize the Town Manager to exercise the final one year option and execute the Professional Services Agreement Renewal for Upland Services for the Town's Mooring Field with Estero Bay Hotel Company dba Matanzas Inn.

Town Manager Hernstadt reviewed the issue.

Vice Mayor Hosafros moved to authorize the Town Manager to exercise the final one year option and execute the Professional Services Agreement Renewal for Upland Services for the Town's Mooring Field with Estero Bay Hotel Company dba Matanzas Inn; second by Council Member Allers.

Motion carried unanimously.

E. FY2019-2020 Re-Appropriation

Approve Re-Appropriation FY2019-2020

Town Manager Hernstadt discussed the re-appropriation.

Council Member Allers moved to approve the re-appropriation FY2019- 2020; second by Vice Mayor Hosafros.

Motion carried unanimously.

XII. FINAL PUBLIC COMMENT

Jason Ingreum stated that the first meeting businesses had with Town Council was just a brain-storming session and no decisions were made. He requested that their input be considered.

John Lallo agreed with Jason and stated they were all on the same page. He questioned the lack of color and individuality in the Times Square design.

Lee Melsek, BORCAB Member, stated that they worked on the Bay Oaks plan for three years. He reported that BORCAB unanimously voted to recommend tearing down the gym and building a new one due to maintenance costs. He noted they also recommended a welcome center building, which was taken out.

XIII. TOWN MANAGER'S ITEMS

Town Manager Hernstadt explained that BORCAB submitted great ideas, but they could not afford the plan, so they combined buildings and scaled down the design. He indicated they were trying to accommodate places for future amenities, but they recognized budget constraints. He noted that he was available to speak with the merchants regarding concerns with the Times Square design.

XIV. TOWN ATTORNEY'S ITEMS

Town Attorney Herin stated that he would distribute bullet points regarding misstatements by Mr. Rood and Mr. Kroemer concerning the dune walkover. If approved, the bullet points would be posted on the Town's website. Vice Mayor Hosafros noted that Mr. Rood and Mr. Kroemer did not tell the truth two weeks ago and they should have been corrected a day or two after they released their statements. Town Attorney Herin read the bullet points. The bullet points were approved.

Town Attorney Herin stated that he would contact the Manager of Miami Beach regarding imposing fines for not wearing masks.

XV. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Allers noted that the Fort Myers Beach Art Association was open and encouraged people to visit.

Council Member Atterholt brought up beach erosion south of the Wyndham. Council Member Veach noted that the Times Square renovation would be painful but worth it in the end. He brought up a referendum for a multi-million Bay Oaks complex.

Mayor Murphy stated that they were grateful for all the work BORCAB put into the Bay Oaks redevelopment. He noted they should be proud, and they were thankful. He congratulated employees who were recognized and he thanked Town Manager Hernstadt.

No items from Vice Mayor Hosafros.

XVI. ADJOURNMENT

Vice Mayor Hosafros moved to adjourn; second by Mayor Murphy.

Motion carried unanimously.

The meeting was adjourned at 12:22 PM.

1. **Requested Motion:**

Meeting Date: November 2, 2020

Approve/ Approve with condition/ Deny VAR20200036 at a Parcel 5043 Williams Drive to Allow a Relief from LDC Table 34-3 for a Principal Structure Setback and from Sec. 34-1174 for an Accessory Structure Setback.

Why the action is necessary:

The property owner has submitted a request for a variance to the all side setbacks of the existing principal structure and accessory structure. The LDC requires an approval from Town Council after a recommendation from the LPA.

What the action accomplishes:

Approving the variance requests will allow the existing house and pool screen enclosure to be remodeled/updated within the existing footprint.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

5. **Background:**

The parcel is located within the Residential Single-family (RS) zoning district. The principal structure was built in 1998 and the current owners, James and Dawn Reichlin, bought the property in 2002. The variance requests are from the rear yard and water setback requirement of 25 feet to allow a setback of 20.2 feet for the primary structure, from the side yard setback requirement of 7.5 feet to allow a setback of 6.9 feet for wooden stairs and entry deck, and from the street setback requirement of 25 feet to allow a setback of 24.9 feet for the primary structure and 24.4 feet for the pool screen enclosure.

Staff finds that the lot is oddly shaped, becoming much narrower at one end. The shape of the lot makes meeting front and rear setbacks more difficult. Additionally, the setback encroachments has been in existence for 20 years and is not result of actions of the applicant. Each setback variance is the minimum needed and would not negatively impact the neighborhood.

The Local Planning Agency (LPA) has reviewed the case and finds it is consistent with the Land Development Code and the Comprehensive Plan. LPA has approved the variance request with conditions.

The LPA also discussed permits for the renovations from the year 2000. Staff finds that all renovations to the house were approved and permitted from Lee County prior to any physical improvements. Staff determined that the current setback discrepancies were likely a construction error.

Attachments:

1. 20-47, 5043 Williams Dr All Side Setback Variance_R1
2. Res 20-47 Exhibit A Survey
3. Staff Report TC
4. Staff Report Exhibit A Application
5. Staff Report Exhibit B Notice to Property Owners

Financial Impact:

6. **Alternative Action**

Approve with conditions

7. **Management Recommendations:**

8. **Recommended Approval:**

Kalyani Bhutada, Planning Services

Jason Green, Community Development Services

John R Herin Jr, Town Attorney

Amy Baker, Deputy Town Clerk

Created/Initiated - 10/22/2020

Approved - 10/27/2020

Approved - 10/27/2020

Final Approval - 10/28/2020

RESOLUTION NUMBER 20-47

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA REGARDING APPLICATION VAR 20200036, FOR A VARIANCE TO THE REQUIREMENTS OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE FOR THE PROPERTY LOCATED AT 5043 WILLIAMS DRIVE; 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 James and Dawn Reichlin (“Applicant”), owner of the property located at 5043 Williams Drive (“Property”), is requesting a variance from Table 34-3 and Sec. 34-1174(b) of the Town of Fort Myers Beach Land Development Code (“LDC”); and

WHEREAS, the STRAP number for the Property is 28-46-24-W4-00500.0180 and the legal description of the Property is attached as *Exhibit A*; and

WHEREAS, the Property is located in the ‘Residential Single family’ zoning district of the Official Zoning Map and the ‘Low Density’ category of the Future Land Use Map of the Comprehensive Plan 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 October 13, 2020, at which 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 34-84 of the LDC; and

WHEREAS, on November 2, 2020 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 LDC 34-87, and the Town Council determined it is in the best interest of the Town to approve the request.

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

Determination.

Based upon the recommendations, testimony, and evidence presented by the applicant, Town staff, and interested parties, the Town Council **APPROVES/APPROVES WITH CONDITIONS/DENIES** the following:

- A. A variance from Table 34-3 of the LDC – “Dimensional Regulations in Conventional Zoning Districts” - to allow a principal structure to encroach into all side setbacks, for a variance of 0.1 feet from the required 25 feet front setback requirement; for a variance of 4.8 feet from the required 25 feet rear/ waterbody setback requirement; for a variance of 0.6 feet from the 7.5 feet side setback requirement on the south side.
- B. A variance from Sec. 34-1174 (b) of the LCD – “Locational Regulations in Conventional Zoning Districts” - to allow an accessory structure to be located closer to the street right of way than the principal structure, for a variance of 0.1 feet from the required 25 feet front/ street setback.

Findings and Conclusions:

In accordance with the requirements of Sections 34-84 and 34-87 of the LDC regarding consideration of eligibility for a variance, the Town Council makes the following findings and reaches the following conclusions:

- A. There **are/are not** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request **is** for a de minimus variance under circumstances or conditions where rigid compliance is not essential to protect public policy.
- B. The conditions justifying the variance **are/are not** the result of actions of the applicant taken after the adoption of the regulation in question.
- C. The variance granted **is/is not** the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.
- D. The granting 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 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.

Conditions of Approval:

1. *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 Land Development Code in effect at the time of permit approval, except as specifically modified herein.*
2. *The variances shall only apply to the single-family residence (rear, side and street setback) and the screen enclosure (street setback) as shown on the provided survey dated 6/20/19*

by CES Inc. No deviations from the measurements of that survey greater than 0.1 feet shall be permitted.

- 3. If the principal single-family residence is determined to be substantially damaged or subject to substantial improvement, the setback variances shall be null and void.*
- 4. The applicant shall provide a letter from professional engineer indicating the improvements are inspected and comply with design plans and Florida Building Code.*

Effective Date.

This Resolution shall take effect immediately upon adoption.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by _____ and upon being put to a vote, the result 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 2nd day of November 2020 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH, FLORIDA

Raymond P. Murphy, Mayor

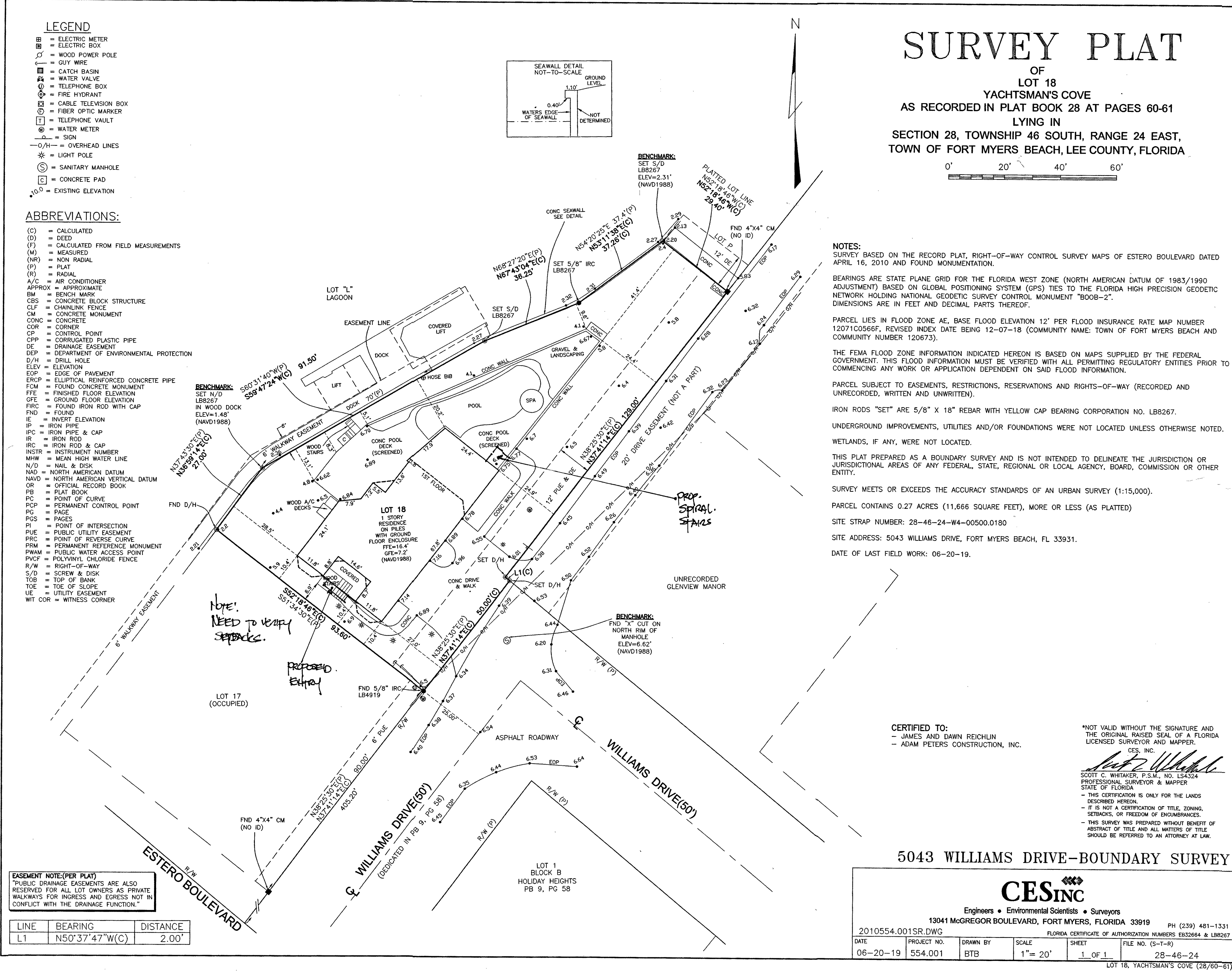
ATTEST:

Michelle D. Mayher, Town Clerk

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

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of November 2020.





Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Variance

CASE NUMBER: VAR20200036

CASE NAME: 5043 Williams Dr. waterbody, front and side yard setback variance

TOWN COUNCIL HEARING DATE: November 2nd, 2020 at 9.00 AM

STAFF RECOMMENDATION: Approve with Condition

**PREPARED/
SUBMITTED BY:** Kelly Bhutada/ Jason Green AICP

I. APPLICATION SUMMARY

Applicant/Owner: James and Dawn Reichlin

Request: The applicant is seeking variances from Table 34-3 for the primary structure and Sec. 34-1174(b) for the pool enclosure. The variance requests are from the rear yard and water setback requirement of 25 feet to allow a setback of 20.2 feet for the primary structure, from the side yard setback requirement of 7.5 feet to allow a setback of 6.9 feet for wooden stairs and entry deck, and from the street setback requirement of 25 feet to allow a setback of 24.9 feet for the primary structure and 24.4 feet for the pool screen enclosure.

Subject property: See attached survey

Physical Address: 5043 Williams Dr.

STRAP #: 28-46-24-W4-00500.0180

FLU: Low Density

Zoning: Residential Single family (RS)

Current use(s): Single-Family Dwelling

Adjacent zoning and land uses:

North: RESIDENTIAL SINGLE FAMILY (RS)
Canal, Single-family residence

South: RESIDENTIAL SINGLE FAMILY (RS)
Single-family residence

East: RESIDENTIAL SINGLE FAMILY (RS)
Single-family residence

West: RESIDENTIAL SINGLE FAMILY (RS)
Single-family residence

II. BACKGROUND AND ANALYSIS

Background:

James and Dawn Reichlin, the applicant/owners of 5043 Williams Drive, are requesting variances from the rear/waterbody setback, the side setback and the street/ front setback. The variances requested are for encroachment of principal structure by 4.8 feet in the rear yard, 0.6 feet on the side yard and 0.1 feet in the front yard as well as encroachment of the enclosed pool by 0.6 feet along the street frontage/ front yard. The required setbacks are 25 feet from rear property line, 7.5 feet side property line and 25 feet front/ ROW property line.

The house was built in 1998 with a major renovation occurring in 2000. The applicants bought the said property in May of 2002 and wish to make renovations and repairs to the home. The renovations that are proposed would not increase the nonconformity. However, because the house does not meet the setbacks, structural repairs and renovations require a variance.

Analysis:

This property is oddly shaped, at the southern end the lot is approximately 94 feet deep and narrowing on the northern end to approximately 29 feet deep. The house meets the majority of the setbacks and the proposed renovations would not change the current setback distances.

Neighborhood Compatibility:

In a review of aerial photography of the neighborhood, staff found the homes to generally be consistent in their setbacks along Williams Drive and from the canal. Glenview Manor Drive, which runs along the northern end of the property, does not

have any homes located along the western side of the road because there is inadequate land between the right of way and the canal to accommodate homes.

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.*

Per the survey, the lot is oddly shaped, becoming much narrower at one end. The shape of the lot makes meeting front and rear setbacks more difficult.

- 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.*

The house was last substantially altered in 2000, prior to the applicants purchasing the home. The applicants were unaware that the home was in violation of the setbacks.

- 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.*

The applicant is requesting a variance that will accommodate the existing house which they are renovating. They are not requesting any additional encroachment into the front, side or rear setbacks.

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

The setback encroachments have been in existence for 20 years. Granting a variance would not negatively impact the neighborhood.

- 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.*

While non-conforming structures are not unique in the Town of Fort Myers Beach, staff finds the conditions and circumstance of the subject property are general and recurring for the non-conforming buildings on the island and an alternative policy for non- conforming building shall be amended to recognize the age of the building and limitation on variation of setbacks.

III. RECOMMENDATION

Staff finds the existing conditions and location of the single-family residence, warrants the variance requested. The covered rear deck has been in place since 2000 and the front encroachment appears to have come into being at the same time.

Therefore, staff recommends **APPROVAL WITH CONDITIONS** of VAR20200036, for a single-family residence to be 20.2 feet from the seawall/rear property line, 6.9 feet from the southern side property line and 24.9 feet from the street property line and for the pool screen enclosure to be located 24.4 feet from the street property line.

LPA RECOMMENDATION:

LPA finds that the requested variance is consistent with the Town's Comprehensive Plan and Land Development Code. LPA approved the variance request with condition as provided in the staff report. The LPA has discussed permits for the renovation to the house and addition of accessory structures from year 2000. Staff finds that all the renovation to the house were approved and permitted from Lee County prior to any physical improvements. Therefore, staff determines that the current setback discrepancies could be a construction error.

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. *The variances shall only apply to the single-family residence (rear, side and street setback) and the screen enclosure (street setback) as shown on the provided survey dated 6/20/19 by CES Inc. No deviations from the measurements of that survey greater than 0.1 feet shall be permitted.*
3. *If the principal single-family residence is determined to be substantially damaged or subject to substantial improvement, the setback variances shall be null and void.*

Staff Report Exhibits:

- A – Survey
- B – Complete Application
- C – Letter to Adjacent Property Owners

VAR 20200036



PROJECT NUMBER:

DATE:



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

APPLICATION for PUBLIC HEARING

This is 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 *one ORIGINAL paper copy, fourteen (14) copies* of all required applications, supplemental information, exhibits and documents. Please do not print and copy the instructions at the end of the application. In addition to application fees, the applicant is required to pay for (2) sets of mailings to neighboring property owners within 500', and all advertising fees.

Site Address: 5043 Williams drive, Ft. Myers Beach, FL 33931
 STRAP Number: 28-46-24-W4-00500.018
 Applicant: James & Dawn Reichlin Phone: 440-371-3945
 Contact Name: Dawn Reichlin Phone: 440-366-0591
 Email: dreichlin@elyriapp.com Fax: _____
 Current Zoning District: RS-1
 Future Land Use Map (FLUM) Category: _____
 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

Revised 1/6/2017

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 2525 Estero Blvd., Fort Myers Beach, Florida 33931
 Phone: 239-765-0202 Permits@FortMyersBeachFL.gov Fax: 239-765-0909

Page 1 of 15

PROJECT NUMBER:

DATE:

PART I - General Information

A. **Applicant***: James Reichlin Phone: 440-371-3945

**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: 199 Overbrook Road, Elyria, Ohio 44035

Email: jreichlin62@yahoo.com

Fax: _____

Contact Name: _____

Phone: 440-371-3945

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: Self Phone: _____

Address: _____

Email: _____ Fax: _____

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

Name: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

Name: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

PROJECT NUMBER: _____

DATE: _____

Name: _____

Phone: _____

Address: _____

Email: _____

Fax: _____

PART II – Nature of Request

Requested Action (each request requires a separate application)

☐ Special Exception

☒ Variance from LDC Section _____ - _____

☐ Conventional Rezoning from _____ to _____

☐ Planned Development

☐ Rezoning from _____ to ☐ Commercial PD ☐ Residential PD

☐ Amendment. List the project number: _____

☐ Extension/reinstatement of Master Concept Plan. List project number: _____

☐ Appeal of Administrative Action

☐ Vacation ☐ Right-of-Way ☐ Easement

☐ Other. Please Explain: _____

PART III – Waivers

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

Code Section: _____

Description: _____

Code Section: _____

Description: _____

Code Section: _____

PROJECT NUMBER:

DATE:

Description: _____

PART IV – Property Ownership

☒ Single Owner (individual or husband and wife)

Name: James & Dawn Reichlin Phone: 440-371-3945

Mailing Address: 199 Overbrook Road, Elyria, Ohio 44035

Email: jreichlin62@yahoo.com Fax: _____

☐ 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 4-1

☐ Attach map showing property owners interests as Exhibit 4-2 (for multiple parcels)

☐ For condominiums and timeshares see Explanatory Notes Part IV (Page 11)

DISCLOSURE OF OWNERSHIP INTEREST

STRAP: 28-46-24-W4-00500-.0180

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

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

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

PROJECT NUMBER:

DATE:

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

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

Name and Address

Percentage of Interest

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

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

Name and Address

Percentage of Ownership

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

PROJECT NUMBER:

DATE:

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
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

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

PROJECT NUMBER:

DATE:

STATE OF FLORIDA)
COUNTY OF LEE)

Subscribed and sworn to (or affirmed) before me this _____ day of _____,
20_____, by _____.

Notary Public Signature

(SEAL)

Notary Printed Name

Personally Known _____ or Produced Identification _____

Type of Identification Produced: _____ My Commission Expires: _____

PART V – Property Information

A. Legal Description:

STRAP: 28-46-24-W4-00500-.0180

Property Address: 5043 Williams Drive, Ft. Myers Beach, FL 33931

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee County? ☐ No. Attach a legible copy of the legal description as Exhibit 5-1.

☐ Yes. Property identified in subdivision: _____

Book: _____ Page: _____ Unit: _____ Block: _____ Lot(s): _____

B. Boundary Survey:

☐ Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 5-2.

C. Property Dimensions:

Width (please provide an average width if irregular in shape) _____ feet

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PROJECT NUMBER:

DATE:

Depth (please provide an average width if irregular in shape) _____ feet

Frontage on street: 179 feet. Frontage on waterbody: 192.01 feet

Total land area: .27 ☒ acres ☐ square feet

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

☐ Attach Area Location Map as Exhibit 5-3

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 5-4.
- ☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 5-5.

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 5-6.
- ☐ Attach a map showing the surrounding property owners as Exhibit 5-7.
- ☐ 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 |

H. Zoning (see official Zoning Map):

- | | |
|---|--|
| ☐ RS (Residential Single-family) | ☐ CF (Community Facilities) |
| ☐ RC (Residential Conservation) | ☐ IN (Institutional) |

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PROJECT NUMBER:

DATE:

- | | |
|--|--|
| ☐ RM (Residential Multifamily) | ☐ BB (Bay Beach) |
| ☐ RPD (Residential Planned Development) | ☐ EC (Environmentally Critical) |
| ☐ CM (Commercial Marina) | ☐ DOWNTOWN |
| ☐ CO (Commercial Office) | ☐ SANTOS |
| ☐ CB (Commercial Boulevard) | ☐ VILLAGE |
| ☐ CR (Commercial Resort) | ☐ SANTINI |
| ☐ CPD (Commercial Planned Development) | |

PART VI

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, James Reichlin 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;

PROJECT NUMBER:

DATE:

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

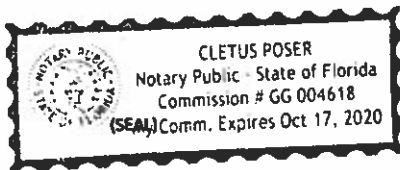
The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.


Signature of owner or authorized agent

3/06/2020
Date

STATE OF FLORIDA)
COUNTY OF LEE)

Subscribed and sworn to (or affirmed) before me this 6 day of MARCH,
20 20, by JAMES M REICHLIN.




Notary Public Signature

CLETUS POSER
Notary Printed Name

Personally Known _____ or Produced Identification ☒

Type of Identification Produced: OH AR LIC My Commission Expires: 10-17-2020

PROJECT NUMBER:

DATE:

PART VII

AFFIDAVIT

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

I, _____ (name), as _____ (title)
of _____ (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 County 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 Lee County 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.

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

Signature

Title

Typed or Printed Name

Date

**STATE OF FLORIDA)
COUNTY OF LEE)**

Subscribed and sworn to (or affirmed) before me this _____ day of _____,
20_____, by _____, as (title) _____ on behalf of
(company name) _____.

Notary Public Signature

(SEAL)

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PROJECT NUMBER:

DATE:

Notary Printed Name

Personally Known _____ or Produced Identification _____

Type of Identification Produced: _____ My Commission Expires: _____

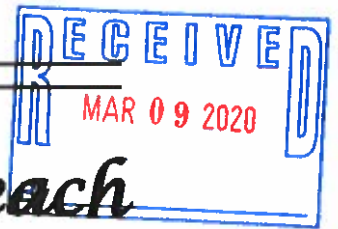
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Case #
Planner

Date Received
Date of Sufficiency/Completeness



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: JAMES & DAWN REICHLIN
Authorized Applicant:
LeePA STRAP Number: 28-46-24-W4-00500.0180

Current Property Status:	
Current Zoning: RS-1	
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

VARIANCE FROM SET BACK REQUIREMENTS FOR FRONT AND REAR YARD IN TABLE 34-2.

Complete the narrative statements below for EACH variance requested.

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

PART I
Narrative Statements

Request for variance from _____ (LDC Section number)

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

The current waterbody setback to the main structure is 25 ft. The building was built at _____ 20 feet

Reasons for request

Explain why the variance is needed:

Need to correct an existing setback condition which currently in non-compliance- we would like to do some interior/exterior improvements/repairs to the existing house.

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

Explain the possible effect the variance, if granted, would have on surrounding properties:

House has had this set back since it was last renovated in or around 2000.

We do not feel any neighbors have a problem with this condition, we have not heard any complaints in 20 yrs.

Explain the hardship (what is unique about the property) that justifies relief from the regulation:

The structure was built according to the required setbacks at that time. Would like to renovate the existing conditions.

The house sits on an oddly shaped lot.

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision-making in LDC Section 34-87.

The existing building is 20.2' away from the nearest body of water. According to current setback requirement it has to be 25'0". We would like to renovate the existing building in the future so we want the building to comply with setbacks- see attached survey. So we are requesting a reduction to 20' from 25' only in the rear setback. *As the house is on an oddly shaped lot.*

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completion _____

PART 2

Submittal Requirements

All applications for a variance must submit fourteen (14) copies of this application form and all applicable exhibits.

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

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.

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Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

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:

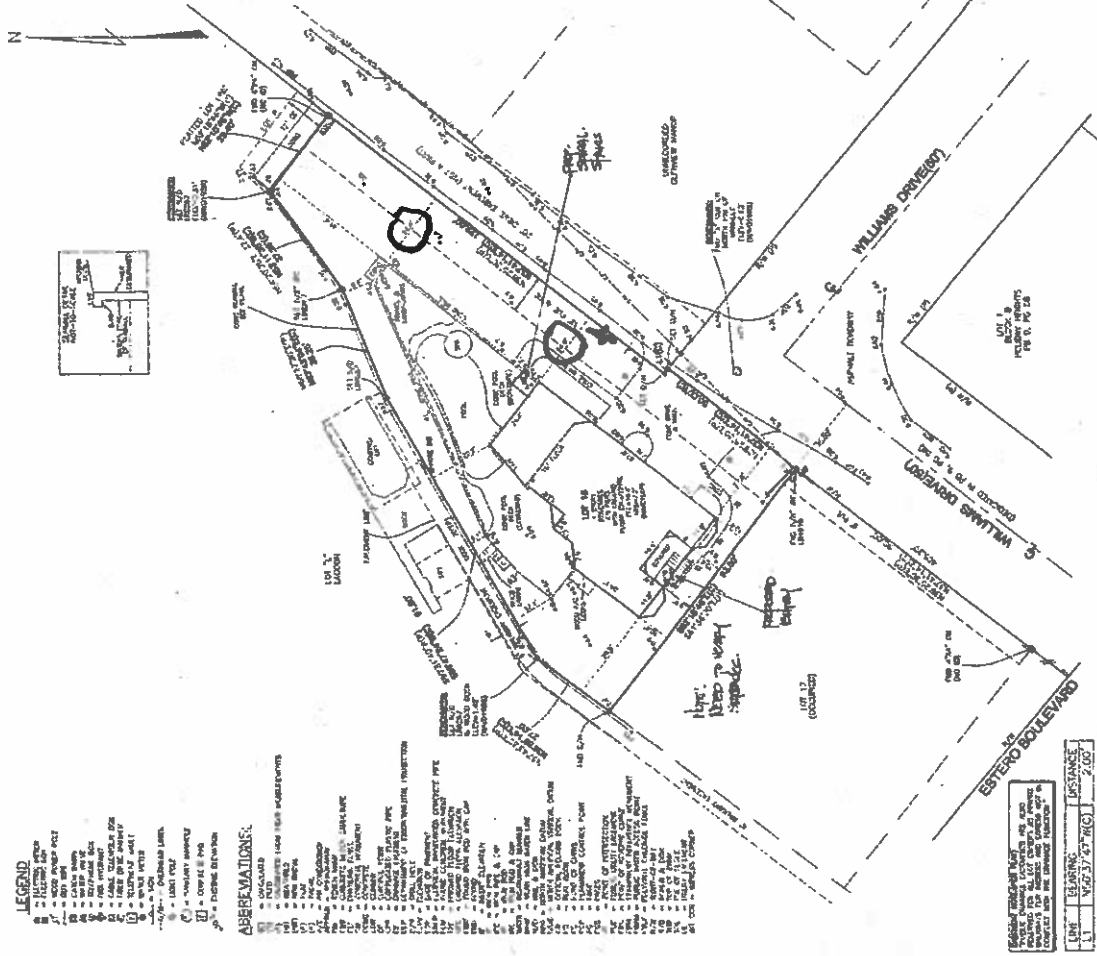
1. Whether there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or whether the request is for a *de minimis* variance under circumstances or conditions where rigid compliance is not necessary to protect public policy;
2. Whether the exceptional 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; *yes*
4. Whether granting the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare; *no*
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. *no*

The house sits on an oddly shaped lot.

SURVEY PLAT

OF
LOT 19
YACHTSMAN COVE
AS RECORDED IN PLAT BOOK 28 AT PAGES 80-81
LYING IN
SECTION 28, TOWNSHIP 46 SOUTH, RANGE 24 EAST,
TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA.

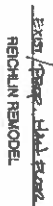
0' 30' 40'



NOTES:
1. THIS PLAT WAS PREPARED FOR THE RECORD BY THE SURVEYOR, AND IS NOT TO BE CONSIDERED A FINAL SURVEY.
2. THE PLAT WAS PREPARED FOR THE RECORD BY THE SURVEYOR, AND IS NOT TO BE CONSIDERED A FINAL SURVEY.
3. THE PLAT WAS PREPARED FOR THE RECORD BY THE SURVEYOR, AND IS NOT TO BE CONSIDERED A FINAL SURVEY.
4. THE PLAT WAS PREPARED FOR THE RECORD BY THE SURVEYOR, AND IS NOT TO BE CONSIDERED A FINAL SURVEY.
5. THE PLAT WAS PREPARED FOR THE RECORD BY THE SURVEYOR, AND IS NOT TO BE CONSIDERED A FINAL SURVEY.
6. THE PLAT WAS PREPARED FOR THE RECORD BY THE SURVEYOR, AND IS NOT TO BE CONSIDERED A FINAL SURVEY.
7. THE PLAT WAS PREPARED FOR THE RECORD BY THE SURVEYOR, AND IS NOT TO BE CONSIDERED A FINAL SURVEY.
8. THE PLAT WAS PREPARED FOR THE RECORD BY THE SURVEYOR, AND IS NOT TO BE CONSIDERED A FINAL SURVEY.
9. THE PLAT WAS PREPARED FOR THE RECORD BY THE SURVEYOR, AND IS NOT TO BE CONSIDERED A FINAL SURVEY.
10. THE PLAT WAS PREPARED FOR THE RECORD BY THE SURVEYOR, AND IS NOT TO BE CONSIDERED A FINAL SURVEY.

5043 WILLIAMS DRIVE - BOUNDARY SUI
CESINC
Engineers & Surveyors
2210 N. W. 13th Ave., Fort Myers, Florida 33901
Phone 941-936-1111
Fax 941-936-1112
E-mail: info@cesinc.com
Website: www.cesinc.com

DATE: 08-20-19
BY: [Signature]
CHECKED BY: [Signature]
DATE: 08-20-19





Town of Fort Myers Beach

NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

Case Number: VAR20200036

Case Name: 5043 Williams Dr. Waterbody, Side and Street Setback Variance

Applicant: James and Dawn Reichlin

Location: 5043 Williams Dr. STRAP #: 28-46-24-W4-00500.0180

Zoning: Residential Single Family (RS)

Request: Variances from Table 34-3 for the primary structure and Sec. 34-1174(b) for the pool enclosure. The variance requests are from the rear yard and water setback requirement of 25 feet to allow a setback of 20.2 feet for the primary structure, from the side yard setback requirement of 7.5 feet to allow a setback of 6.9 feet for wooden stairs and entry deck, and from the street setback requirement of 25 feet to allow a setback of 24.9 feet for the primary structure and 24.4 feet for the pool screen enclosure.

Staff Report: Direct inquiries to:
Kelly Bhutada, Community Development, at 239-765-0202 ext. 1310
Fort Myers Beach Town Hall
2525 Estero Boulevard
Fort Myers Beach, FL 33931

Notice is hereby given that the Town Council of the Town of Fort Myers Beach will hold a public hearing at a meeting beginning at **9:00 AM on November 2, 2020** regarding the case listed above. This hearing will take place at Town Hall, 2525 Estero Boulevard, Fort Myers Beach, Florida, 33931.

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence to become a participant in the hearing.

At this hearing the Town Council of the Town of Fort Myers Beach will review the case and a recommendation from the Local Planning Agency and staff. If any person should desire to have verbatim record of the proceedings, which record indicates the testimony and evidence presented, that person will have to make arrangements on their own.

Copies of the staff report are available for viewing at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you need reasonable accommodation, contact Town Hall at 239-765-0202.

1. **Requested Motion:**

Meeting Date: November 2, 2020

Approve/ Approve with conditions/ Deny VAR20200052 at a Parcel 4690/4700 Estero Boulevard to allow a variance from LDC Sec.34-1174 for Accessory Structures, to allow an accessory structure to be located closer to the street right-of-way than the principal structure

Why the action is necessary:

The property owner has submitted a request for a variance to the location of accessory structure forward of the principal structure. The LDC requires an approval from Town Council after a recommendation from the LPA.

What the action accomplishes:

Approval of the variance will approve the location of accessory structures closer to Estero Boulevard than the principal structure.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Jason Green, Community
Development Services

5. **Background:**

The applicant, Ms. Claudia Metcalfe, is seeking a variance (VAR) from LDC Sec. 34-1174(b) for an accessory structure to be located closer to street Right of Way than the principal structure. The variance will allow the construction of a detached garage, a storage room, an elevated pool/deck and a tiki hut to be approximately 60 feet from the right-of-way property line as shown on the site plan.

The subject lot was developed in 1940 and the residence, like many houses in this subdivision were constructed to the rear of the buildable area to take advantage of beach views. Due to the location in which the house was constructed the rear yard is small and the code does not allow residential accessory structure within the EC zoning district. Varying setback on the side of the house leaves little space for accessory structures behind or to the side of the house. The proposed location of the accessory structures exceeds the 25-foot principal structure street setback but is forward of the home.

The applicant/agent has indicated that the existing vegetation on the property will be maintained which will help block the view from Estero Blvd. The vegetative buffer is a condition of approval in the staff report.

The LPA has reviewed the case and finds it consistent with the Land Development Code and the Comprehensive Plan. The LPA has approved the variance with conditions and recommended eliminating condition 6 as given in the staff report. Condition 6 states that the roofed accessory structure shall not be located closer to the right-of-way of Estero Boulevard than the swimming pool/hot tub.

Attachments:

1. RES. 20-48, 4690-4700 Estero Blvd Accessory Structure Variance
2. Staff report TC 4690-4700 Estero
3. Exhibit A Survey
4. Exhibit B Site Plan

5. Exhibit C Application
6. Exhibit D Support Letter
7. Exhibit E Variance Report
8. Exhibit F Notification Letter
9. Exhibit G Elevation drawing

Financial Impact:

6. Alternative Action

Approve with conditions

7. Management Recommendations:

8. Recommended Approval:

Kalyani Bhutada, Planning Services
Jason Green, Community Development Services
John R Herin Jr, Town Attorney
Amy Baker, Deputy Town Clerk

Created/Initiated - 10/22/2020
Approved - 10/27/2020
Approved - 10/27/2020
Final Approval - 10/28/2020

RESOLUTION NUMBER 20-48

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA REGARDING APPLICATION VAR 20200052, FOR A VARIANCE TO THE REQUIREMENTS OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE FOR THE PROPERTY LOCATED AT 4690/4700 ESTERO BOULEVARD; 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 Claudia Metcalfe (“Applicant”), owner of the property located at 4690/4700 Estero Blvd. (“Property”), is requesting a variance from Sec. 34-1174(b) of the Town of Fort Myers Beach Land Development Code (“LDC”); and

WHEREAS, the STRAP number for the Property is 29-46-24-W3-008J0.0030 and the legal description of the Property is attached as *Exhibit A*; and

WHEREAS, the Property is located in the ‘Residential Conservation’ and ‘Environmentally Critical’ zoning district of the Official Zoning Map and the ‘Mixed Residential’ category of the Future Land Use Map of the Comprehensive Plan 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 October 13, 2020, at which 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 34-84 of the LDC; and

WHEREAS, on November 2, 2020 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 LDC 34-87, and the Town Council determined it is in the best interest of the Town to approve the request.

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

Determination:

Based upon the recommendations, testimony, and evidence presented by the applicant, Town staff, and interested parties, the Town Council **APPROVES/APPROVES WITH CONDITIONS/DENIES** the following:

- A. A variance from Sec. 34-1174(b) of the LCD – “Locational Regulations in Conventional Zoning Districts” - to allow an accessory structure to be located closer to the street right of than the principal structure, specifically a variance of 60 feet from the required 126.6 feet front setback distance compared to the principal structure.

Findings and Conclusions:

In accordance with the requirements of Sections 34-84 and 34-87 of the LDC regarding consideration of eligibility for a variance, the Town Council makes the following findings and reaches the following conclusions:

- A. There **are/are not** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request **is** for a de minimus variance under circumstances or conditions where rigid compliance is not essential to protect public policy.
- B. The conditions justifying the variance **are/are not** the result of actions of the applicant taken after the adoption of the regulation in question.
- C. The variance granted **is/is not** the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.
- D. The granting 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 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.

Conditions of Approval:

1. *Nothing in the approval of this variance, including any of the attached conditions, may be construed as a variance or deviation from the provisions of LDC Chapter 6, Article IV Floodplain regulations. Approval of this variance does not exempt the Property from any provisions of the LDC with the exception of the approved variance.*
2. *Approval of this variance does not give the Applicant 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.*

3. *The variances shall only apply to the proposed accessory structure location as shown on the provided site plan dated 05/11/2020 by Kuk Architecture and Design. No deviations from the measurements of that site plan greater than 0.1 feet shall be permitted.*
4. *A type B landscape buffer, per LDC Sec.10-416, shall be installed and maintained adjacent to single-family uses and right-of-way to mitigate visual impacts.*
5. *Total height of the any structure is limited to the height of the existing principal structure.*

Effective Date.

This Resolution shall take effect immediately upon adoption.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by _____ and upon being put to a vote, the result 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 2nd day of November 2020 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH, FLORIDA

Raymond P. Murphy, Mayor

ATTEST:

Michelle D. Mayher, Town Clerk

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

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of November 2020.



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT

TYPE OF CASE: Variance

CASE NUMBER: VAR 20200052

CASE NAME: 4690/4700 Estero Blvd- Accessory Structure Variance

**TOWN COUNCIL
HEARING DATE:** November 2nd, 2020 at 9.00 AM

**STAFF
RECOMMENDATION:** Approve with conditions

**PREPARED/
SUBMITTED BY:** Kelly Bhutada/ Jason Green, AICP

I. APPLICATION SUMMARY

Applicant: Claudia Metcalfe (owner)/ Fred Drovdlc (agent)

Request: The applicant is seeking a variance (VAR) from LDC Sec. 34-1174(b) for accessory structures to be located closer to the street right of way (ROW) than the principal structure to allow construction of a detached garage, a storage room, an elevated pool/ deck, tiki hut and other (attached exhibit G) to be approximately 60 feet from the right-of-way property line.

Subject property: See attached survey and legal description, Exhibit A

Physical Address: 4690/ 4700 Estero Boulevard

STRAP #: 29-46-24-W3-008J0.0030

FLU: Mixed Residential

Zoning: Residential Conservation (RC) and
Environmentally Critical (EC)

Current use(s): Multi- family Residential

Adjacent zoning and land uses:

East and southwest of the parcel is individually owned single-family residences, zoned Residential Conservation (RC). North of the parcel is Estero Boulevard ROW and then developed lots zoned Residential Multi-family (RM). Northwest of the property is 20 feet drive access easement for the beach pedestrian. South of the parcel is the beach and Gulf of Mexico.

II. BACKGROUND AND ANALYSIS

Background:

The subject property is a platted, lot 3, 4 & 6, Block J, Hyde Park Subdivision, and the subject parcel lies within SFHA flood zone VE with base flood elevation of 16 feet. Per LeePA, the subject parcel is developed with a one-duplex unit closer to the gulf and one single-family dwelling unit closer to the ROW of Estero Blvd. The subject lot is a conforming lot with average lot dimension of 121± feet wide by 179± feet deep and is non- conforming due to density and setback.

The 20,000± square foot lot is located south of Estero Blvd and is a gulf fronting lot which underlays RC and EC district on the land use map and Mixed Residential on the future land use map. Ms. Claudia Metcalfe, owner of the said parcel have requested a variance to the required front setback to allow construction of accessory structures including detached garage, storage room, an elevated pool/ deck and tiki hut area in the front yard as shown on the site plan, Exhibit B.

This staff report presents applicant's request to approve a variance to construct an accessory structures closer to the ROW of Estero Blvd than the principal structure in the RC zoning district, a variance from LDC Sec. 34-1174(b). The accessory structure like detached garage, storage shed, pool and tiki hut in the residential zoning districts are required not to be placed closer to the ROW than the principal structure; 7.5 ft. from the side property lines and 5 feet from the seawalled natural body of water. The applicant is proposing accessory structures to be constructed at approximately 60 feet from the ROW of Estero Blvd.

Analysis:

The subject property is RC zoned on the northern portion and zoned EC on the southern portion, adjacent to the beach. The EC zoning district is delineated by the 1978 Coastal Control Construction Line (CCCL), no construction may occur seaward of the CCCL, in the EC zoning district. The residence was built in 1940 and the current owner/ applicant bought the property in August 2013. Per the provided survey, the structure was built across the CCCL and the rear deck is encroaching in to the EC district approximately 2.8 feet.

The subject property is a waterfront lot and is subject to the following setbacks: 25 ft. front yard setback, 7.5 ft. from side property lines, and 50 ft. from mean high water line along Gulf of Mexico. Existing duplex unit conform to these setbacks. However, a single- family unit is located closer to the ROW and do not conform to the setback requirement for RC district.

The subject parcel consists of three (3) lots in Hyde Park subdivision and is irregular in size to parcels in the neighborhood, in the same zoning district. This house, like many houses in this subdivision were constructed to the rear of the buildable area to take advantage of beach views. Due to the location in which the house was constructed the rear yard is small and the code does not allow residential accessory structure within the EC zoning district. Varying setback on the side of the house leaves little space to construct a pool behind or to the side of the house. The proposed location of the accessory structures exceeds the 25-foot front setback but is forward of the principal structure.

The duplex unit is setback at 126.75 feet from front/ ROW property line and there is existing vegetation on the property that will be maintained and enhanced, per applicant, which will

block the view from Estero Blvd. The vegetative buffer is a condition of approval. Staff found no previous variance on the parcel.

Comprehensive Plan Compatibility:

Staff finds that the reduction in the setback to construct a residential improvement in an older subdivision without increasing density is consistent with "POLICY 4-B-4 MIXED RESIDENTIAL: designed for older subdivisions with mixed housing types on smaller lots, newer high-rise buildings, and mobile home and RV parks. This category will ensure that Fort Myers Beach retains a variety of neighborhoods and housing types..."

Neighborhood Compatibility:

In a review of aerial photography of the neighborhood, staff found that many of the homes are constructed near the CCCL to take advantage of the beach view. A pool variance was approved at a parcel that is five blocks away to allow a pool in front of the house. The applicant has received a support letter from the neighbors at 4660 and 4730 Estero Boulevard, the properties directly adjacent, Exhibit D.

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 applicant provided the following explanation:

The Applicant's request is de minimis in nature and will only allow for the development of a private pool and open-air tiki hut that will be accessory to the single-family dwelling unit, or the principal structure. The Property is also unique as it was first developed in the year 1940 as part of the HYDE PARK subdivision (BLK J PB 7 PG 20 LOTS 3 4 + 6).

Staff finds that the residence was constructed at the very back of the property, leaving very little space behind the house and somewhat narrow side yard.

*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.*

The applicant provided the following explanation:

The variance request is not the result of action taken by the current property owner, who acquired the property in 2013. The principal structure itself was constructed in 1940 prior to the creation of the code section which the Applicant is seeking relief.

Staff finds that the conditions presented to justify the variance are not the result of the actions of the applicant. The existing structure location leaves little space for the accessory structure in the side or rear yard and the applicant was not responsible for the construction of the house.

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.

The applicant provided the following explanation:

Yes, the requested variance is the minimum to relieve the applicant of the code requirement. The variance is the distance between the front building line of the house and the farthest extent of the pool/deck area as depicted on the site plan. The setback from Estero Blvd. is maintained as a minimum of 25 feet. The Applicant is not seeking any additional relief or variances.

Staff finds that the accessory structures will be located approximately 60 feet from the ROW property line and will meet the front setback of 25 feet. A side yard setback of 7.5 feet will be maintained as shown in the site plan.

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

The applicant provided the following explanation:

The granting of this variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare. As previously noted, the Applicant has provided letters of no objection from the property owners directly to the north and south of the subject property. The pool and tiki hut will be setback a minimum of 25-feet from Estero Blvd. and will be screened by existing vegetation along the right-of-way.

Staff finds that the variance will not be injurious to the neighborhood and detrimental to the public welfare. Enhancement of the existing landscaping and the distance off the ROW will minimize the visual impact of the proposed improvements.

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.

The applicant provided the following explanation:

This variance request is not uncommon for Gulf side properties located on Estero Blvd. as many of the existing structures were built before modern land development codes and state and federal coastal building regulations. However, it is the decision of the Council to amend the regulations to allow pool and residential accessory structures in the front yard between principal structures and street right-of-way.

Staff finds the conditions and circumstance of the subject property is fairly general and recurring for the gulf fronting non-conforming single-family or two family residences on the island and an alternative policy for non- conforming building shall be amended to recognize the age of the building and limitation on variation of setbacks.

III. RECOMMENDATION

Staff finds there is a hardship, or exceptional or extraordinary conditions or circumstances present that warrant the variance requested. The existing condition of the location of the duplex unit closer to the CCCL create a hardship for future improvements and require them to be located in front of the property.

Therefore, staff recommends **APPROVAL WITH CONDITION** of the variances from LDC Sec. 34-1174(b) to allow accessory structures to be closer to a street ROW line or street easement than the principal building.

Staff Recommended Conditions of Approval:

1. *Nothing in the approval of this variance, including any of the attached conditions, may be construed as a variance or deviation from the provisions of LDC Chapter 6, Article IV Floodplain regulations. Approval of this variance does not exempt the subject property from any provisions of the LDC with the exception of the approved variance.*
2. *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.*
3. *The variances shall only apply to the proposed accessory structure location as shown on the provided site plan dated 05/11/2020 by Kuk Architecture and Design. No deviations from the measurements of that site plan greater than 0.1 feet shall be permitted.*
4. *A type B landscape buffer, per LDC Sec.10-416, shall be installed and maintained adjacent to single-family uses and right-of-way to mitigate visual impacts.*
5. *Total height of the any structure is limited to the height of the existing principal structure.*
6. *The roofed accessory structure shall not be located closer than the swimming pool/hot tub to the right-of-way of Estero Boulevard.*

LPA RECOMMENDATION:

LPA finds that the requested variance is consistent with the Town's Comprehensive Plan and Land Development Code. LPA recommended approval the variance request with conditions 1-5 as provided in the staff report and eliminate condition number 6.

LPA Recommended Conditions of Approval:

1. *Nothing in the approval of this variance, including any of the attached conditions, may be construed as a variance or deviation from the provisions of LDC Chapter 6, Article IV Floodplain regulations. Approval of this variance does not exempt the subject property from any provisions of the LDC with the exception of the approved variance.*
2. *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.

- 3. The variances shall only apply to the proposed accessory structure location as shown on the provided site plan dated 05/11/2020 by Kukk Architecture and Design. No deviations from the measurements of that site plan greater than 0.1 feet shall be permitted.*
- 4. A type B landscape buffer, per LDC Sec.10-416, shall be installed and maintained adjacent to single-family uses and right-of-way to mitigate visual impacts.*
- 5. Total height of the any structure is limited to the height of the existing principal structure.*
- 6. The roofed accessory structure shall not be located closer to the right-of-way of Estero Boulevard than the swimming pool/hot tub.*

Staff Report Exhibits:

A – Legal Description and Survey

B – Site Plan

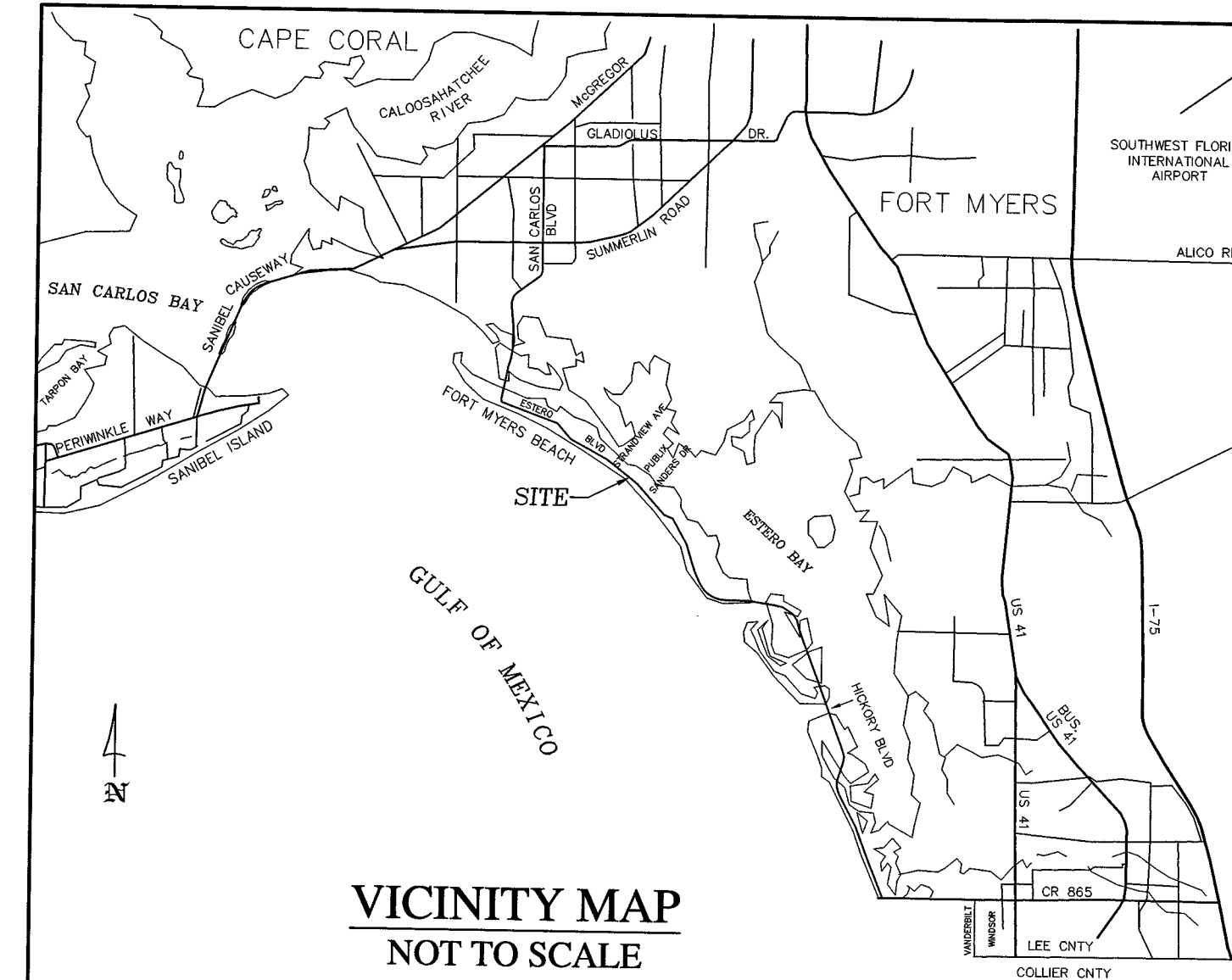
C – Application

D – Letter of Support from Neighbor

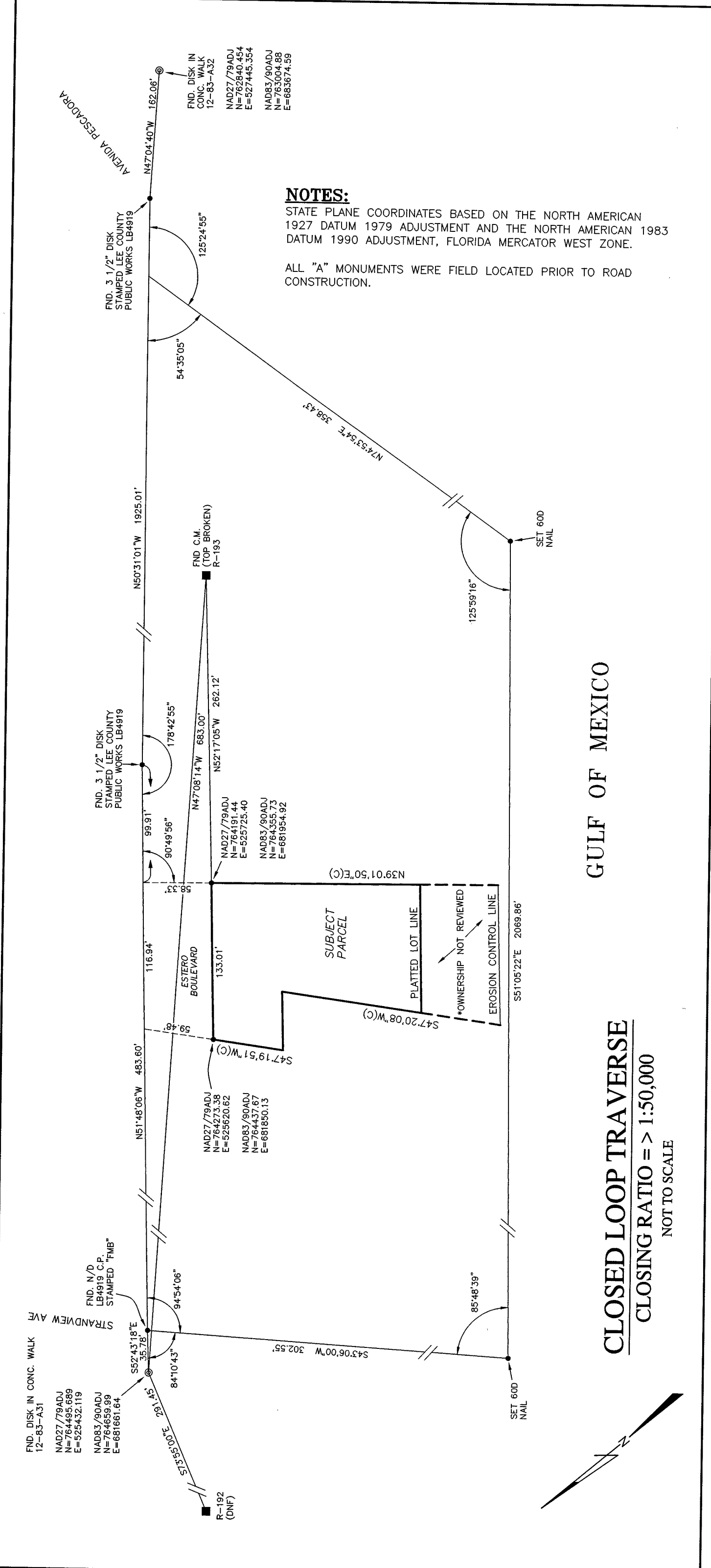
E – Variance Report

F – Letter to Adjacent Property Owners

G –Elevation Drawing



VICINITY MAP
NOT TO SCALE



NOTES:
STATE PLANE COORDINATES BASED ON THE NORTH AMERICAN 1927 DATUM 1979 ADJUSTMENT AND THE NORTH AMERICAN 1983 DATUM 1990 ADJUSTMENT, FLORIDA MERCATOR WEST ZONE.
ALL "A" MONUMENTS WERE FIELD LOCATED PRIOR TO ROAD CONSTRUCTION.

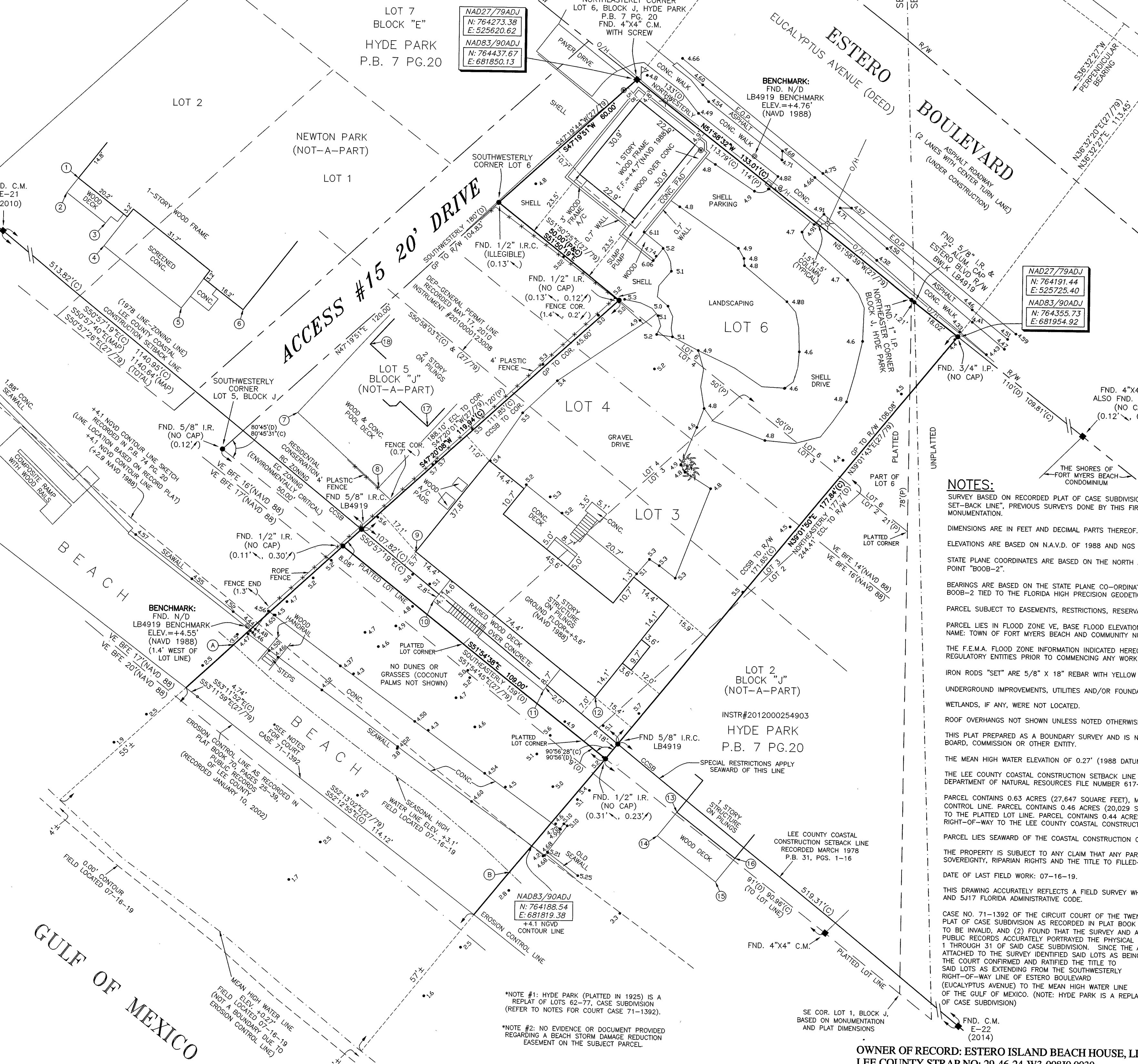
GULF OF MEXICO

CLOSED LOOP TRAVERSE
CLOSING RATIO = 1:50,000
NOT TO SCALE

ABBREVIATIONS:
P.B. = PLAT BOOK
P.C. = POINT OF CURVE
P.T. = POINT OF TANGENCY
P.I. = POINT OF INTERSECTION
I.P. = IRON PIPE
I.R. = IRON ROD & CAP
C.M. = CONCRETE MONUMENT
P.C.P. = PERMANENT CONTROL POINT
P.R.M. = PERMANENT REFERENCE MONUMENT
CONC. = CONCRETE
E.O.P. = EDGE OF PAVEMENT
M. = MEASURED
FND. = FOUND
N/D. = NAIL AND DISK
ELEV. = ELEVATION
P.U.E. = PUBLIC UTILITY EASEMENT
COR. = CORNER
P. = PLAT
A/C. = AIR CONDITIONER
D.B. = DEED BOOK
O.R. = OFFICIAL RECORD BOOK
PG. = PAGE
F. = FIELD
C. = CALCULATED
FF. = FINISH FLOOR
I.E. = INVERT ELEVATION
R.C.P. = REINFORCED CONCRETE PIPE
C.B. = CATCH BASIN
MH. = MANHOLE
PK. = PARKER KALON
O.H. = OVERHEAD LINES
D. = DEED
N.A.V.D. = NORTH AMERICAN VERTICAL DATUM
N.G.S.V.D. = NATIONAL GEODETIC VERTICAL DATUM
B.F.E. = BASE FLOOD ELEVATION
DNR = DEPARTMENT OF NATURAL RESOURCES COASTAL CONSTRUCTION CONTROL LINE MAPS DATED 5-30-81
MAP = LEE COUNTY COASTAL CONSTRUCTION SETBACK LINE
ECL = EROSION CONTROL LINE
GP = DEP-GENERAL PERMIT LINE
P.O.B. = POINT OF BEGINNING

LEGEND
[Symbol] = STORM MANHOLE
[Symbol] = ELECTRIC BOX
[Symbol] = LIGHT POLE
[Symbol] = WOOD POWER POLE
[Symbol] = CONCRETE POWER POLE
[Symbol] = GUY WIRE
[Symbol] = CATCH BASIN
[Symbol] = IRRIGATION VALVE
[Symbol] = WATER VALVE
[Symbol] = SANITARY MANHOLE
[Symbol] = TELEPHONE BOX
[Symbol] = FIRE HYDRANT
[Symbol] = CABLE TELEVISION BOX
[Symbol] = TRANSFORMER
[Symbol] = WATER METER
[Symbol] = SIGN
[Symbol] = EXISTING ELEVATION
[Symbol] = MAILBOX
[Symbol] = CABBAGE PALM

PERPENDICULAR TIES TO THE COASTAL CONSTRUCTION CONTROL LINE
1 = 245.2' 5 = 258.3' 9 = 275.3' 13 = 291.1'
2 = 251.2' 6 = 246.6' 10 = 284.4' 14 = 301.1'
3 = 251.6' 7 = 262.6' 11 = 285.7' 15 = 301.8'
4 = 257.6' 8 = 266.1' 12 = 277.3' 16 = 291.8'
17 = 240.7' 18 = 230.7'
PERPENDICULAR DISTANCE FROM APPROXIMATE SEASONAL HIGH WATER LINE TO COASTAL CONSTRUCTION CONTROL LINE
A = 335' B = 340'



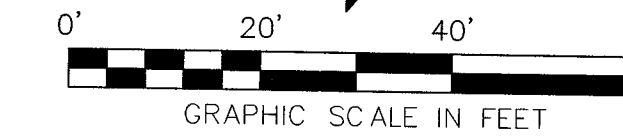
NOTES:
SURVEY BASED ON RECORDED PLAT OF CASE SUBDIVISION (PLAT BOOK 1, PAGE 58), THE "EROSION CONTROL LINE" (PLAT BOOK 70, PAGE 25), THE "LEE COUNTY COASTAL CONTROL SET-BACK LINE", PREVIOUS SURVEYS DONE BY THIS FIRM, TITLE COMMITMENT BY STEWART TITLE GUARANTEE COMPANY WITH COMMITMENT NUMBER: 1-11-1415-MB (UNDATED) AND FOUND MONUMENTATION.
DIMENSIONS ARE IN FEET AND DECIMAL PARTS THEREOF.
ELEVATIONS ARE BASED ON N.A.V.D. OF 1988 AND NGS BENCHMARK G-245.
STATE PLANE COORDINATES ARE BASED ON THE NORTH AMERICAN DATUM OF 1983/1990 ADJUSTMENT, FLORIDA MERCATOR WEST ZONE AS SHOWN AND NOTED HEREON HOLDING NGS CONTROL POINT "BOOB-2".
BEARINGS ARE BASED ON THE STATE PLANE CO-ORDINATE GRID NORTH AMERICAN DATUM (NAD) OF 1983/1990 ADJUSTMENT, FLORIDA MERCATOR WEST ZONE HOLDING NGS CONTROL POINT BOOB-2 TIED TO THE FLORIDA HIGH PRECISION GEODETIC NETWORK AND AS NOTED OTHERWISE.
PARCEL SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS- OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).
PARCEL LIES IN FLOOD ZONE VE, BASE FLOOD ELEVATION OF 14', 15', 17' AND 20' (NAVD 1988). THIS INFORMATION TAKEN FROM FLOOD INSURANCE RATE MAP 12071C0566F, COMMUNITY NAME: TOWN OF FORT MYERS BEACH AND COMMUNITY NUMBER: 120673, PANEL EFFECTIVE 8-28-2008 AND INDEX DATE 12-07-2016.
THE F.E.M.A. FLOOD ZONE INFORMATION INDICATED HEREON IS BASED ON MAPS SUPPLIED BY THE FEDERAL GOVERNMENT. THIS FLOOD INFORMATION MUST BE VERIFIED WITH ALL PERMITTING REGULATORY ENTITIES PRIOR TO COMMENCING ANY WORK OR APPLICATION DEPENDENT ON SAID FLOOD INFORMATION.
IRON RODS "SET" ARE 5/8" X 18" REBAR WITH YELLOW CAP BEARING CORPORATION NO. LB8267.
UNDERGROUND IMPROVEMENTS, UTILITIES AND/OR FOUNDATIONS WERE NOT LOCATED UNLESS OTHERWISE NOTED.
WETLANDS, IF ANY, WERE NOT LOCATED.
ROOF OVERHANGS NOT SHOWN UNLESS NOTED OTHERWISE.
THIS PLAT PREPARED AS A BOUNDARY SURVEY AND IS NOT INTENDED TO DELINEATE THE JURISDICTION OR JURISDICTIONAL AREAS OF ANY FEDERAL, STATE, REGIONAL OR LOCAL AGENCY, BOARD, COMMISSION OR OTHER ENTITY.
THE MEAN HIGH WATER ELEVATION OF 0.27' (1988 DATUM) WAS EXTENDED FROM DEP TIDE INTERPOLATION POINT IDENTIFICATION 100229 AND IS SHOWN FOR REFERENCE ONLY.
THE LEE COUNTY COASTAL CONSTRUCTION SETBACK LINE AS SHOWN ON MAPS PREPARED FOR STATE OF FLORIDA DEPARTMENT OF NATURAL RESOURCES FILE NUMBER 617-0275 DATED MARCH 1978 IS RECORDED IN PLAT BOOK 31 AT PAGES 1-16.
PARCEL CONTAINS 0.63 ACRES (27,647 SQUARE FEET), MORE OR LESS FROM ESTERO BOULEVARD RIGHT-OF-WAY TO THE EROSION CONTROL LINE. PARCEL CONTAINS 0.46 ACRES (20,029 SQUARE FEET), MORE OR LESS FROM ESTERO BOULEVARD RIGHT-OF-WAY TO THE PLATTED LOT LINE. PARCEL CONTAINS 0.44 ACRES (19,261 SQUARE FEET), MORE OR LESS FROM ESTERO BOULEVARD RIGHT-OF-WAY TO THE LEE COUNTY COASTAL CONSTRUCTION SETBACK LINE.
PARCEL LIES SEAWARD OF THE COASTAL CONSTRUCTION CONTROL LINE WHICH WILL REQUIRE ADDITIONAL PERMITTING.
THE PROPERTY IS SUBJECT TO ANY CLAIM THAT ANY PART OF SAID LAND IS OWNED BY THE STATE OF FLORIDA BY RIGHT OF SOVEREIGNTY, RIPARIAN RIGHTS AND THE TITLE TO FILLED-IN LANDS, IF ANY.
DATE OF LAST FIELD WORK: 07-16-19.
THIS DRAWING ACCURATELY REFLECTS A FIELD SURVEY WHICH COMPLIES WITH THE REQUIREMENTS OF SECTION 62B-33.0081 AND 5117 FLORIDA ADMINISTRATIVE CODE.
CASE NO. 71-1392 OF THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT, LEE COUNTY, FLORIDA, FOUND (1) THE PLAT OF CASE SUBDIVISION AS RECORDED IN PLAT BOOK 1 AT PAGE 58 OF THE PUBLIC RECORDS OF SAID LEE COUNTY TO BE INVALID, AND (2) FOUND THAT THE SURVEY AND AFFIDAVIT AS SHOWN IN DEED BOOK 131 AT PAGE 300 OF SAID PUBLIC RECORDS ACCURATELY PORTRAYED THE PHYSICAL LOCATION OF LOTS 1 THROUGH 31 OF SAID CASE SUBDIVISION. SINCE THE AFFIDAVIT AND STATEMENTS ATTACHED TO THE SURVEY IDENTIFIED SAID LOTS AS BEING BEACH FRONT LOTS, SAID LOTS AS EXTENDING FROM THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF ESTERO BOULEVARD (EUCALYPTUS AVENUE) TO THE MEAN HIGH WATER LINE OF THE GULF OF MEXICO. (NOTE: HYDE PARK IS A REPLAT OF CASE SUBDIVISION)

*NOTE #1: HYDE PARK (PLATTED IN 1925) IS A REPLAT OF LOTS 62-77, CASE SUBDIVISION (REFER TO NOTES FOR COURT CASE 71-1392).
*NOTE #2: NO EVIDENCE OR DOCUMENT PROVIDED REGARDING A BEACH STORM DAMAGE REDUCTION EASEMENT ON THE SUBJECT PARCEL.

OWNER OF RECORD: ESTERO ISLAND BEACH HOUSE, LLC
LEE COUNTY STRAP NO: 29-46-24-W3-008J0.0030
SITE ADDRESS: 4690/4700 ESTERO BOULEVARD

SURVEY PLAT

OF
A PARCEL OF LAND
LYING IN
SECTIONS 28 AND 29, TOWNSHIP 46 SOUTH, RANGE 24 EAST,
TOWN OF FORT MYERS BEACH
ESTERO ISLAND, LEE COUNTY, FLORIDA



DESCRIPTION:
AS RECORDED IN INSTRUMENT #2013000195903:

COMMENCING AT THE NORTHEASTERLY CORNER OF LOT 6, BLOCK J, OF THAT CERTAIN SUBDIVISION KNOWN AS HYDE PARK, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 7, PAGE 20, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; SAID CORNER BEING THE INTERSECTION OF EUCALYPTUS AVENUE OR ESTERO BOULEVARD AND 20 FOOT STREET; THENCE SOUTHWESTERLY ALONG THE WESTERLY BOUNDARY OF LOT 6 AND LOT 5, BLOCK J, A DISTANCE OF 180 FEET TO THE SOUTHWESTERLY CORNER OF LOT 5, BLOCK J; THENCE SOUTHEASTERLY AT AN INCLUSIVE ANGLE OF 80°45' ALONG THE SOUTHERLY BOUNDARIES OF LOTS 5, 4, 3, AND 2, BLOCK J, A DISTANCE OF 159 FEET; THENCE NORTHEASTERLY AT AN INCLUSIVE ANGLE OF 90°56' A DISTANCE OF 177.7 FEET TO A POINT ON THE SOUTHERLY SIDE OF EUCALYPTUS AVENUE OR ESTERO BOULEVARD, WHICH SAID POINT IS 133 FEET FROM THE POINT OF BEGINNING; THENCE NORTHWESTERLY ALONG THE SOUTHERLY SIDE OF EUCALYPTUS AVENUE OR ESTERO BOULEVARD, A DISTANCE OF 133 FEET TO THE POINT OF BEGINNING.

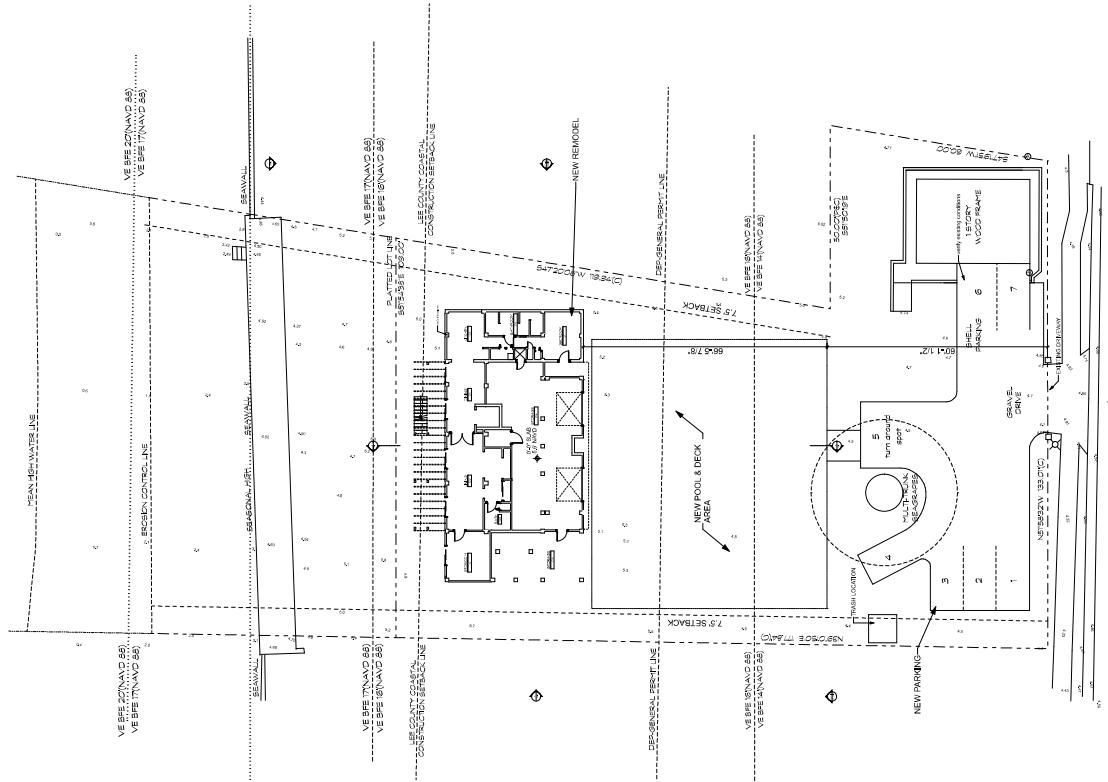
LESS AND EXCEPT: LOT 5, BLOCK "J", OF HYDE PARK, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 7, PAGE 20, PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

*NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
CES, INC.
SCOTT C. WHITAKER, P.S.M., NO. 154324
PROFESSIONAL SURVEYOR & MAPPER
STATE OF FLORIDA
- THIS CERTIFICATION IS ONLY FOR THE LANDS DESCRIBED HEREON.
- IT IS NOT A CERTIFICATION OF TITLE, ZONING, SETBACKS, OR FREEDOM OF ENCUMBRANCES.
- THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF ABSTRACT OF TITLE AND ALL MATTERS OF TITLE SHOULD BE REFERRED TO AN ATTORNEY AT LAW.

METCALFE
4690/4700 ESTERO BOULEVARD

CESinc
Engineers • Environmental Scientists • Surveyors

13041 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919		PH (239) 481-1331	
2010582.001SR_DEP.DWG		FLORIDA CERTIFICATE OF AUTHORIZATION NUMBERS EB32664 & LB8267	
DATE	PROJECT NO.	DRAWN BY	SCALE
07-16-19	582.001	CAM/BTB	1" = 20'
SHEET		FILE NO. (S-T-R)	
1 OF 1		29-46-24	



1 Site Plan
SCALE: 1/16" = 1'-0"

PROPOSED AREA CALCULATIONS	
AC SPACE	
EXISTING GROUND FLOOR AC	1,420
PROPOSED FIRST FLOOR AC	2,552
	<u>3,972 SQ FT</u>
NON AC SPACE	
EXISTING STORAGE	1,325
	<u>1,325 SQ FT</u>
	<u>5,297 SQ FT</u>

EXISTING TOTAL AC - 3,766 SQ. FT.
EXISTING GROUND FLOOR AC - 1,420 SQ. FT.
EXISTING 1ST FLOOR AC - 2,346 SQ. FT.

PROJECT NUMBER:

DATE:



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

APPLICATION for PUBLIC HEARING

This is 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 *one ORIGINAL paper copy, fourteen (14) copies* of all required applications, supplemental information, exhibits and documents. Please do not print and copy the instructions at the end of the application. In addition to application fees, the applicant is required to pay for (2) sets of mailings to neighboring property owners within 500', and all advertising fees.

Site Address: 4700 Estero Blvd., Fort Myers Beach, FL 33931

STRAP Number: 29-46-24-W3-008J0.0030

Applicant: Claudia Metcalfe Phone: 239-910-4060

Contact Name: Claudia Metcalfe Phone: 239-910-4060

Email: claudiafunck@hotmail.com Fax: N/A

Current Zoning District: Residential Conservation (RC)

Future Land Use Map (FLUM) Category: Mixed Residential (MR)

FLUM Density Range: 6 du/acre 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

PROJECT NUMBER:

DATE:

PART I – General Information

A. Applicant*: Claudia Metcalfe Phone: 239-910-4060

**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: 4700 Estero Blvd., Fort Myers, FL 33931

Email: claudiafunck@hotmail.com Fax: N/A

Contact Name: Claudia Metcalfe Phone: 239-910-4060

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: Lindsay F. Robin, MPA Phone: 239-908-3079

Address: Waldrop Engineering, 1514 Broadway #201, Fort Myers FL 34195

Email: lindsay.robin@waldropengineering.com Fax: 239-405-7899

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

Name: Fred Drovdlc, AICP Phone: 239-344-0000

Address: Waldrop Engineering, 1514 Broadway #201, Fort Myers, FL 34195

Email: fred.drovdlc@waldropengineering.com Fax: 239-405-7899

Name: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

PROJECT NUMBER:

DATE:

Name: _____

Phone: _____

Address: _____

Email: _____

Fax: _____

PART II – Nature of Request

Requested Action (each request requires a separate application)

☐ Special Exception

☒ Variance from LDC Section 34-1174(b) - Location and setbacks generally

☐ 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: _____

☐ Appeal of Administrative Action

☐ Vacation ☐ Right-of-Way ☐ Easement

☐ Other. Please Explain: _____

PART III – Waivers N/A

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

Code Section: _____

Description: _____

Code Section: _____

Description: _____

Code Section: _____

PROJECT NUMBER:

DATE:

Description: _____

PART IV – Property Ownership

☒ Single Owner (individual or husband and wife)

Name: SAME AS APPLICANT

Phone: _____

Mailing Address: _____

Email _____

Fax: _____

☐ 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 4-1

☐ Attach map showing property owners interests as Exhibit 4-2 (for multiple parcels)

☐ For condominiums and timeshares see Explanatory Notes Part IV (Page 11)

DISCLOSURE OF OWNERSHIP INTEREST

SEE ATTACHED.

STRAP: 29-46-24-W3- 008J0.00300

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

Claudia Metcalfe

100%

4700 Estero Blvd.

Fort Myers Beach, FL 33931

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

PROJECT NUMBER:

DATE:

Name, Address and Office

Percentage of Stock

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

Name and Address

Percentage of Interest

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

Name and Address

Percentage of Ownership

PROJECT NUMBER:

DATE:

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

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

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

Claudia Metcalfe

Printed Name

PROJECT NUMBER:

DATE:

**STATE OF FLORIDA)
COUNTY OF LEE)**

Subscribed and sworn to (or affirmed) before me this _____ day of _____,
20_____, by _____.

Notary Public Signature

(SEAL)

Notary Printed Name

Personally Known _____ or Produced Identification _____

Type of Identification Produced: _____ My Commission Expires: _____

PART V – Property Information

A. Legal Description:

STRAP: 29-46-24-W3- 008J0.00300

Property Address: 4700 Estero Blvd., Fort Myers Beach, FL 33931

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee County? ☐ No. Attach a legible copy of the legal description as Exhibit 5-1.

☒ Yes. Property identified in subdivision: Hyde Park

Book: 7 Page: 20 Unit: _____ Block: J Lot(s): 3 4 + 6

B. Boundary Survey: SEE PLAT.

☐ 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 5-2.

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 100+/- feet

PROJECT NUMBER:

DATE:

Depth (please provide an average width if irregular in shape) 175+/- feet

Frontage on street: 150+/- feet. Frontage on waterbody: 100+/- feet

Total land area: 0.45+/- ☒ acres ☐ square feet

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

The Property is generally located 200 feet south of Strandview Avenue on the south
side (Gulf side) of Estero Boulevard in the Town of Fort Myers Beach, Florida.

☒ Attach Area Location Map as Exhibit 5-3

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 5-4.

☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 5-5.

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 5-6.

☒ Attach a map showing the surrounding property owners as Exhibit 5-7.

☒ 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

H. Zoning (see official Zoning Map):

☐ RS (Residential Single-family)

☐ CF (Community Facilities)

☒ RC (Residential Conservation)

☐ IN (Institutional)

PROJECT NUMBER:

DATE:

- | | |
|--|--|
| ☐ RM (Residential Multifamily) | ☐ BB (Bay Beach) |
| ☐ RPD (Residential Planned Development) | ☐ EC (Environmentally Critical) |
| ☐ CM (Commercial Marina) | ☐ DOWNTOWN |
| ☐ CO (Commercial Office) | ☐ SANTOS |
| ☐ CB (Commercial Boulevard) | ☐ VILLAGE |
| ☐ CR (Commercial Resort) | ☐ SANTINI |
| ☐ CPD (Commercial Planned Development) | |

PART VI SEE ATTACHED.

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, Claudia Metcalfe 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;

PROJECT NUMBER:

DATE:

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 of owner or authorized agent

Date

**STATE OF FLORIDA)
COUNTY OF LEE)**

Subscribed and sworn to (or affirmed) before me this _____ day of _____,
20_____, by _____.

Notary Public Signature

(SEAL)

Notary Printed Name

Personally Known _____ or Produced Identification _____

Type of Identification Produced: _____ My Commission Expires: _____



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: To be provided by Staff
Project Name: 4700 Estero Blvd. Variance
Authorized Applicant: Waldrop Engineering, P.A.
LeePA STRAP Number: 29-46-24-W3-008J0.0030

Current Property Status: Residential
Current Zoning: Residential Conservation (RC)
Future Land Use Map (FLUM) Category: Mixed Residential (MR)
Comp Plan Density: 6 du/ac Platted Overlay? ☐ Yes ☒ No

Variance is requested from:

LDC Section Number

Title of Section or Subsection

side (Gulf side) of Estero Boulevard in the Town of Fort Myers Beach, Florida.

Complete the narrative statements below for EACH variance requested.

PART I Narrative Statements

Request for variance from LDC 34-1174(b) **(LDC Section number)**

Explain the specific regulation contained in this section from which relief is sought:
LDC Section 34-1174(b) restricts all roofed and non-roofed accessory uses,
buildings or structures from being located closer to a street right-of-way than the principal building.

Reasons for request

Explain why the variance is needed:
Please refer to the attached Request Narrative, which outlines the variance
request in detail.

Explain the possible effect the variance, if granted, would have on surrounding properties:
Please refer to the attached Request Narrative, which outlines the variance request in detail.
This variance would not have any impact on surrounding properties.

Explain the hardship (what is unique about the property) that justifies relief from the regulation:

The principal structure was constructed in 1940.
Please refer to the attached Request Narrative, which outlines the variance request in detail.

PART 2 Submittal Requirements

All applications for a variance must submit fourteen (14) copies of this application form and all applicable exhibits.

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

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.

PROJECT NUMBER:

DATE:

PART VI

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, Claudia Metcalfe 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;

PROJECT NUMBER:

DATE:

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 of owner or authorized agent

Date

**STATE OF FLORIDA)
COUNTY OF LEE)**

Subscribed and sworn to (or affirmed) before me this _____ day of _____,
20_____, by _____.

Notary Public Signature

(SEAL)

Notary Printed Name

Personally Known _____ or Produced Identification _____

Type of Identification Produced: _____ My Commission Expires: _____

PROJECT NUMBER:

DATE:

DISCLOSURE OF OWNERSHIP INTEREST

STRAP: 29-46-24-W3- 008J0.00300

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

Claudia Metcalfe

100%

4690/4700 Estero Blvd.

Fort Myers Beach, FL 33931

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

PROJECT NUMBER:

DATE:

Name, Address and Office

Percentage of Stock

Estero Island Beach House, LLC

100%

4690 Estero Blvd.

Fort Myers Beach, FL 33931

Claudia Metcalfe

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

PROJECT NUMBER:

DATE:

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

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

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

Claudia Metcalfe

Printed Name

PROJECT NUMBER:

DATE:

**STATE OF FLORIDA)
COUNTY OF LEE)**

Subscribed and sworn to (or affirmed) before me this _____ day of _____,
20_____, by _____.

Notary Public Signature

(SEAL)

Notary Printed Name

Personally Known _____ or Produced Identification _____

Type of Identification Produced: _____ My Commission Expires: _____

4700 Estero Blvd. Variance

May 11, 2020

PREPARED FOR:
Claudine Metcalfe
4690/4700 Estero Blvd.
Fort Myers Beach, FL 33931

SUBMITTED TO:
Town of Fort Myers Beach Planning Division
2525 Estero Blvd.
Fort Myers Beach, FL 33931



May 7, 2020

Town of Fort Myers Beach
Planning and Zoning Division
2525 Estero Boulevard
Fort Myers, Florida 33931

**RE: 4690/4700 Estero Boulevard
Variance Application**

Sarah Probst:

On behalf of Claudia Metcalfe ("Applicant") Waldrop Engineering is pleased to submit the enclosed variance petition relating to locating residential accessory uses between the principal use (single-family residence) and the street right-of-way (Estero Blvd.) at 4690/ 4700 Estero Blvd. ("Property").

The Property is a 0.45± acre parcel with an existing single-family residence and guest house, both of which were constructed in 1940. The Property is generally located 200 feet south of Strandview Avenue on the south side (Gulf side) of Estero Boulevard in the Town of Fort Myers Beach, Florida. An aerial exhibit depicting the project location is attached to this application.

HISTORY/BACKGROUND:

The Subject Property is zoned Residential Conservation (RC) and is within the Mixed Residential (MR) future land use category. The principal structure was constructed in 1940 within feet of the 1978 Coastal Construction Control Line (CCCL) resulting in a deficient space for locating a pool in the rear of the principal structure. Due to the design of the residence the side yards also lack sufficient area for locating accessory uses and structures.

The Applicant intends on constructing a pool and accessory open-air "tiki" structure in the front yard of the principal structure for private use.

REQUEST:

The Applicant is requesting the following variance from the zoning regulations set forth in the Rural Agricultural zoning district:

1. Variance from Land Development Code LDC Section 34-1174(b), which restricts all roofed and non-roofed accessory uses, buildings or structures from being located closer to a street right-of-way than the principal building; whereas the Applicant is requesting to locate a pool and open-air accessory "tiki" structure between the principal structure and the street right-of-way. The pool and accessory structure will be setback a minimum of 25-feet from the Estero Boulevard street right-of-way. The project will be in compliance with all other setbacks and code requirements for accessory structures.

JUSTIFICATION:

The single-family home and guest house located at 4690/4700 Estero Blvd. were constructed in 1940. During that time pools were not as common as they are today so it was not contemplated to locate a swimming pool in the rear of the house. The house was constructed to provide a rear setback appropriate to the time of development and to maximize proximity to the gulf waters. The CCCL was established in 1978 creating a build-to-line that reduced the useable area in the rear of the property leaving inadequate room for an accessory structure.

The current property owner, the Applicant, wishes to construct a swimming pool and a small open-air tiki hut in what is considered between the front of the principal structure and the street right-of-way.

As shown on the attached Variance Site Plan, the location of the pool and accessory structure are setback from Estero Blvd in compliance with the land development code requiring a minimum of 25-feet front yard setback for any structure. Due to the setback and existing vegetation along the perimeter of the property, the improvements will not be visible from Estero Blvd. and therefore will not cause any concern for public health, safety and welfare or negatively impact the viewshed from Estero Blvd. The Applicant has also secured letters of no objection from the property owners directly to the north and south of the Property. Furthermore, this request has been granted for other Properties along Estero Blvd., which have successfully located pools between the principal structure and street right-of-way, recently a variance at 3860 Estero Blvd in case number 2019-0013.

It is important to note that all other setbacks, height and other development requirements will be in compliance with the existing RC Zoning District development standards. The variance request is based on solid design and engineering principals and provides for appropriate design flexibility of the subject property due to the time in which the property was developed, more than 80 years ago.

VARIANCE CRITERIA:

The following is a detailed analysis of this request's compliance with the variance review criteria set forth in LDC Section 34-87:

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;

The Applicant's request is de minimis in nature and will only allow for the development of a private pool and open-air tiki hut that will be accessory to the single-family dwelling unit, or the principal structure. The Property is also unique as it was first developed in the year 1940 as part of the HYDE PARK subdivision (BLK J PB 7 PG 20 LOTS 3 4 + 6).

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;

The variance request is not the result of action taken by the current property owner, who acquired the property in 2013. The principal structure itself was constructed in 1940 prior to the creation of the code section which the Applicant is seeking relief.

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;

Yes, the requested variance is the minimum to relieve the applicant of the code requirement. The variance is the distance between the front building line of the house and the farthest extent of the pool/deck area as depicted on the site plan. The setback from Estero Blvd. is maintained as a minimum of 25 feet. The Applicant is not seeking any additional relief or variances.

4. Whether granting the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare;

The granting of this variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare. As previously noted, the Applicant has provided letters of no objection from the property owners directly to the north and south of the subject property. The pool and tiki hut will be setback a minimum of 25-feet from Estero Blvd. and will be screened by existing vegetation along the right-of-way.

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.

This variance request is not uncommon for Gulf side properties located on Estero Blvd. as many of the existing structures were built before modern land development codes and state and federal coastal building regulations. However, it is the decision of the Council to amend the regulations to allow pool and residential accessory structures in the front yard between principal structures and street right-of-way.

Based upon the above analysis, the Applicant respectfully requests approval of this variance petition. The approval will uphold the intent of the Land Development Code and Comprehensive Plan. The request complies with the variance review criteria, and will not negatively impact compatibility, public health, safety or welfare.

If you have and further questions, please feel free to contact me directly at (239) 405-7777, ext. 2232, or lindsay.robin@waldropengineering.com.

Sincerely,

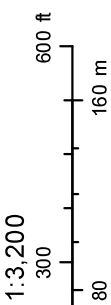
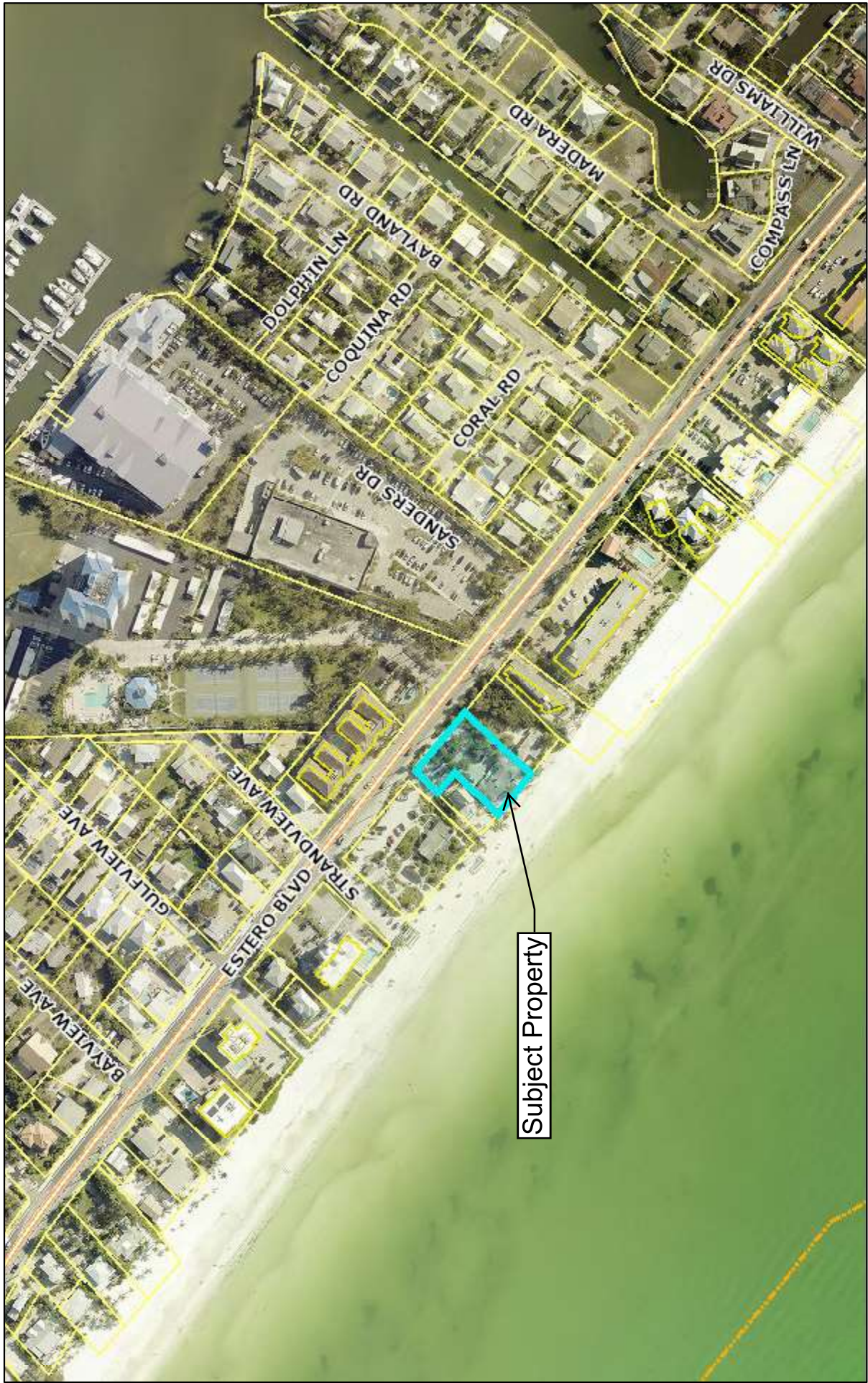
WALDROP ENGINEERING, P.A.



Lindsay F. Robin, MPA
Project Planner

cc: Claudia Metcalfe

AERIAL MAP



Air Photos: 2019 Hi-Res (4 inch)

April 10, 2020

- County Boundary
- Major Roads Medium
- I - 75
- US 41
- Other Highways
- Other Roads
- Parcels Near
- CONDO BUILDING
- PARCEL

This map is NOT a legal land survey and should not be used or relied upon as such. No warranties, express or implied, are provided with the data, use, accuracy or interpretation.

PROJECT NUMBER:

DATE:

DISCLOSURE OF OWNERSHIP INTEREST

STRAP: 29-46-24-W3- 008J0.00300

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

Claudia Metcalfe

100%

4690/4700 Estero Blvd.

Fort Myers Beach, FL 33931

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

PROJECT NUMBER:

DATE:

Name, Address and Office

Percentage of Stock

 Estero Island Beach House, LLC

100%

4690 Estero Blvd.

Fort Myers Beach, FL 33931

Claudia Metcalfe

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

PROJECT NUMBER:

DATE:

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

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

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

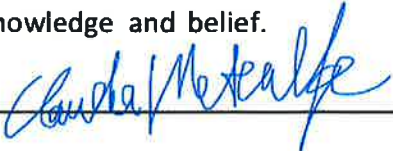
Address

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

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



Claudia Metcalfe

Printed Name

PROJECT NUMBER:

DATE:

STATE OF FLORIDA)
COUNTY OF LEE)

Subscribed and sworn to (or affirmed) before me this 23rd day of June,
2020, by Claudia Metcalfe.



[Signature]
Notary Public Signature

Jessica K. Linn
Notary Printed Name

Personally Known X or Produced Identification _____

Type of Identification Produced: _____ My Commission Expires: 04/16/2022



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 # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

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:

Explain the possible effect the variance, if granted, would have on surrounding properties:

Explain the hardship (what is unique about the property) that justifies relief from the regulation:

PART 2 Submittal Requirements

All applications for a variance must submit fourteen (14) copies of this application form and all applicable exhibits.

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

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.

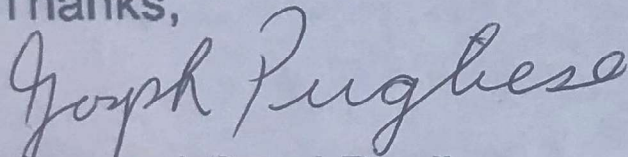
Ms. Sarah Propst
Town of Fort Myers Beach
2525 Estero Blvd.
Fort Myers Beach, FL 33931

RE: 4700 Estero Blvd. – Metcalfe Variance

Dear Ms. Propst:

I own the property located at 4660 Estero Blvd. immediately adjacent to the above referenced property. I am aware of the recent variance filed to locate their pool and accessory structure in front of their home. I have no objection to the proposal and support their request.

Thanks,

A handwritten signature in cursive script, appearing to read "Joe and Carol Pugliese".

Joe and Carol Pugliese
4660 Estero Blvd.

Ms. Sarah Propst
Town of Fort Myers Beach
2525 Estero Blvd.
Fort Myers Beach, FL 33931

RE: 4700 Estero Blvd. – Metcalfe Variance

Dear Ms. Propst:

We own the property located at 4730 Estero Blvd. immediately adjacent to the above referenced property. We are aware of the recent variance filed to locate their pool and accessory structure in front of their home. We have no objection to the proposal and support their request. If you have any questions, you can call or email us at 239-290-5971 or brougraff@gmail.com

Thanks,



Paul Rougraff



Barbara Rougraff



PUBLIX SUPER MARKETS INC
EXPENSE PAYABLES LEASE TEAM
PO BOX 32018
LAKELAND FL 33802

PATEK JEWELL D H TR
4841 ESTERO BLVD
FORT MYERS BEACH FL 33931

PAINE JOSEPH C + KAREN M
4839 ESTERO BLVD
FORT MYERS BEACH FL 33931

MDR BEACH PROPERTIES LLC
5917 US 36 E
GREENVILLE OH 45331

MAHER MARGARITA
913 NORTH ST
FORT MYERS BEACH FL 33931

MESIROW BUNNIE R TR
4838 CORAL RD
FORT MYERS BEACH FL 33931

LETTERI LONNE M TR
4830 CORAL RD
FORT MYERS BEACH FL 33931

SCHLOTTMAN DAVID + CHERI
4850 CORAL RD
FORT MYERS BEACH FL 33931

FLICK SONDR A C
4821 CORAL RD
FORT MYERS BEACH FL 33931

MACLEOD ROBERT M
4811 CORAL RD
FORT MYERS BEACH FL 33931

LETTERI LONNE M TR
4830 CORAL RD
FORT MYERS BEACH FL 33931

SEASIDE CONDO
ASSOCIATION
4770 ESTERO BLVD
FORT MYERS BEACH FL 33931

SHORES OF FT MYERS BEACH CONDO
ASSOCIATION
5 GLEN FOREST
SAINT LOUIS MO 63124

OCEAN HARBOR CONDO OF
CONTINENTAL GROUP
6300 PARK OF COMMERCE BLVD
BOCA RATON FL 33487

BENT PALMS OF FORT MYERS BEACH
4852 ESTERO BLVD
FORT MYERS BEACH FL 33931

BOCKER VIRGIL TR
100 GULFVIEW AVE
FORT MYERS BEACH FL 33931

DOCBONE PROPERTIES 4502 LLC
15941 NELSONS CT
FORT MYERS FL 33908

ROSSI LAURA
5333 SHADOW CREEK DR
BOARDMAN OH 44512

COOPER & COMPANY LLC
PO BOX 501
HOWELL MI 48844

HUTSON GEORGE ALLEN + ALLISON
726 E LEHIGH DR
NEWPORT TN 37821

OCEANIC BLUE RETREATS LLC
3431 PINE RIDGE RD STE 101
NAPLES FL 34109

JP ADVANTA INVESTMENTS LLC
5780 SPANISH OAKS LN
NAPLES FL 34119

LOUDERMILK JAMES D + ROSEMARIE
15788 SILVERADO CT
FORT MYERS FL 33908

BOURASSA OLGA K TR
247 MIRAMAR ST
FORT MYERS BEACH FL 33931

MENDOZA JORGE L & ARLINA I
15133 SW 62ND ST
MIAMI FL 33193

ANDERSON CAROL A +
4202 PRAIRIEWEST DR
CHAMPAIGN IL 61822

FUNK MICHAEL T +
1214 SUMMIT AVE
LOUISVILLE KY 40204

POWERS NADA F + ROBERT M
4601 ESTERO BLVD
FORT MYERS BEACH FL 33931

DIGENIS HELEN L
3908 ZARING MILL CT
LOUISVILLE KY 40241

LONG STEVEN + MARCIA
6171 S VICKERYVILLE RD
SHERIDAN MI 48884

TOWN OF FORT MYERS BEACH
FINANCE DEPT
2525 ESTERO BLVD
FORT MYERS BEACH FL 33931

ROUGRAFF PAUL M + BARBARA L
122 CARICA RD
NAPLES FL 34108

PUGLIESE JOSEPH A
4660 ESTERO BLVD
FORT MYERS BEACH FL 33931

STRANDVIEW TOWER CONDO
SENTRY MGMT INC
2180 W STATE ROAD 434 STE 5000
LONGWOOD FL 32779

WHITE CAP CONDOMINIUM ASSN INC
12230 CHATEAU CT
FISHERS IN 46037

COUTO FERNAND + IRENE A
773 ARNOLD ST
SUDBURY ON P3E 6H1
CANADA

ERLANDER JAMES C TR
4770 ESTERO BLVD UNIT 102
FORT MYERS BEACH FL 33931

SEASIDE VACATIONS FT MYERS LLC
1005 NORTH WATER ST
BAY CITY MI 48708

ANDERSON BETTY J TR
BRIAN ANDERSON
7945 PERRY LAKE RD
CLARKSTON MI 48348

PROVENZALE DONALD J + DANIELLE
8S051 CREEK DR
NAPERVILLE IL 60540

TEUSINK PHILIP R + KAREN R
47 S KENSINGTON PL
SPRINGFIELD OH 45504

MANDOLINI ANTHONY M TR
6597 NICHOLAS BLVD UNIT 1101
NAPLES FL 34108

EVANS GREGORY W + REGINA M
14530 AUTUMN WOOD DR
WESTFIELD IN 46074

MCKEON JOHN J
6 BERGIN CT
WOLCOTT CT 06716

FLIS WANDA SOPHIA
1133 FORESTVALE DR
BURLINGTON ON L7P 3G6
CANADA

BAKKE ROBERT
4735 FREMONT AVE S
MINNEAPOLIS MN 55419

BAKKE ELIZABETH LEE + ROBERT W
4735 FREMONT AVE S
MINNEAPOLIS MN 55419

GRILLO STEVEN G
16 SMALLBROOK CIR
RANDOLPH NJ 07869

LLB INVESTMENT GROUP LLC
940 NW 201ST TER
PEMBROKE PINES FL 33029

HUSEBY LINDA +
913 S 12TH ST
MONTEVIDEO MN 56265

ALVERO CAESAR & ALICIA M
21346 33RD AVE
BAYSIDE NY 11361

LIOTTA SALVATORE + CONCETTA
6 OAK BROOK CLUB DR APT J101
OAK BROOK IL 60523

ZUFFELATO EUGENE S + EMMA
260 MIDLAND DR
ORANGE CT 06477

KLECZKA FRANK M
4805 SUNNYSIDE DR
MILWAUKEE WI 53208

BAKKE ROBERT
4735 FREMONT AVE S
MINNEAPOLIS MN 55419

1765 MCCRAITH PROPERTIES LLC
20 BURRSTONE RD
NEW YORK MILLS NY 13417

LLB INVESTMENT GROUP LLC
8432 NW 93RD ST
MEDLEY FL 33166

MATHESON ROBERT R + JORJA L
2935 W COMMERCE RD
MILFORD MI 48380

ANTHONY J ROSS LLC +
13259 SHERBURNE CIR #2201
BONITA SPRINGS FL 34135

SEBASTIAN R A + JOAN M +
1912 WOODLAND AVE
PARK RIDGE IL 60068

ANDERSON ORION D + MARY M TR
12108 BOAT SHELL DR
MATLACHA ISLES FL 33991

TEGENKVIST ANDERS & HELENE
FLYGARVAGEN 48
JARFALLA 175 69
SWEDEN

DAHLE TORALV & GERTRUDE S TR
4770 ESTERO BLVD #308
FORT MYERS BEACH FL 33931

GLORIA NOWACZYK TRUST +
606 S CHARLETON ST
WILLOW SPRINGS IL 60480

ZUCKWEILER STEVEN W + JEAN M
532 LAKEWOOD CT
WINDSOR CO 80550

IRZYK PAMELA KIM YAGI
637 HENRY ST
FOLSOM CA 95630

L JOHNSON PROPERTIES LLC
550 25TH AVE N
SAINT CLOUD MN 56303

ROBERTSON MICHAEL R + GAIL TR
7 GLENVIEW MANOR DR
FORT MYERS BEACH FL 33931

TRUDEL DAVID R + JUDITH B TR
1807 SETTLERS RESERVE WAY
WESTLAKE OH 44145

REIMSCHISEL REALTY INC
970 N MAIN ST
BLUFFTON IN 46714

SIMONKA MEREDITH V
104 WARWICK RD
WEST WINDSOR NJ 08550

CROWLEY CHRISTOPHER J &
5300 RIVERWALK TRAIL
COMMERCE TWP MI 48382

LLB INVESTMENT GROUP LLC
940 NW 201ST TER
PEMBROKE PINES FL 33029

FRANCIS DARRELL A + MARY E
410 HAWTHOREN AV
SOUTH MILWAUKEE WI 53172

PHYLLIS JANE EDWARDS TRUST
1102 N TOPPER RD
MOUNT PULASKI IL 62548

COFFMAN JOHN STEPHEN &
1926 ANGEL VIEW DR
GREENWOOD IN 46143

MARACH DEBORAH A TR
322 BRANCHWOOD CT
SCHAUMBURG IL 60193

OSTENDORF DONALD T &
27530 RICHVIEW CT
BONITA SPRINGS FL 34135

ISH JANE M L/E
4770 ESTERO BLVD #504
FORT MYERS BEACH FL 33931

FRANCIS DARRELL + MARY
410 HAWTHORNE AVE
SOUTH MILWAUKEE WI 53172

SWANSON RICKY L + LISA M
4558 SILVERTHORN DR
JACKSONVILLE FL 32258

DIDION KENNETH W & SHARON J TR
29910 SEQUOIA TRAIL
WESTLAKE OH 44145

SIMONKA GEORGE H & ANDREA
5 OAKEN LANE
MERCERVILLE NJ 08619

LOSTRITTO DONALD
61 MERWIN CIR
CHESHIRE CT 06410

TUEL LARRY L +
1768 NW 122ND ST
CLIVE IA 50325

BALDRIDGE RYAN F
KAREN BALDRIDGE
2041 PAINTED PALM DR
NAPLES FL 34119

CAMPBELL BRIAN + NANCY
221 HILLBROOK DR
SHEPHERDSVILLE KY 40165

D & H GERMAN LAUNDRY SERVICE L
KOEHLER INTERNATIONAL INC
949 TAMiami TRL STE 208
PORT CHARLOTTE FL 33953

BALDRIDGE KAREN ANN
2337 BUTTERFLY PALM DR
NAPLES FL 34119

SOYKA JOHN & JO ANN
6358 SAINT ANDREWS CIRCLE S
FORT MYERS FL 33919

SHELLEY MARY J
1211 S DUCHESNE DR
SAINT CHARLES MO 63301

CLUGH THOMAS ENTERPRISES LLC
1623 EAST 430 SOUTH
LAFAYETTE IN 47909

OSTENDORF DONALD T &
27530 RICHVIEW CT
BONITA SPRINGS FL 34135

BLANCO PETER JR TR 1/2 INT +
4560 ESTERO BLVD #201
FORT MYERS BEACH FL 33931

DAVIS THOMAS F
4560 ESTERO BLVD #202
FORT MYERS BEACH FL 33931

ESPINOLA DAVID M + LUCIA M
15 RINZEE RD
DRACUT MA 01826

SCHOCK NORMAN F TR +
806 BANNOCK DR
DUNDEE IL 60118

DAWSON JOSEPH E +
4560 ESTERO BLVD #301
FORT MYERS BEACH FL 33931

KEITH STEVEN R + KIMBRA A
4749 FONTANA RD
WEST BEND WI 53095

DAVIS DENNIS
4560 ESTERO BLVD #303
FORT MYERS BEACH FL 33931

WILSON SUSAN
1655 PLACE DES RAVINS
ORLEANS ON K1C 6H3
CANADA

PREFERRED ASSETS INC
121 MOHR DRIVE
MANKATO MN 56001

STEVENS JAMES B + BARBARA P
4560 ESTERO BLVD #402
FORT MYERS BEACH FL 33931

BYERLE BRUCE A + ANNE E
4560 ESTERO BLVD #403
FORT MYERS BEACH FL 33931

MINERS MARGARET A TR
PO BOX 130
LABELLE FL 33975

CHAMBRE DIANE D TR
4560 ESTERO BLVD #501
FORT MYERS BEACH FL 33931

TIEZZI DANIEL TR
608 FOOT HILLS RD
HIGGANUM CT 06441

BURWINKEL WILLIAM J + BETH A
710 MT HOPE AVE #4
CINCINNATI OH 45204

DANGELO DANIEL A + JUNE E
677 ERIE AVE
N TONAWANDA NY 14120

BONFIGLIO FRANK L +CATARINA TR
4560 ESTERO BLVD #602
FORT MYERS BEACH FL 33931

KOMENDAREK EDWIN + MARILYN
30 NEWTON AVE
NORWICH NY 13815

MARSHALL + ILSLEY TRUST CO TR
PO BOX 2980
MILWAUKEE WI 53201

MAMCK VENTURES LLC
401 COMPTON CT
ALLEN TX 75013

BERECZ VICTOR G JR +
4560 ESTERO BLVD #702
FORT MYERS BEACH FL 33931

BURWINKEL WILLIAM + BETH A
710 MOUNT HOPE AVE APT 4
CINCINNATI OH 45204

BERGMANN MARY B TR
3225 E BRADFORD DR
BLOOMFIELD HILLS MI 48301

RAY HAROLD L & APRIL L
10 FOREST BAY LN
CICERO IN 46034

WARNER H JACK TR
12344 N LEDGES DR
ROSCOE IL 61073

KETRING ENTERPRISES LLC
10473 S 50W
PENDLETON IN 46064

RAY HAROLD L & APRIL L
10 FOREST BAY LN
CICERO IN 46034

ZINK DAVID C TR
20 TERRY CT
JACKSONVILLE IL 62650

PRASSE MARJORIE J TR
4633 ESTERO BLVD #202
FORT MYERS BEACH FL 33931

SIGLER JAY L & JENNIFER L
10200 S 575 W
FORTVILLE IN 46040

LST & KEES LLC
12285 BERAGIO PL
ALPHARETTA GA 30004

HENDERSON JAMES + KERRIE
10738 S 575 W
PENDLETON IN 46064

PAOLI DEVELOPMENT ASSN LLP
1263 SHADOW OAK DR
MALVERN PA 19355



Town of Fort Myers Beach

NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

Case Number: VAR20200052

Case Name: 4690/4700 Estero Blvd- Accessory Structure Setback Variance

Applicant: Claudia Metcalfe (Owner)/ Fred Drovdlc (agent)

Location: 4690/ 4700 Estero Blvd STRAP #: 29-46-24-W3-008J0.0030

Zoning: Residential Conservation (RC) and Environmentally Critical (EC)

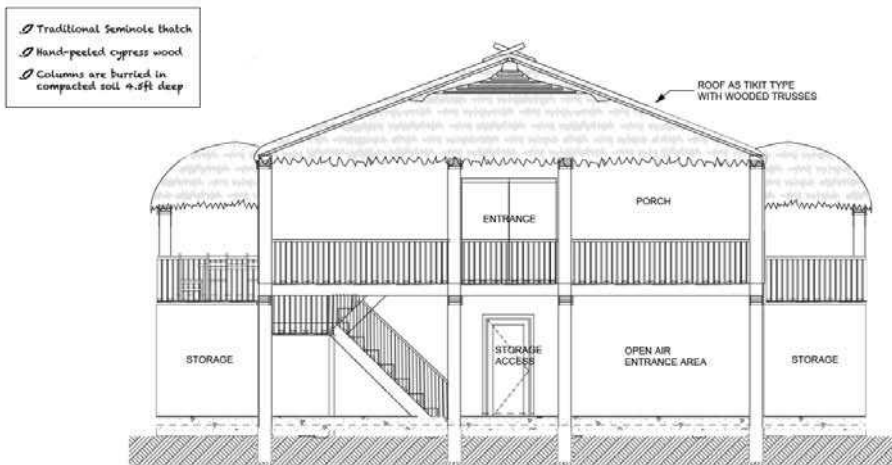
Request: The applicant is seeking relief from Town's LDC Sec. 34-1174(b) for an accessory structure to be located closer to street Right of Way than the principal structure to allow construction of a detached garage, a storage room, an elevated pool/ deck and a tiki hut to be approximately 60 feet from the right-of-way property line.

Staff Report: Direct inquiries to:
Kelly Bhutada, Community Development, at 239-765-0202 Ext. 1310
Fort Myers Beach Town Hall
2525 Estero Boulevard
Fort Myers Beach, FL 33931

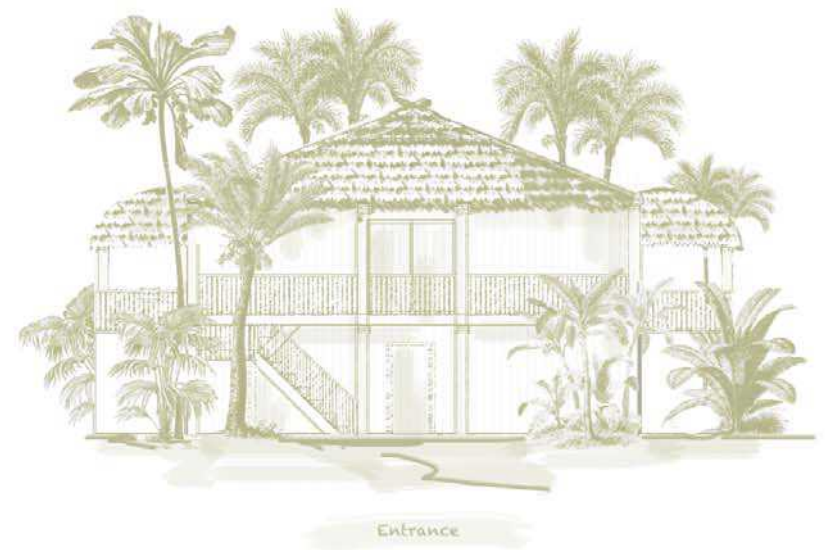
Notice is hereby given that the Town Council of the Town of Fort Myers Beach will hold a public hearing at a meeting beginning at **09:00 AM on November 2, 2020** regarding the case listed above. This hearing will take place at Town Hall, 2525 Estero Boulevard, Fort Myers Beach, Florida, 33931.

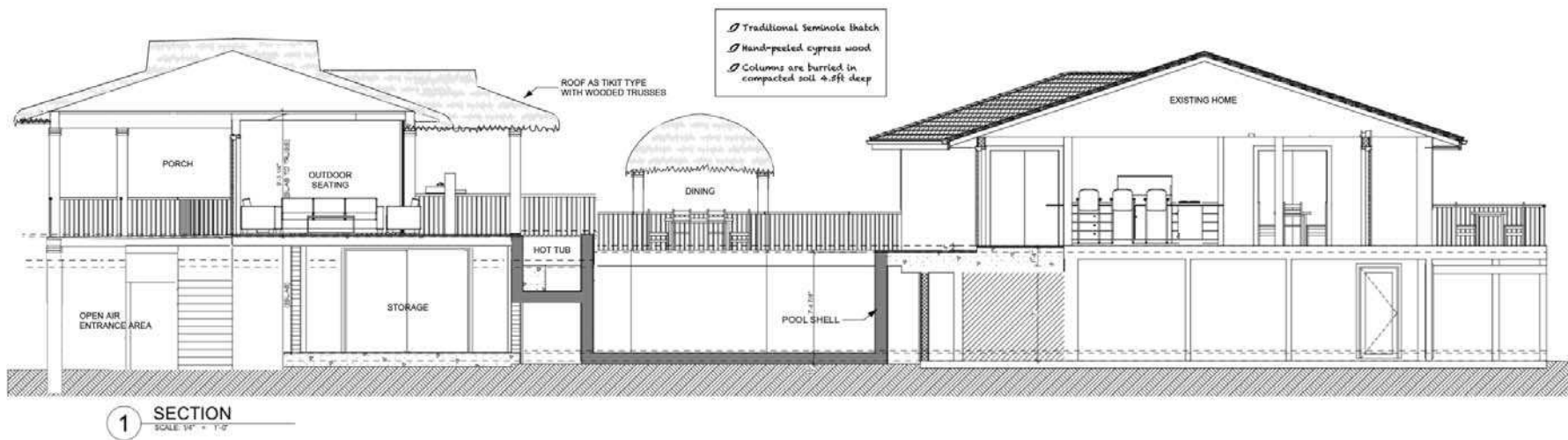
At this hearing the Town Council of the Town of Fort Myers Beach will review the case, and a recommendation from Local Planning Agency and staff on this matter. If any person needs a verbatim record of the proceedings, please make their own arrangements. You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence to become a participant in the hearing.

Copies of the staff report are available for viewing at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you need reasonable accommodation, contact Town Hall at 239-765-0202.



North Eastern Façade 4690 Estero Blvd.





North Western Façade 4690 Estero Blvd.

1. **Requested Motion:**

Meeting Date: November 2, 2020

Sunset Celebration Special Event Permit and Fees.

Why the action is necessary:

Ordinance 12-4

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

5. **Background:**

Sunset Celebration is a recurring event that has been held every year since 2012 by the Time Square Merchants Association. The dates they are requesting for this new fiscal year are for a total of 52 days at \$10.00 per day plus \$100.00 for the permit, the total being \$620.00.

The Merchants are requesting a credit for March, April, May and June dates from 2020 of 25 days which equals \$625.00, having been hit hard by Covid-19 and were unable to hold the event. When last years application was approved, the fee schedule for recurring was \$100.00 for the permit and \$25.00 per day.

Attachments:

1. SEP20-0035 APPLICATION
2. Sunset Celebration enviro approval

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

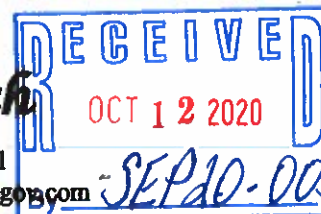
Patty Prevost, Building Services Administrative Assistant
Jason Green, Community Development Services
John R Herin Jr, Town Attorney
Amy Baker, Deputy Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 10/21/2020
Approved - 10/27/2020
Approved - 10/27/2020
Approved - 10/27/2020
Final Approval - 10/28/2020



Town of Fort Myers Beach

2525 Estero Boulevard, Fort Myers Beach, Florida 33931
Tel: (239) 765-0202 Fax: (239) 765-0909 Email: permits@fmbgov.com



Name of event SUN SET CELEBRATION

Attach separate sheet of paper with detailed description of event

Date(s) and times of event SEE ATTACHED

Address of event TIMES SQUARE URBAN DISTRICT

Expected # of participants/attendees 100-150

Sponsoring Organization TIMES SQUARE MERCHANTS & EVENTS ASS.

Organization address 1001 ESTERO BLVD. FORT MYERS BCH, FL 33931

Contact Person/Phone# STEVE MAILLAKAKIS

E-mail gcstavros@gmail.com

Amplified Music Y ☒ N ☐ 500 Ft Notifications ☒ Copy of Letter ☒

Renting Town Property Y ☐ N ☐ Renting Parking Spaces Y ☐ N ☒

How many Spaces? N/A How many hours 5-10 PM 5 HOURS

Extension of Premises? Y ☐ N ☒ ABT Form ☐ (Over 3 days needs to go to Council)

Letters of Permission to use Property N/A

Letters of Permission to use Parking N/A Parking Plan N/A

Site Plan ☒ Insurance ☒ (Naming Town of FMB as Certificate Holder)

Requesting Water Y ☐ N ☒ Electric Y ☒ N ☐

Y ☐ N ☐

Y ☐ N ☐

Y ☐ N ☐

Y ☐ N ☐

Applicant Signature

Printed Name

STEVE MAILLAKAKIS

This permit is subject to the applicant meeting all requirements contained in Fort Myers Beach Code of Ordinance Book Part 2 Chapter 22 and in compliance with all items in the special event application.

Sunset Celebration 2020-2021 Dates

These are the dates we were unable to fulfill due to Covid 19

March 14, 20, 21, 27, 28, =5 days
April 3, 4, 10, 11, 17, 18, 24, 25, =8 days
May 1, 2, 8, 9, 15, 16, 22, 23, 29, 30, =10 days
June 5, 6, =2 days

Grand total of 25 days

Credit
625⁰⁰

These are the proposed dates we would like as credit for lost dates according to the new fee schedule.

October 23, 30. =2 days
November 6, 13, 20, 27. =4 days
December 4, 11, 18, 25, 31. = 5 days
January -2021- 1, 8, 15, 22, 29. =5 days
February 5, 12, 19, 26 = 4 days
March 5, 12, 19, 26 =4 days
April 2, 9, 16, 23, 30 = 5 days
May 7, 14, 21, 28. =4 days
June 4, 11, 18, 25 = 4 days
July 2, 9, 16, 23, 30 =5 days
August 6, 13, 20, 27. = 4 days
September 3, 10, 17, 24 = 4 days
October 1, 8. = 2 days

Grand total of 52 day

520⁰⁰
100⁰⁰

120⁰⁰

Applicant to Complete:

Company managing trash removal: TIMES SQUARE MERCHANTS

No. of dumpsters: 0 Type of dumpsters: _____

Who is responsible for clean-up and payment: TIMES SQUARE MERCHANTS

City right-of-way Parking Use: N/A Number of spaces: N/A

FMB Public Works:

Public Works remarks: Applicant responsible for trash
clean-up and no parking in town right of way.

Approval: Martin Pitts Date: 10-12-2020

FMB Environment Science: Tel (239)765-0202 Fax (239)765-0909

FMB Environmental Sciences remarks: _____

Approval: _____ Date: _____

Florida DEP: DEP now provides an online application process for minor event approval

<http://www.dep.state.fl.us/beaches/>

Jennie Cowart

Tel (239)344-5627 Fax (850)412-0590
Email: Jennifer.cowart@dep.state.fl.us

Florida DEP remarks: _____

Check list: Application _____ **Site Plan** _____ **Description** _____

Florida DEP approval: _____ **Date:** _____

Turtle Time Inc.: Eve Haverfield

Tel (239)481-5566 eve@turtletime.org

Turtle Season is May 1 through October 31

Turtle Time remarks: _____

Turtle Time approval: _____ **Date:** _____



Town of Fort Myers Beach

2525 Estero Boulevard, Fort Myers Beach, Florida 33931

Tel: (239) 765-0202 ext. 1303 * Fax: (239) 765-0909 Email: Permits@fmbgov.com

Please forward the completed application and site plan along with each individual approval request to each identified agency below. Once completed return to Town Hall.

Florida DEP: DEP now provides an online application process for minor event approval

Self-Certification for CCCL Permit Guidance Document: <http://www.dep.state.fl.us/beaches/>

FOR MAJOR EVENTS ONLY CONTACT

Jennie Cowart Tel (239) 344-5627 Fax (239) 412-0590 E-Mail: Jennifer.cowart@dep.state.fl.us

Comments: _____

Florida DEP Approval: _____ Date: _____

FMB Fire Department

Tel (239) 590-4205

Fax (239) 432-1554

100 Voorhis St. Fort Myers Beach, FL 33931

FMB Fire Comments:

Stage setup shall not obstruct any ingress/egress, fire hydrants, or access. One (1) 10x10 tent permitted.

Approval: Jennifer Campbell Date 10/16/2020

Lee County Sheriff's Department: Tel (239) 477-1830 Fax (239) 432-0268

15650 Pine Ridge Rd Fort Myers, FL 33908

Comments:

All amplified sound must adhere to Town of FMB Noise Ordinance. Any alcohol sold by the surrounding businesses

in the area will remain within the confines of that business. It is understood by this

office that this permit is for the live music set up in the Time's Square area.

Approval: [Signature] 93147 Date 10-9-2020



Town of Fort Myers Beach

2525 Estero Boulevard, Fort Myers Beach, Florida 33931

Tel: (239) 765-0202 ext. 1303 * Fax: (239) 765-0909 Email: Permits@fmbgov.com

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office that this permit is for the live music set up in the Time's Square area.

Approval: [Signature] 83147 Date 10-9-2020

Date 10/07/20

To Property Owner,

Re: Notification of Amplified Sound

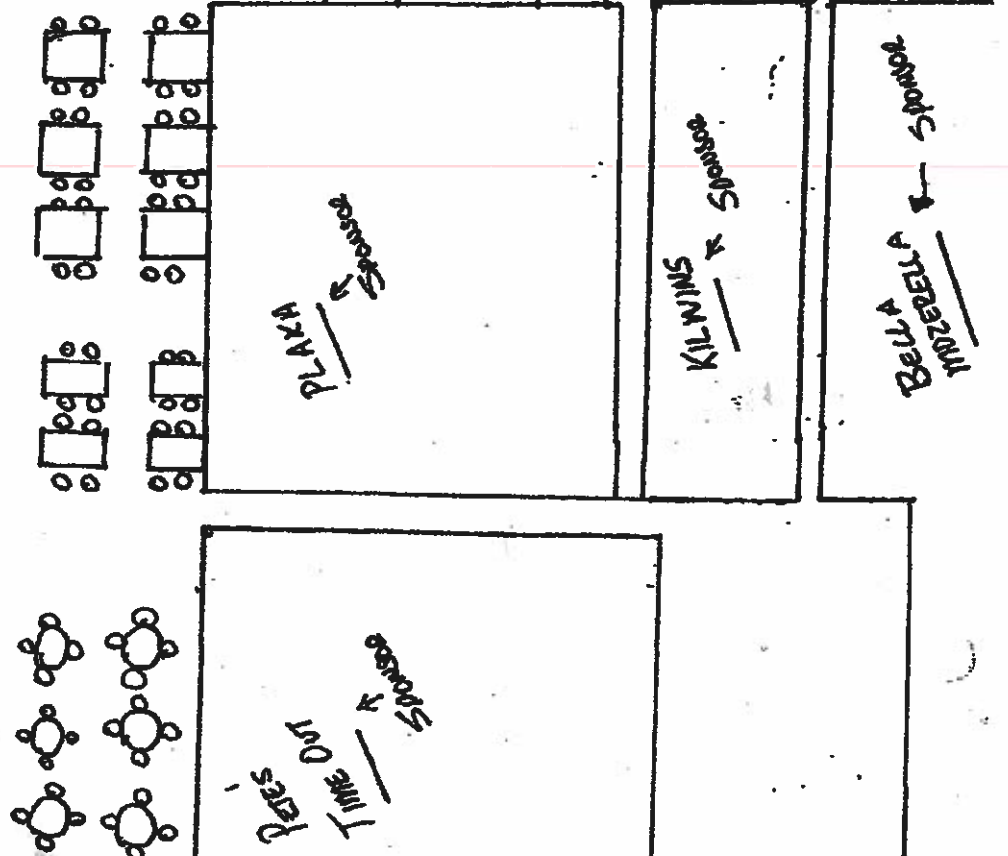
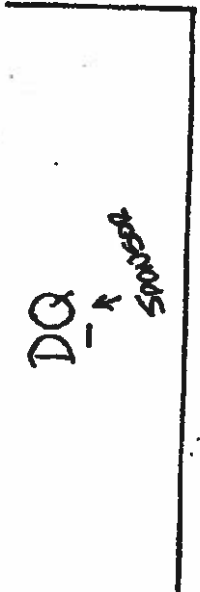
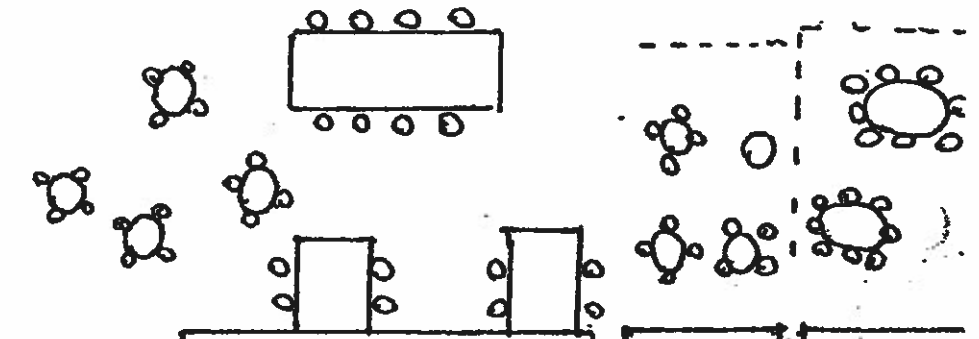
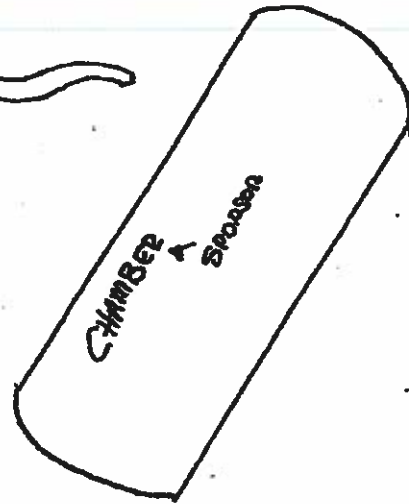
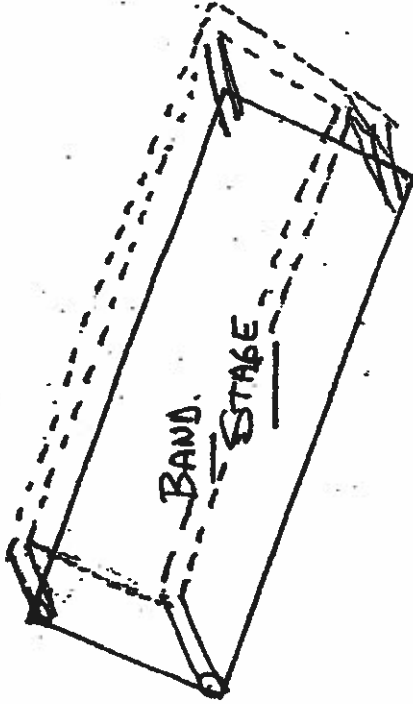
This notice is to inform you of an upcoming reoccurring Special Event held in Times Square in front of the pier and adjacent to Lynn Hall Parking Lot. This event is called "The Sunset Celebration", hosted by the Times Square Merchants and events Association. This event is scheduled for Friday and Saturday evening from 5pm-10pm. See attached schedule for Dates.

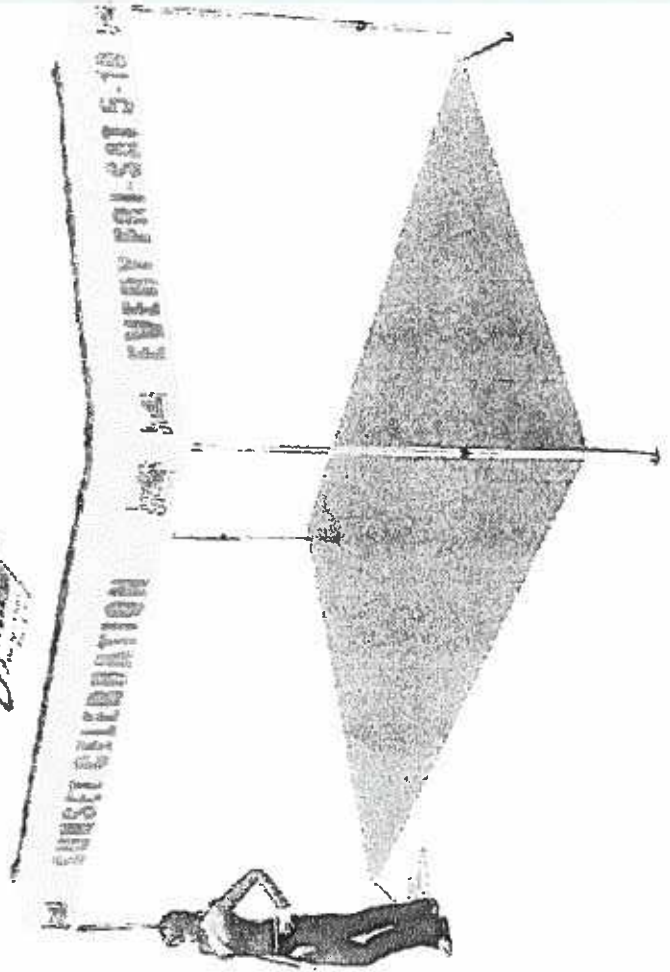
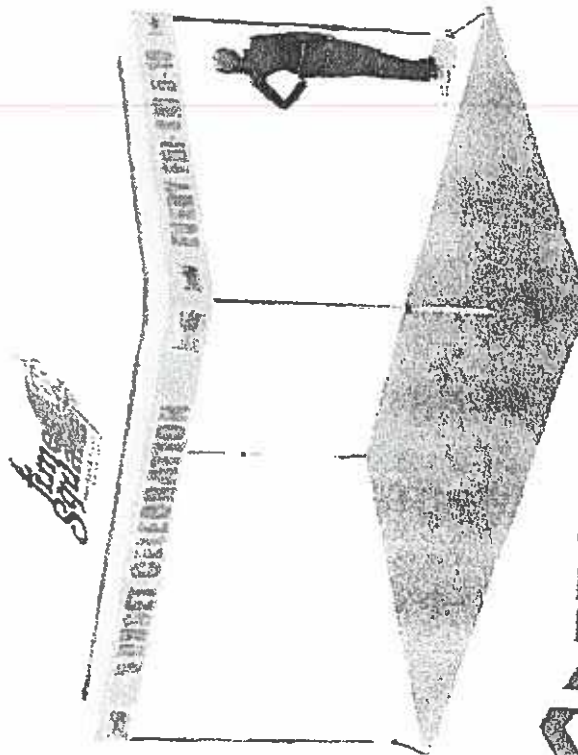
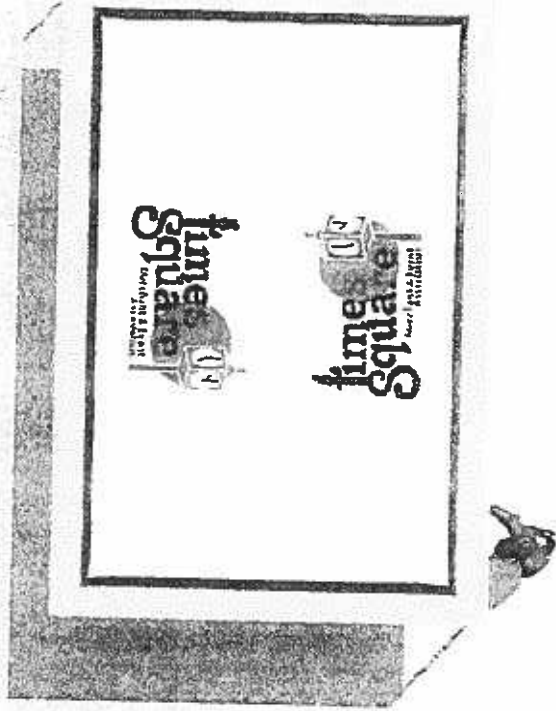
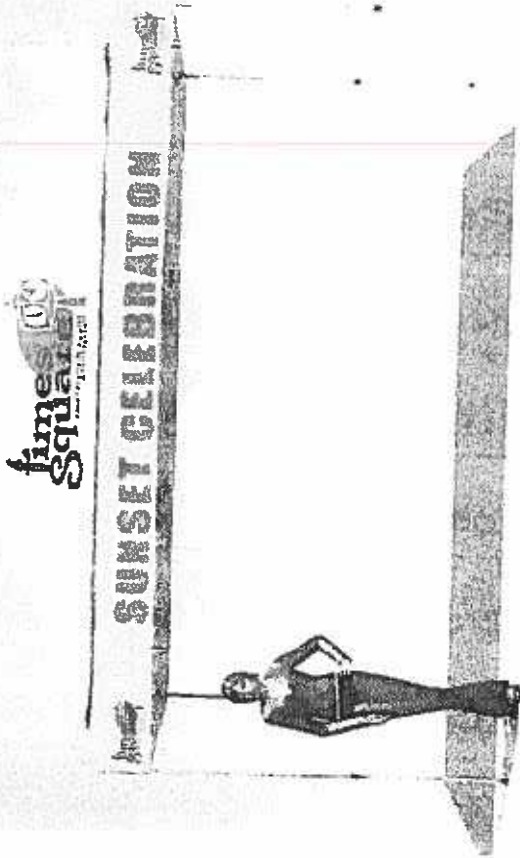
"Town Ordinance16-03 in instances where a proposed special event will be held within 500 feet of residential property and will include any amplified sound, the applicant shall provide notice to such owners and advise them of the nature of the event and the dates and times when the event will be held. The 500 feet shall be measured from the perimeter of the site where the special event will take place and for the condominium properties, single written notification to the condominium association shall be sufficient. The notification shall advise the owner(s) of their right to submit a letter of objection to the Town Manager and shall include a date by which any such letter of objection must be submitted."

Please should you have comments, questions or objections please submit them in writing no later than 10/28/20

Town Manager
2525 Estero Blvd
FMB, Fl 33931

~ plus





Sign: **Date:**
THIS IS NOT A FINAL PROOF, COLOR MAY CHANGE DEPENDING UPON FINAL OUTPUT

If you have any questions regarding this rendering please contact
Sales Representative Peter Hnr at 626.750.1921

Rendering may vary from the actual final product.

4/4/2019

VARIANCE REPORT

Subject Parcels: 1 Affected Parcels: 35 Buffer Distance: 500 ft



24-46-23-W3-00008.0000

280 210 140 70 0 280 Feet

THE INFORMATION CONTAINED IN THIS REPORT IS GOVERNED BY FLORIDA STATUTE 119.071
(GENERAL EXEMPTIONS FROM INSPECTION OR COPYING OF PUBLIC RECORDS)

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

10/21/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER McGriff Insurance Services 13515 Bell Tower Drive Fort Myers, FL 33907 INSURED The Times Square Merchant and Event Association, Inc. 1001 Estero Blvd Fort Myers Beach, FL 33931	CONTACT NAME: Elisha M. DeLeon PHONE (A/C, No, Ext): 239-433-7157 FAX (A/C, No): 866-802-8680 E-MAIL ADDRESS: edeleon@mcgriff.com <table border="1"> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr> <tr> <td>INSURER A:</td><td>Western World Insurance Company</td><td>13196</td></tr> <tr> <td>INSURER B:</td><td></td><td></td></tr> <tr> <td>INSURER C:</td><td></td><td></td></tr> <tr> <td>INSURER D:</td><td></td><td></td></tr> <tr> <td>INSURER E:</td><td></td><td></td></tr> <tr> <td>INSURER F:</td><td></td><td></td></tr> </table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A:	Western World Insurance Company	13196	INSURER B:			INSURER C:			INSURER D:			INSURER E:			INSURER F:		
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INSURER C:																						
INSURER D:																						
INSURER E:																						
INSURER F:																						

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PROJECT ☐ LOC OTHER: ☐ AUTOMOBILE LIABILITY ☐ ANY AUTO (OWNED) ☐ AUTOS ONLY ☐ MIXED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS ONLY	X		NPP8682506	10/23/2020	04/23/2021	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS COMP/OP AGG \$Included \$ COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$
	☐ UMBRELLA LIAB ☐ EXCESS LIAB ☐ DEF ☐ RETENTION \$ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						EACH OCCURRENCE \$ AGGREGATE \$ \$ PER STATUTE OTHER P.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate holder is named as additional insured with interest in insured's operations with respect to General Liability only per Additional Insured Endorsement WW180 (03/10) attached.

Town of Fort Myers Beach

OCT 21 2020

Received by:

CERTIFICATE HOLDER

CANCELLATION

Town of Fort Myers Beach Attn: Patty Prevost 2525 Estero Blvd Fort Myers Beach, FL 33931	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Elisha M. DeLeon
---	---

© 1988-2015 ACORD CORPORATION. All rights reserved.



To: Steve Mailakakis
gcstavros@gmail.com

Re: Sunset Celebration (Multiple Dates)
Times Square
Fort Myers Beach, FL 33931

Please see environmental comments regarding your special event permit. All special event activities shall comply with the Town of Fort Myers Beach Code of Ordinances.

A 10 foot buffer is required between any dune vegetation and event activities.

In addition, it is prohibited for any person to:

- Harass, molest or disturb wildlife (Sec. 14-3);
- Destroy or harm a dune or remove dune vegetation (Sec. 14-3);
- Discard or leave litter, garbage, trash or refuse, vegetative clippings, or debris (Sec. 14-3);
- Cause any noise disturbance as defined by Sec. 14-23.

For special events occurring during sea turtle nesting season (May 1 – Oct. 31):

- Lighting associated with a special event that may directly, indirectly, or cumulatively be visible from any portion of the beach is not authorized at nighttime during sea turtle nesting season, per Town's Sea Turtle Conservation Ordinance 20-04

Should you have any questions, please contact me.

Sincerely,

Chadd Chustz

Environmental Project Manager

Town of Fort Myers Beach

2525 Estero Boulevard

Fort Myers Beach, Florida 33931

Office : (239) 765-0202 x 1312

Fax : (239) 765-0909

Email: chadd@fmbgov.com

Web site: www.fmbgov.com

1. **Requested Motion:**

Meeting Date: November 2, 2020

Motion to Approve Resolution 20-49, adopting the Mooring Field Strategic Action Plan

Why the action is necessary:

Formal approval is necessary in order to proceed with the strategies and goals as stated in the Mooring Field Strategic Plan.

What the action accomplishes:

This action would officially adopt the Mooring Field Strategic Plan to be used as a guideline for future goals, as stated in the plan, to be achieved to better utilize the Mooring Field and to effectively serve the residents of Fort Myers Beach.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

Chelsea O'Riley, Public Works
Director

5. **Background:**

Attachments:

1. 20-49 Mooring Strategic Action Plan Resolution
2. Exhibit A

Financial Impact:

6. **Alternative Action**

Do not approve.

7. **Management Recommendations:**

Approve.

8. **Recommended Approval:**

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

Created/Initiated - 10/26/2020
Approved - 10/26/2020
Approved - 10/26/2020
Approved - 10/26/2020
Final Approval - 10/26/2020

RESOLUTION NUMBER 20-49

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN
OF FORT MYERS BEACH, FLORIDA, ADOPTING THE
MOORING FIELD STRATEGIC ACTION PLAN; AND
PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, through a strategic planning process the Mooring Field Strategic Action Plan was developed with the participation of the Town Council, AAC, many volunteers, residents, stakeholders and Town staff and

WHEREAS, on October 21, 2020, the Anchorage Advisory Committee (AAC) recommended approval of the Mooring Field Strategic Action Plan to Town Council and

WHEREAS, the Mooring Field Strategic Action Plan will greatly assist the AAC and maritime community to make sound recommendations to Town Council.

NOW, THEREFORE BE IS RESOLVED BY THE TOWN COUNCIL OF FORT MYERS BEACH THAT:

Section 1. The above recitals are true and correct and incorporated herein by this reference.

Section 2. The Mooring Field Strategic Plan, attached hereto as Exhibit “A”, is hereby adopted.

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

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

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

ADOPTED this _____ day of _____, 2020 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Raymond P. Murphy, Mayor

ATTEST:

Amy Baker, Deputy Town Clerk

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

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this _____ day of _____ 2020.

Matanzas Harbor Municipal Mooring Field



Strategic Action Plan October 21, 2020

Developed by Mooring Field AAC, Staff, and Stakeholders

MOORING FIELD MISSION Provide a safe and welcoming experience for mariners.	MOORING FIELD VISION To be the preferred mooring destination in Florida.
FMB MOORING FIELD SUCCESS STANDARDS ▪ We provide exceptional customer service in an efficient and knowledgeable manner. ▪ We provide an attractive, safe, and comfortable destination. ▪ We provide exceptional and well-maintained amenities. ▪ We are attracting new customers and retaining repeat customers. ▪ We have fluent and open communication between customers, town staff, provider, and AAC.	

Strategic Action Plan

October 21, 2020

CORE FOCUS AREA	STRATEGIC OBJECTIVES			
1. CUSTOMER EXPERIENCE	Short Term Goals	Responsibility	Target Date	Progress Report
	1. Identify ways to create a positive experience that appeals to all boaters and consider feasibility for implementation.	Randy	3/2021	
	2. Put into practice a system for tracking returning customers that provides data to be used in analysis (including length of stay and time of year).	Randy	5/2021	
	3. Explore the possibility of quick action to separate the restroom from the restroom/shower facilities with current provider.	Provider	2/2021	
	4. Increase hours of operation for restroom facilities.	Provider	2/2021	
	5. Install an ice machine for exclusive use of Mooring Field customers.	Provider	2/2021	
	Long Term Goals			
	6. Develop a process for tracking customer feedback for use in planning and marketing.	Randy	7/2021	
	7. Provide ongoing customer service training specific to the Mooring Field, to all stakeholders and staff.	Randy	01/2022	Continuous
2. GROWTH / CAPACITY	Short Term Goals	Responsibility	Target Date	Progress Report
	1. Make recommendation to either provide future services in-house or to continue outsourcing.	PW Direc./Austin	12/2020	
	2. Move forward with plans to expand existing mooring field.	PW Direc./Austin	2/2021	
	3. Work to expand the number of restroom and shower facilities.	PW Direc./Provider	3/2021	
	4. Work to expand dinghy dock capacity.	Austin	6/2021	
	5. Identify an appropriate outdoor congregation space for Mooring Field customers.	PW Direc./Provider	3/2021	
	6. In expansion planning, ensure the Mooring Field can accommodate all vessels (within our legal capability).	CEC/PW Direc.	2/2021	

	Long Term Goals			
	7. Consider the pros and cons of a Ship Store and make a recommendation on whether to pursue.	AAC	3/2021	
	8. Create an appropriate indoor congregation space for Mooring Field customers.	Provider	3/2021	
	9. Increase the occupancy of the Mooring Field to maximize utilization.	Provider	9/2021	
	10. Assess need for staff increases in future initiatives.	PW Dir./Austin	1/2021	
	11. Consider options for Mooring Field vehicle parking spaces.	Randy	8/2021	
	12. Investigate feasibility of adding an anchorage area.	Austin	3/2021	
	13. Continue work to become a designated federal anchorage area.	CEC/PW Direc.	9/2021	
3. TECHNOLOGY IMPROVEMENTS	Short Term Goals	Responsibility	Target Date	Progress Report
	1. Create an on-line solution to create efficiency and ease for customers (to include check-in, check-out, waiting list management, and pump out requests).	PW Direc./Austin	2/2022	
	2. Set up a kiosk dedicated to check-ins.	Randy/IT	7/2021	
	3. Create a dedicated website for the Mooring Field.	PIO	6/2021	
	4. Acquire Wi-Fi access for entire area of Mooring Field.	Randy/IT	7/2021	
	5. Create a social media presence to market and inform.	PIO	3/2021	Ongoing
	6. Research best solution to employ sensor notification for tracking mooring ball occupancy.	Randy/IT	4/2021	
	7. Investigate installation of a change machine in the laundromat.	Provider	1/2021	
	Long Term Goals			
	8. Install Key Card technology for use of bath/shower facilities.	PW Direc./IT	7/2021	
	9. Create a FMB Mooring Field app for use by customers.	PIO	8/2021	

4. SAFETY AND SECURITY	Short Term Goals	Responsibility	Target Date	Progress Report
	1. Implement fender improvements at dinghy dock.	Austin	2/2021	
	2. Install security cameras at dinghy dock and restroom entrances.	PW Director	4/2021	
	3. Ensure restroom/shower facilities are meeting maintenance standards for customer safety.	Austin/Provider	3/2021	
	4. Meet with law enforcement to agree on proactive measures that includes flow of information to assist in ensuring safety and security.	Austin/Provider	1/2021	
	5. Improve the lighting and the dinghy dock and all usage areas.	PW Director	12/2021	
	Long Term Goals			
	6.			
5. COMMUNICATION	Short Term Goals	Responsibility	Target Date	Progress Report
	1. Enhance communication to customers.	Provider	2/2021	
	2. Improve communication between provider and staff.	Austin	12/2020	
	3. Define a process for regular and specific updates between the AAC and Town Council.	AAC/Liaison	1/2021	
	4. Define a process for regular and specific budget reports from staff to AAC (including the State Report).	Finance	3/2021	
	5. Develop a fully implementable marketing plan.	PIO/PW Direc.	10/2021	
	6. Investigate feasibility and value of conducting a weekly meet and greet for customers.	Provider	12/2020	
	7. Create a verbal communication log for use in following up on shared information from customers.	Provider	2/2021	
	8. Create a center for communication of rules, events, plans, and other information of interest to customers (signages).	Austin	3/2021	
	Long Term Goals			
	9. Include ability on dedicated website (not yet built) to receive anonymous communication from customers.	PIO	5/2021	
	10. Ensure there is fluent and open communication between customers, Town Council, Town Staff, provider, and AAC.	PW Director	10/2022	

1. **Requested Motion:**

Meeting Date: November 2, 2020

Approve Resolution #20-50 authorizing the Town to finalize a loan agreement for the eligible Stormwater portions of the North Estero Phase 2 Part 2, Tier 1 Side Streets, and North Estero Phase 2 Part 1 projects and have the Town Manager finalize the application to the State of Florida Revolving Fund Loan.

Why the action is necessary:

This is a requirement of the State Revolving Fund Loan application.

What the action accomplishes:

The Town is applying for \$16,204,800 (excluding capitalized interest and loan service fee) from the Florida Department of Environmental Protection's State Revolving Fund for the planning of the Town of Fort Myers Beach Stormwater System Improvements.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

5. **Background:**

Now that the fee structure has been adjusted, the loan will be secured by the gross revenues derived yearly from the operation of the Town's Stormwater system after payment of the operation and maintenance expenses and the satisfaction of all yearly senior debt payment obligations. The pledged revenues are legally available to pledge.

Streets include:

Williams Drive
Estrellita Drive
Gulfview Avenue (Bay)
Fifth Street

Mandalay Road
Portions of Shell Mound Boulevard
Fairview Boulevard
Mid-Island Drive
Bayland Road

Crescent Street
Madison Court
Andre Mar
First Street
Third Street
Second Street
Bonita
Harbor

Palermo Circle
Santos
Primo

Lagoon St
Matanzas court and street
Carlos

Attachments:

1. DRAFT 20-50, Authorizing SRF Stormwater Loan
2. DRAFT-SW36086-Legal Opinion Letter
3. DRAFT-FMB-SW36086 SRF Loan Application REVISED

Financial Impact:

6. Alternative Action

Do not go forward with the loan and find an alternative way to fund the projects.

7. Management Recommendations:

Approve Resolution

8. Recommended Approval:

Christy Cory, Utilities Director
Christy Cory, Utilities Director
Robert Lange, Finance Director
John R Herin Jr, Town Attorney
Amy Baker, Deputy Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 10/26/2020
Approved - 10/26/2020
Approved - 10/27/2020
Approved - 10/28/2020
Approved - 10/28/2020
Final Approval - 10/28/2020

RESOLUTION NO. 20-50

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RELATING TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION STATE REVOLVING FUND LOAN PROGRAM; MAKING FINDINGS; AUTHORIZING THE LOAN APPLICATION; AUTHORIZING THE LOAN AGREEMENT; ESTABLISHING PLEDGED REVENUES; DESIGNATING AN AUTHORIZED REPRESENTATIVE; PROVIDING ASSURANCES; PROVIDING FOR CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

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

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach (“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, Florida Statutes provide for loans to local government agencies to finance the planning, design, and construction of stormwater treatment facilities; and

WHEREAS, applicable statutes and administrative rules require authorization to apply for loans, to establish pledged revenues, to designate an authorized representative; to provide assurances of compliance with loan program requirements; and to enter into a loan agreement; and

WHEREAS: the Town intends to construct necessary improvements to its stormwater system (the “Project”) and desires to borrow money from the State Revolving Fund; and

WHEREAS, the State Revolving Fund loan priority list designates the Town’s Project (Project No. SW36086) as eligible for available funding; and

WHEREAS, the Town intends to enter into a loan agreement with the Florida Department of Environmental Protection under the State Revolving Fund for Project financing (“Loan Agreement”).

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

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

Section 2. The Town Manager is authorized to apply for the Loan Agreement from the State Revolving Fund to finance the Project, and is designated as the Town’s representative to

carry out the responsibilities under the Loan Agreement, which the Town Manager may delegate to appropriate staff the responsibility to carry out technical, financial, and administrative activities associated with the Loan Agreement.

Section 3. The revenues pledged for the repayment of the Loan Agreement are the gross revenues derived yearly from the operation of the Town's stormwater system after payment of the operation and maintenance expenses and the satisfaction of all yearly senior debt payment. No senior debt obligations pledging these revenues currently exist.

Section 4. The legal authority for borrowing moneys to construct this Project is Section 166.111, *Florida Statutes* and Section 403.1835, *Florida Statutes*.

Section 5. All Resolutions or part of Resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

Section 6. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

Section 7. This Resolution shall take effect immediately upon its adoption.

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

Ray Murphy, Mayor	_____
Rexann Hosafros, Vice Mayor	_____
Dan Allers, Council Member	_____
Jim Atterholt, Council Member	_____
Bill Veach, Council Member	_____

ADOPTED this 2nd day of November 2020 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Raymond P. Murphy, Mayor

ATTEST:

Michelle D. Mayher, Town Clerk

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

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this _____ day of _____ 2020.

October 26, 2020

Ms. Angela Knecht
Program Administrator
State Revolving Fund Management
3900 Commonwealth Blvd., Mail Station 3505
Tallahassee, Florida 32399-3000

Re: SW36086 – Town of Fort Myers Beach, Florida
Stormwater System Improvements

Dear Ms. Knecht:

I am the duly appointed Attorney for the Town of Fort Myers Beach, Florida (the “Town”). The Town proposes to borrow \$16,204,800 (excluding capitalized interest and loan service fee) from the Florida Department of Environmental Protection’s State Revolving Fund for the planning of the Town of Fort Myers Beach Stormwater System Improvements.

It is my understanding that the loan will be secured by the gross revenues derived yearly from the operation of the Town’s stormwater system after payment of the operation and maintenance expenses and the satisfaction of all yearly senior debt payment obligations. Such revenues are legally available to pledge, and the Town of Fort Myers Beach has the legal authority to increase rates to ensure repayment of the proposed loan.

There are currently no senior debt obligations pledged to these revenues.

Sincerely,

NAME OF ATTORNEY

SW36086
Town of Fort Myers Beach

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

**STATE REVOLVING LOAN PROGRAM
for
Point Source Water Pollution Control
LOAN APPLICATION**



Florida Department of Environmental Protection
State Revolving Fund Program
Marjory Stoneman Douglas Building
3900 Commonwealth Blvd., MS 3505
Tallahassee, FL 32399-3000

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LOAN APPLICATION

- (1) SUBMITTAL. Submit the application and attachments to the Department of Environmental Protection, MS 3505, State Revolving Fund Program, 3900 Commonwealth Blvd., Tallahassee, Florida 32399-3000. The application (and backup) may be submitted electronically to the Department's Project Manager.
- (2) COMPLETING THE APPLICATION.
 - (a) This application consists of five parts: (I) ADMINISTRATIVE INFORMATION; (II) PROJECT INFORMATION; (III) FINANCIAL INFORMATION; (IV) AUTHORIZATION AND ASSURANCES; and (V) SUPPLEMENTARY INFORMATION.
 - (b) All information provided on this application must be printed. Monetary amounts may be rounded.
 - (c) Forms and attachments to be submitted are denoted with italic print.
- (3) ASSISTANCE. Completing this application may require information that can be obtained from Clean Water State Revolving Fund Program staff. Please email SRF_Reporting@dep.state.fl.us for assistance in completing this application.

PART I - ADMINISTRATIVE INFORMATION

- (1) PROJECT SPONSOR Town of Fort Myers Beach
Federal Employer Identification Number 65-0632342
DUNS Number 809043685
- (2) AUTHORIZED REPRESENTATIVE (person authorized to sign or attest loan documents).
Name Roger Hernstadt Title Town Manager
Telephone (239) 765-0202 ext. 1100 FAX Email Roger@fmbgov.com
Mailing Address 2525 Estero Boulevard Fort Myers Beach, FL 33931
- (3) PRIMARY CONTACT (person to answer questions regarding this application).
Name Christy Cory Title Utilities Director
Telephone 239-321-7217 FAX Email Christy@fmbgov.com
Employer Town of Fort Myers Beach
Mailing Address 2525 Estero Boulevard Fort Myers Beach, FL 33931
- (4) ADDITIONAL CONTACTS. If more than one additional person is to receive copies of Department correspondence, attach the information (*Attachment #N/A*).
Name Mark Brewer Title President
Telephone 941-756-5800 FAX Email president@angiebrewer.com
Employer Angie Brewer & Associates, LC
Mailing Address 9080 58th Drive East, Suite 200, Bradenton, FL 34202
- (5) PROJECT NUMBER (listed on the Department's priority list). SW36086
- (6) INTERIM FINANCING. A local government project sponsor that has interim financing may be subject to certain conditions regarding such financing.

Is the project currently being funded with interim financing?

☐ Yes ☒ No

PART II – PROJECT INFORMATION

If you are applying for a planning, design, or SSES loan for a project that will involve construction, complete only Subpart A below. If you are applying for a loan to construct a project that is already planned and designed, complete only Subpart B below.

A. PLANNING, DESIGN OR SSES PROJECT

Information should be provided for each separate facility to be planned and designed as appropriate. For design/build projects (not eligible for design loans) or those where multiple facilities, segments, or phases are involved, please attach information for activities, schedule, and cost for each. (*Attachment #N/A*)

- (1) **ACTIVITIES.** Attach a brief description of the scope of planning and design activities to be financed by this loan. Include a list of any specialized studies to be performed. (*Attachment #3*) Are these activities the same as those scheduled on the *Request for Inclusion Form*? ☐ Yes ☐ No. If “No”, please explain. (*Attachment #N/A*)
- (2) **SCHEDULE.**
- (a) Provide proposed completion dates for the items. (Please call Department staff to discuss time frames needed to complete required tasks.)
- | | |
|------------------------------------|-----|
| Planning documentation | N/A |
| Engineering work | N/A |
| Certification of site availability | N/A |
| Permit | N/A |
- (b) Do you anticipate that an interlocal agreement with another party will be necessary to implement the project? If “Yes”, please explain. (*Attachment #N/A*) ☐ Yes ☐ No
- (c) Is this a design/build project? ☐ Yes ☐ No
- (3) **COST.** Is the cost information submitted for the planning, design or SSES loan priority list current? ☐ Yes ☐ No
If “No”, please explain and submit revised cost information using the appropriate page of the *Request for Inclusion Form*. (*Attachment #N/A*) Note that the disbursable amount will be limited to the priority list amount.

PRECONSTRUCTION LOAN APPLICANTS PROCEED TO PART III.

B. CONSTRUCTION OR I/I REHABILITATION PROJECT

- (1) **ACTIVITIES.**
- (a) Attach a brief description of construction or I/I rehabilitation activities to be financed by this loan. Include a list of the contracts (by title) corresponding to the plans and specifications accepted by the Department (*Attachment #3*).
Are these contracts the same as those scheduled on the *Request for Inclusion Form*? ☒ Yes ☐ No
If “No”, please explain. (*Attachment #3*)
- (b) Have any of the contracts been bid? ☒ Yes ☐ No
If “Yes”, indicate which contracts have been bid. (*Attachment #3*)
- (c) Was planning, design, or SSES for this project financed in another SRF loan? ☐ Yes ☒ No
If “Yes”, give the SRF loan number. N/A
- (d) Does this project involve an interlocal agreement with other local governments or other entities? ☐ Yes ☒ No
If “Yes”, attach a copy of the Department letter accepting the interlocal agreement. (*Attachment #N/A*)
Is the interlocal agreement, as accepted by the Department, fully executed and enforceable? ☐ Yes ☒ No
If “No”, please explain (*Attachment #N/A*).

- (2) SCHEDULE. (month and year)
- (a) Anticipated notice to proceed for first construction contract. 08/2020
- (b) Anticipated completion of all construction contracts. 10/2022

- (3) COST. Is the cost information submitted for the priority list current? ☒ Yes ☐ No

If "No", please explain and submit revised cost information using the appropriate page of the *Request for Inclusion Form*. (Attachment #3) Note that the disbursable amount will be limited to the priority list amount.

PART III - FINANCIAL INFORMATION

Estimates of the capitalized interest, project useful life for financial hardship loans, financing rate, pledged revenue coverage, limitations on annual loan amounts for large projects, applicability and amount of repayment reserves, amount of the loan service fee and any other information may be obtained by contacting staff in the State Revolving Fund Management Section.

- (1) PRINCIPAL. The requested amount of the loan which does not include capitalized interest is \$16,204,800

Note that the disbursable amount will be limited to the priority list amount and must be consistent with the project information provided under **PART II** of this application. Also note that the capitalized interest is an inexact estimate, and it is subject to adjustment by the Department to reflect actual disbursement timing. The principal amount of the loan does not include the loan service fee.

- (2) TERMS AND REPAYMENT.

- (a) Loans to local government project sponsors are amortized over the lesser of useful life of the project or 20 years unless the project is to serve a small community qualifying as having a financial hardship. Loans to financial hardship communities may be amortized over the lesser of useful life of the project or 30 years. Loans to non-governmental project sponsors are amortized over the lesser of the useful of the project or 20 years. Finance charges and principal are paid semiannually.

What is the useful life of the project? 20 (years)

Over how many years would you like to amortize the loan? 20 (years)

- (b) List all revenues that are to be pledged for repayment of this loan. The gross revenues derived yearly from the operation of the Town's stormwater system after payment of the operation and maintenance expenses and the satisfaction of all yearly senior debt payment obligations.

- (c) Pledged revenue receipts or collections by the project sponsor must exceed the amount of the repayments due to the Department unless there are other collateral provisions. The excess revenue, or coverage, generally is 15% of each repayment.

What coverage is proposed for the loan? 15% (coverage percentage)

- (d) Is any other financial assistance being applied to this project? ☐ Yes ☒ No

If "Yes", please list. (Attachment #N/A)

- (3) ANNUAL FUNDING LIMIT. Large project funding (generally, loans in excess of \$10 million) may be provided in increments pursuant to the initial loan agreement and subsequent amendments. Each increment shall have a separate financing rate as established in the agreement or amendment providing that increment.

- (4) INFORMATION ON LIENS.

- (a) Describe, if applicable, all debt obligations having a prior or parity lien on the revenues pledged to repay this loan. (Attachment #4) For example: City Name, Florida, Water and Sewer System Revenue Bonds, Series 1996, issued in the amount of \$10,000,000, pursuant to Ordinance No. 93-104, as amended and supplemented by Ordinance No. 96-156.

- (b) Using the Part V, *Schedule of Prior and Parity Liens*, provide debt service information, if applicable, on each prior and parity obligation.

- (c) For the listed obligations, provide a copy of the ordinance(s), resolution(s), official statement(s), or pages thereof, setting forth the definitions, use of proceeds, debt service schedule, pledged revenues, rate covenants, provisions for issuing additional debt, provisions for bond insurance, and debt rating. (*Attachment #4*).
- (d) Describe any other notes and loans payable from the revenues pledged to repay this loan. (*Attachment #4*).
- (5) ACTUAL AND PROJECTED REVENUES.
 - (a) Complete the Part V, *Schedule of Actual Revenues and Debt Coverage* for the past two fiscal years.
 - (b) Complete the Part V, *Schedule of Projected Revenues and Debt Coverage*, demonstrating the availability of pledged revenues for loan repayment.
- (6) AVAILABILITY OF PLEDGED REVENUES. All sources must be supported by a written legal opinion. (*Attachment #5*) The opinion must address the following:
 - (a) Availability of the revenues to repay the loan.
 - (b) Right to increase rates at which revenues shall be collected to repay the loan.
 - (c) Subordination of the pledge if pledged revenues are subject to a prior or parity lien.
- (7) LOAN SERVICE FEE. A loan service fee is assessed on each loan. The fee is not part of the loan. The fee along with interest thereon will be deducted from the first available repayments after the final amendment to the loan agreement.

PART IV – AUTHORIZATION AND ASSURANCES

- (1) AUTHORIZATION. Provide an authorizing resolution of the Applicant's governing body or other evidence of authorization (*Attachment #6*) for the following:
 - (a) Pledging revenues to repay the loan.
 - (b) Designation of the Authorized Representative(s) to file this application, provide assurances, execute the loan agreement, and represent the Applicant in carrying out responsibilities (including that of requesting loan disbursements) under the loan agreement.
- (2) ASSURANCES. The Applicant agrees to comply with the laws, rules, regulations, policies and conditions relating to the loan for this project. Applicants should seek further information from the Clean Water State Revolving Fund Program staff as to the applicability of the requirements if the necessity for the assurances is of concern. Specifically, the Applicant certifies that it has complied, as appropriate, and will comply with the following requirements, as appropriate, in undertaking the Project:
 - (a) Assurances for capitalization grant projects.
 - 1. Complete all facilities for which funding has been provided.
 - 2. The Archaeological and Historic Preservation Act of 1974, PL 93-291, and the National Historic Preservation Act of 1966, PL 89-665, as amended, regarding identification and protection of historic properties.
 - 3. The Clean Air Act, 42 U.S.C. 7506(c), which requires conformance with State Air Quality Implementation Plans.
 - 4. The Coastal Zone Management Act of 1972, PL 92-583, as amended, which requires assurance of project consistency with the approved State management program developed under this Act.
 - 5. The Endangered Species Act, 16 U.S.C. 1531, et seq., which requires that projects avoid disrupting threatened or endangered species and their habitats.
 - 6. Executive Order 11593, Protection and Enhancement of the Cultural Environment, regarding preservation, restoration and maintenance of the historic and cultural environment.
 - 7. Executive Order 11988, Floodplain Management, related to avoiding, to the extent possible, adverse impacts associated with floodplain occupancy, modification and development whenever there is a practicable alternative.
 - 8. Executive Order 11990, Protection of Wetlands, related to avoiding, to the extent possible, adverse impacts associated with the destruction or modification of wetlands and avoiding support of construction in wetlands.
 - 9. The Fish and Wildlife Coordination Act, PL 85-624, as amended, which requires that actions to control natural streams or other water bodies be undertaken to protect fish and wildlife resources and their habitats.

10. The Safe Drinking Water Act, Section 1424(e), PL 93-523, as amended, regarding protection of underground sources of drinking water.
11. The Wild and Scenic Rivers Act, PL 90-542, as amended, related to protecting components or potential components of the national wild and scenic rivers system.
12. The federal statutes relating to nondiscrimination, including: The Civil rights Act of 1964, PL 88-352, which prohibits discrimination on the basis of race, color or national origin; the Age Discrimination Act, PL 94-135, which prohibits discrimination on the basis of age; Section 13 of the Federal Water Pollution Control Act, PL 92-500, which prohibits sex discrimination; the Rehabilitation Act of 1973, PL 93-112, as amended, which prohibits discrimination on the basis of handicaps.
13. Executive Order 11246, Equal Employment Opportunity, which provides for equal opportunity for all qualified persons.
14. Executive Orders 11625 and 12138, Women's and Minority Business Enterprise, which require that small, minority, and women's business and labor surplus areas are used when possible as sources of supplies, equipment, construction and services.
15. The Coastal Barrier Resources Act, 16 U.S.C. 3501 et seq., regarding protection and conservation of the coastal barrier resources.
16. The Farmland Protection Policy Act, 7 U.S.C. 4201 et seq., regarding protection of agricultural lands from irreversible loss.
17. The Uniform Relocation and Real Property Acquisition Policies Act of 1970, PL 91-646, which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally assisted programs.
18. The Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754, as amended, which requires that projects be carried out in accordance with area wide planning activities.
19. Section 306 of the Clean Air Act, Section 508 of the Clean Water Act and Executive Order 11738, which prohibit manufacturers, firms, or other enterprises on the EPA's list of Violating Facilities from participating in the Project.
20. Executive Order 12549, Debarment and Suspension, which prohibits any award to a party which is debarred or suspended or is otherwise excluded from, or ineligible for, participation in federal assistance programs.
21. Minority and Women's Business Enterprise participation in project work using numerical goals, established by the U.S. Environmental Protection Agency, and to be set forth in the specifications for construction and materials contracts.
- (b) Assurances for other projects.
 1. Chapter 161, Part I, F.S., "Beach and Shore Preservation Act" and Part III, "Coastal Zone Protection Act of 1985" which regulate coastal zone construction and all activities likely to affect the condition of the beaches or shore.
 2. Chapter 163, Part II, F.S., the "Local Government Comprehensive Planning and Land Development Regulation Act" which requires units of local government to establish and implement comprehensive planning programs to control future development.
 3. Chapter 186, F.S., State and Regional Planning, which requires conformance of projects with Regional Plans and the State Comprehensive Plan.
 4. Chapter 253, F.S., "Emergency Archaeological Property Acquisition Act of 1988" which requires protection of archaeological properties of major statewide significance discovered during construction activities.
 5. Chapter 258, Part III, F.S., which requires protection of components or potential components of the national wild and scenic rivers system.
 6. Chapter 267, F.S., the "Florida Historical Resources Act" which requires identification, protection, and preservation of historic properties, archaeological and anthropological sites.
 7. Chapter 287, Part I, F.S., which prohibits parties convicted of public entity crimes or discrimination from participating in State-assisted projects and which requires consideration of the utilization of Minority Business Enterprises in State-assisted projects.
 8. Chapter 372, F.S., the Florida Endangered and Threatened Species Act which prohibits the killing or wounding of an endangered, threatened, or special concern species or intentionally destroying their eggs or nest.

9. Chapter 373, Part IV, F.S., Florida Water Resources Act of 1972, which requires that activities on surface waters or wetlands avoid adversely affecting: public health, safety, welfare, or property; conservation of fish and wildlife, including endangered or threatened species or their habitats; navigation or the flow of water; the fishing or recreational values or marine productivity; and significant historical and archaeological resources.
10. Chapter 380, Part I, F.S., Florida Environmental Land and Water Management Act of 1972 as it pertains to regulation of developments and implementation of land and water management policies.
11. Chapter 381, F.S., Public Health, as it pertains to regulation of onsite wastewater systems.
12. Chapter 403, Part I, F.S., Florida Air and Water Pollution Control which requires protection of all waters of the state.
13. Chapter 582, F.S., Soil and Water Conservation Act which requires conformance with Water Management District's regulations governing the use of land and water resources.
14. Governor's Executive Order 95-359, which requires State Clearinghouse review of project planning documentation and intergovernmental coordination.

I, the undersigned Authorized Representative of the Applicant, hereby certify that all information contained herein and in the attached is true, correct, and complete to the best of my knowledge and belief. I further certify that I have been duly authorized to file the application and to provide these assurances.

Signed this _____ Day of _____, 20 _____

Authorized Representative _____
(signature) (name typed or printed)

Attachments

PART V – SUPPLEMENTARY INFORMATION

SCHEDULE OF PRIOR AND PARITY LIENS (EXCLUDING SRF LOANS)

List annual debt service beginning two years before the anticipated loan agreement date and continuing at least three additional fiscal years.
Use additional pages as necessary.

#1 There are currently no senior debt obligations pledged to stormwater revenues. Coverage % Insured (Yes/No)	#2 Coverage % Insured (Yes/No)	#3 Coverage % Insured (Yes/No)
#4 Coverage % Insured (Yes/No)	#5 Coverage % Insured (Yes/No)	#6 Coverage % Insured (Yes/No)

FISCAL YEAR	Annual Debt Service (Principal Plus Interest)						Total Debt Service	Total Debt Service Incl. Coverage
	#1	#2	#3	#4	#5	#6		
2017	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2018	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2019	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2020	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2021	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2022	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2023	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2024	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2025	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2026	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2027	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2028	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2029	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2030	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2031	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2032	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2033	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2034	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2035	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2036	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2037	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2038	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2039	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2040	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

PART V – SUPPLEMENTARY INFORMATION

SCHEDULE OF ACTUAL REVENUES AND DEBT COVERAGE

(Provide information for the two fiscal years preceding the anticipated date of the SRF loan agreement.)

	FY 2018	FY 2019
(a) Operating Revenues (Source)		
Charges for Service	\$ 1,106,047	\$ 1,120,536
	\$ -	\$ -
(b) Interest Income	\$ -	\$ -
(c) Other Incomes or Revenues (Identify)		
Miscellaneous	\$ 5,775	\$ 7,098
(d) Total Revenues	\$ 1,111,822	\$ 1,127,634
(e) Operating Expenses (excluding interest on debt, depreciation, and other non-cash items)	\$ 269,325	\$ 481
(f) Net Revenues (f = d - e)	\$ 842,497	\$ 1,127,153
(g) Debt Service (including any required coverage)	\$ -	\$ -
(h) Attach audited annual financial report(s), or pages thereof, or other documentation necessary to support the above information. Include any notes or comments from the audit reports regarding compliance with covenants of debt obligations having a prior or parity lien on the revenues pledged for repayment of the SRF Loan. (Attachment #7)		
(i) Attach worksheets reconciling this page with the appropriate financial statements (for example, backing out depreciation and interest payments from operating expenses). (Attachment #7)		
(j) If the net revenues were not sufficient to satisfy the debt service and coverage requirement, please explain what corrective action was taken. (Attachment # N/A)		

PART V – SUPPLEMENTARY INFORMATION

SCHEDULE OF PROJECTED REVENUES AND DEBT COVERAGE

Begin with the fiscal year preceding first anticipated semiannual loan payment and continuing for at least three additional years. Attach a separate page for previous State Revolving Fund loans. (*Attachment # 7*)

	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
(a) Operating Revenue	\$ 1,457,235	\$ 1,793,835	\$ 2,111,335	\$ 2,111,435	\$ 2,111,435
(b) Interest Income	\$ -	\$ -	\$ -	\$ -	\$ -
(c) Other Income or Revenue (identify)					
Miscellaneous	\$ -	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -	\$ -
(d) Total Revenues	\$ 1,457,235	\$ 1,793,835	\$ 2,111,335	\$ 2,111,435	\$ 2,111,435
(e) Operating Expenses (excluding interest on debt, depreciation, and other non-cash items)	\$ 303,744	\$ 332,692	\$ 337,017	\$ 341,398	\$ 345,837
(f) Net Revenues (f = d - e)	\$ 1,153,491	\$ 1,461,143	\$ 1,774,318	\$ 1,770,037	\$ 1,765,598
(g) Revenue (including coverage) pledged to debt service, excluding SRF loans	\$ -	\$ -	\$ -	\$ -	\$ -
(h) Revenue (including coverage) pledged to outstanding SRF loans	\$ 652,511	\$ 652,511	\$ 652,511	\$ 652,511	\$ 652,511
(i) Revenue Available for this SRF Loan (i = f - g - h)	\$ 500,980	\$ 808,632	\$ 1,121,807	\$ 1,117,525	\$ 1,113,087
(j) Identify the source of the above information and explain methods used to develop the projections (<i>Attachment #7</i>) . Include an explanation of any revenue and expense growth or other adjustments; for example, any rate increases, service growth, inflation adjustments, expense adjustments reflecting the cost of operating additional facilities, or other considerations.					
(k) For construction loans, are the above projections consistent with the accepted financial feasibility information?	Yes ☒			No ☐	
If “No”, please explain. (<i>Attachment #N/A</i>)					

PART V – SUPPLEMENTARY INFORMATION

LIST OF ATTACHMENTS

LIST OF ATTACHMENTS. This application requires the submittal of *Attachments* to provide supplemental information. The application is not complete without the completed *List of Attachments*. Please list all attachments that you are including with this application form.

[illegible]

DRAFT

**Town of Fort Myers Beach
Stormwater System Improvements
SRF Clean Water Loan Application**

Attachment 1

EPA Preaward Compliance Report



U.S. ENVIRONMENTAL PROTECTION AGENCY
Washington, DC 20460

**Preaward Compliance Review Report for
All Applicants and Recipients Requesting EPA Financial Assistance**

Note: Read instructions on other side before completing form.

I.	Applicant/Recipient (Name, Address, State, Zip Code). Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931	DUNS No. 809043685
II.	Is the applicant currently receiving EPA assistance? Yes	
III.	List all civil rights lawsuits and administrative complaints pending against the applicant/recipient that allege discrimination based on race, color, national origin, sex, age, or disability. (Do not include employment complaints not covered by 40 C.F.R. Parts 5 and 7. See instructions on reverse side.) None	
IV.	List all civil rights lawsuits and administrative complaints decided against the applicant/recipient within the last year that allege discrimination based on race, color, national origin, sex, age, or disability and enclose a copy of all decisions. Please describe all corrective action taken. (Do not include employment complaints not covered by 40 C.F.R. Parts 5 and 7. See instructions on reverse side.) None	
V.	List all civil rights compliance reviews of the applicant/recipient conducted by any agency within the last two years and enclose a copy of the review and any decisions, orders, or agreements based on the review. Please describe any corrective action taken. (40 C.F.R. § 7.80(c)(3)) None	
VI.	Is the applicant requesting EPA assistance for new construction? If no, proceed to VII; if yes, answer (a) and/or (b) below. Yes No a. If the grant is for new construction, will all new facilities or alterations to existing facilities be designed and constructed to be readily accessible to and usable by persons with disabilities? If yes, proceed to VII; if no, proceed to VI(b). Yes No b. If the grant is for new construction and the new facilities or alterations to existing facilities will not be readily accessible to and usable by persons with disabilities, explain how a regulatory exception (40 C.F.R. § 7.70) applies. Yes No	
VII.	Does the applicant/recipient provide initial and continuing notice that it does not discriminate on the basis of race, color, national origin, sex, age, or disability in its programs or activities? (40 C.F.R. § 5.140 and § 7.95) Yes No a. Do the methods of notice accommodate those with impaired vision or hearing? Yes No b. Is the notice posted in a prominent place in the applicant's offices or facilities or, for education programs and activities, in appropriate periodicals and other written communications? Yes No c. Does the notice identify a designated civil rights coordinator? Yes No	
VIII.	Does the applicant/recipient maintain demographic data on the race, color, national origin, sex, age, or handicap of the population it serves? (40 C.F.R. § 7.85(a)) Census data is utilized when needed.	
IX.	Does the applicant/recipient have a policy/procedure for providing access to services for persons with limited English proficiency? (40 C.F.R. Part 7, E.O. 13166) Yes	
X.	If the applicant/recipient is an education program or activity, or has 15 or more employees, has it designated an employee to coordinate its compliance with 40 C.F.R. Parts 5 and 7? Provide the name, title, position, mailing address, e-mail address, fax number, and telephone number of the designated coordinator. Amanda Anderson, Finance Coordinator, 2525 Estero Blvd. Fort Myers Beach, FL Phone: (239) 765-0202 ext.1201 Email: Amanda@fimb.gov.com	
XI.	If the applicant/recipient is an education program or activity, or has 15 or more employees, has it adopted grievance procedures that assure the prompt and fair resolution of complaints that allege a violation of 40 C.F.R. Parts 5 and 7? Provide a legal citation or Internet address for, or a copy of, the procedures. The Town's Personnel Manual may be downloaded from: http://fl-fortmyersbeach2.civicplus.com/248/Employment	

For the Applicant/Recipient

I certify that the statements I have made on this form and all attachments thereto are true, accurate and complete. I acknowledge that any knowingly false or misleading statement may be punishable by fine or imprisonment or both under applicable law. I assure that I will fully comply with all applicable civil rights statutes and EPA regulations.

A. Signature of Authorized Official

B. Title of Authorized Official
Town Manager

C. Date

For the U.S. Environmental Protection Agency

I have reviewed the information provided by the applicant/recipient and hereby certify that the applicant/recipient has submitted all preaward compliance information required by 40 C.F.R. Parts 5 and 7; that based on the information submitted, this application satisfies the preaward provisions of 40 C.F.R. Parts 5 and 7; and that the applicant has given assurance that it will fully comply with all applicable civil rights statutes and EPA regulations.

A. Signature of Authorized EPA Official

B. Title of Authorized EPA Official

C. Date

See * note on reverse side

DRAFT

**Town of Fort Myers Beach
Stormwater System Improvements
SRF Clean Water Loan Application**

Attachment 2

**Federal Funding Accountability and
Transparency Act**



Florida Department of Environmental Protection
FEDERAL FUNDING ACCOUNTABILITY AND
TRANSPARENCY ACT FORM – Subaward to a Recipient

Required Signatures: **Original Ink Signature**

PURPOSE: The Federal Funding Accountability and Transparency Act (FFATA) was signed on September 26, 2006. The intent of this legislation is to empower every American with the ability to hold the government accountable for each spending decision. The FFATA legislation requires information on federal awards (federal assistance and expenditures) be made available to the public via a single, searchable website, which is <http://www.usaspending.gov/>.

The FFATA Subaward Reporting System (FSRS) is the reporting tool the Florida Department of Environmental Protection (“DEP” or “Department”) must use to capture and report subaward and executive compensation data regarding first-tier subawards that obligate \$25,000 or more in Federal funds (excluding Recovery funds as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5).

[Note: This reporting requirement is not applicable for the procurement of property and services obtained by the DEP through a Vendor relationship. Refer to 2 CFR Ch. 1 Part 170 Appendix A, Section I.c.3 for the definition of “subaward”.]

ORGANIZATION AND PROJECT INFORMATION:

The following information must be provided to the DEP prior to the DEP’s issuance of a subaward (Agreement) that obligates \$25,000 or more in federal funds as described above. Please provide the following information and return the signed form to the Department as requested. If you have any questions, please contact the DEP’s Procurement Administrator at 850/245-2361 for assistance.

DUNS# *:

DUNS+4#:

* If your company or organization does not have a DUNS number, you will need to obtain one from Dun & Bradstreet at 866-705-5711 or use the webform (<http://fedgov.dnb.com/webform>). The process to request a DUNS number takes about ten minutes and is free of charge.

BUSINESS NAME: Town of Fort Myers Beach

DBA NAME (IF APPLICABLE): 809043685

PRINCIPAL PLACE OF BUSINESS ADDRESS:

ADDRESS LINE 1: 2525 Estero Boulevard

ADDRESS LINE 2: _____

ADDRESS LINE 3: _____

CITY: Fort Myers Beach STATE: Florida

ZIP CODE+4**: 33931-3354

PARENT COMPANY DUNS# (IF APPLICABLE):

CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA#):

DESCRIPTION OF PROJECT (UP TO 4000 CHARACTERS):

The Town of Fort Myers Beach has begun a multi-phased project to make necessary improvements to the Town’s stormwater conveyance and treatment systems. These projects will also address issues related to nuisance flooding and stormwater runoff into Estero Bay (an Outstanding Florida Water).

The projects are consistent with the Estero Bay Aquatic Preserve Management Plan.

The Tier I Side Streets Storm and Water Improvements, North Estero Phase 2 - Part 1 Storm and Water Improvements, North Estero Phase 2 - Part 2 Storm and Water Improvements projects will address stormwater related issues on primarily the northern portion of the island.

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT FORM DEP- 55-230 Continued

PRINCIPAL PLACE OF PROJECT PERFORMANCE (IF DIFFERENT THAN PRINCIPAL PLACE OF BUSINESS):

ADDRESS LINE 1: City-Wide

ADDRESS LINE 2: _____

ADDRESS LINE 3: _____

CITY: Fort Myers Beach STATE: Florida

ZIP CODE+4**: 33931-3354

CONGRESSIONAL DISTRICT FOR PRINCIPAL PLACE OF PROJECT PERFORMANCE:

19th Congressional District of Florida

**Providing the Zip+4 ensures that the correct Congressional District is reported.

EXECUTIVE COMPENSATION INFORMATION:

1. In your business or organization's previous fiscal year, did your business or organization (including parent organization, all branches, and all affiliates worldwide) receive (a) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance (e.g. loans, grants, subgrants, and/or cooperative agreements, etc.) subject to the Transparency Act, as defined at 2 CFR 170.320; **and**, (b) \$25,000,000 or more in annual gross revenues from U.S. Federal procurement contracts (and subcontracts) and Federal financial assistance (e.g. loans, grants, subgrants, and/or cooperative agreements, etc.) subject to the Transparency Act?
- Yes _____ No X

If the answer to Question 1 is "Yes," continue to Question 2. If the answer to Question 1 is "No", move to the signature block below to complete the certification and submittal process.

2. Does the public have access to information about the compensation of the executives in your business or organization (including parent organization, all branches, and all affiliates worldwide) through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or Section 6104 of the Internal Revenue Code of 1986?
- Yes _____ No _____

If the answer to Question 2 is "Yes," move to the signature block below to complete the certification and submittal process. [Note: Securities Exchange Commission information should be accessible at <http://www.sec.gov/answers/execomp.htm>. Requests for Internal Revenue Service (IRS) information should be directed to the local IRS for further assistance.]

If the answer to Question 2 is "No" FFATA reporting is required. Provide the information required in the "TOTAL COMPENSATION CHART FOR MOST RECENTLY COMPLETED FISCAL YEAR" appearing below to report the "Total Compensation" for the five (5) most highly compensated "Executives", in rank order, in your organization. For purposes of this request, the following terms apply as defined in 2 CFR Ch. 1 Part 170 Appendix A:

"Executive" is defined as "officers, managing partners, or other employees in management positions".

"Total Compensation" is defined as the cash and noncash dollar value earned by the executive during the most recently completed fiscal year and includes the following:

- i. Salary and bonus.
- ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- v. Above-market earnings on deferred compensation which is not tax-qualified.

- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

TOTAL COMPENSATION CHART FOR MOST RECENTLY COMPLETED FISCAL YEAR

(Date of Fiscal Year Completion (mm/dd/yyyy): _____)

Rank (Highest to Lowest)	Name (Last, First, MI)	Title	Total Compensation for Most Recently Completed Fiscal Year
1			
2			
3			
4			
5			

THE UNDERSIGNED AS (enter position title) Town Manager

OF (enter Business Name) Town of Fort Myers Beach

CERTIFIES THAT ON THE DATE WRITTEN BELOW, THE INFORMATION PROVIDED HEREIN IS ACCURATE.

Type or Print Name: Roger T. Hernstadt

Signature, Title and Date: _____

DRAFT

**Town of Fort Myers Beach
Stormwater System Improvements
SRF Clean Water Loan Application**

**Attachment 3
Project Description**

**Town of Fort Myers Beach
Stormwater System Improvements
Project Description**

The Town of Fort Myers Beach has begun a multi-phased project to make necessary improvements to the Town's stormwater conveyance and treatment systems. These projects will also address issues related to nuisance flooding and stormwater runoff into Estero Bay (an Outstanding Florida Water).

The projects are consistent with the Estero Bay Aquatic Preserve Management Plan.

The Tier I Side Streets Storm and Water Improvements, North Estero Phase 2 - Part 1 Storm and Water Improvements, North Estero Phase 2 - Part 2 Storm and Water Improvements projects will address stormwater related issues on primarily the northern portion of the island.

Contracts Bid:

North Estero Phase 2 - Part 2 Storm and Water Improvements: FDEP issued an Authorization to Award letter for this contract on March 27, 2020.

DRAFT

**Town of Fort Myers Beach
Stormwater System Improvements
SRF Clean Water Loan Application**

**Attachment 4
Debt Obligations**

**Town of Fort Myers Beach
Stormwater System Improvements
Debt Obligations**

- Florida Department of Environmental Protection Clean Water State Revolving Fund Loan SW360830

DRAFT

**Town of Fort Myers Beach
Stormwater System Improvements
SRF Clean Water Loan Application**

Attachment 4

Debt Obligations

State of Florida, Department of Environmental Protection,
Clean Water State Revolving Fund Loan
SW360830

A copy of the agreement for the loan referenced above has not been included in this application but may be obtained from the Florida Department of Environmental Protection or is available upon request.

DRAFT

**Town of Fort Myers Beach
Stormwater System Improvements
SRF Clean Water Loan Application**

Attachment 5

Legal Opinion Letter

October 15, 2020

Ms. Angela Knecht
Program Administrator
State Revolving Fund Management
3900 Commonwealth Blvd., Mail Station 3505
Tallahassee, Florida 32399-3000

Re: SW36086 – Town of Fort Myers Beach, Florida
Stormwater System Improvements

Dear Ms. Knecht:

I am the duly appointed Attorney for the Town of Fort Myers Beach, Florida (the “Town”). The Town proposes to borrow \$16,204,800 (excluding capitalized interest and loan service fee) from the Florida Department of Environmental Protection’s State Revolving Fund for the planning of the Town of Fort Myers Beach Stormwater System Improvements.

It is my understanding that the loan will be secured by the gross revenues derived yearly from the operation of the Town’s stormwater system after payment of the operation and maintenance expenses and the satisfaction of all yearly senior debt payment obligations. Such revenues are legally available to pledge, and the Town of Fort Myers Beach has the legal authority to increase rates to ensure repayment of the proposed loan.

There are currently no senior debt obligations pledged to these revenues.

Sincerely,

NAME OF ATTORNEY

DRAFT

**Town of Fort Myers Beach
Stormwater System Improvements
SRF Clean Water Loan Application**

Attachment 6

Authorizing Resolution

RESOLUTION NO. 2020-__

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RELATING TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION STATE REVOLVING FUND LOAN PROGRAM; MAKING FINDINGS; AUTHORIZING THE LOAN APPLICATION; AUTHORIZING THE LOAN AGREEMENT; ESTABLISHING PLEDGED REVENUES; DESIGNATING AN AUTHORIZED REPRESENTATIVE; PROVIDING ASSURANCES; PROVIDING FOR CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS: Florida Statutes provide for loans to local government agencies to finance the planning, design, and construction of stormwater treatment facilities; and

WHEREAS: Florida Administrative Code rules require authorization to apply for loans, to establish pledged revenues, to designate an authorized representative; to provide assurances of compliance with loan program requirements; and to enter into a loan agreement; and

WHEREAS: The State Revolving Fund loan priority list designates Project No. SW36086 as eligible for available funding; and

WHEREAS: The Town of Fort Myers Beach, Florida intends to construct necessary improvements to its stormwater system (the "Project"); and,

WHEREAS: The Town of Fort Myers Beach, Florida, intends to enter into a loan agreement with the Florida Department of Environmental Protection under the State Revolving Fund for project financing.

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

Section 1. The foregoing findings are incorporated herein by reference and made a part hereof.

Section 2. The Town of Fort Myers Beach, Florida, is authorized to apply for a loan to finance the Project.

Section 3. The revenues pledged for the repayment of the loan are the gross revenues derived yearly from the operation of the Town's stormwater system after payment of the operation and maintenance expenses and the satisfaction of all yearly senior debt payment. There are currently no senior debt obligations pledged to these revenues.

Section 4. The Town Manager is hereby designated as the authorized representative to provide the assurances and commitments required by the loan application.

Section 5. The Town Manager is hereby designated as the authorized representative to execute the loan agreement and any subsequent amendments which will become a binding obligation in accordance with its terms when signed by both parties.

Section 6. The Town Manager is authorized to represent the Town of Fort Myers in carrying out responsibilities under the loan agreement. The Town Manager is authorized to delegate responsibility to appropriate staff to carry out technical, financial, and administrative activities associated with the loan agreement.

Section 7. The legal authority for borrowing moneys to construct this Project is Section 166.111, Florida Statutes and Section 403.1835, Florida Statutes.

Section 8. All Resolutions or part of Resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

Section 9. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

Section 10. This Resolution shall take effect immediately upon its adoption.

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

Ray Murphy, Mayor	_____
Rexann Hosafros, Vice Mayor	_____
Dan Allers, Council Member	_____
Jim Atterholt, Council Member	_____
Bill Veach, Council Member	_____

ADOPTED this _____ day of _____, 2020 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Raymond P. Murphy, Mayor

ATTEST:

Michelle D. Mayher, Town Clerk

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

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this _____ day of _____ 2020.

DRAFT

DRAFT

7

**Town of Fort Myers Beach
Stormwater System Improvements
SRF Clean Water Loan Application**

**Attachment 7
Financial Notes**

**Town of Fort Myers Beach
Stormwater System Improvements
Financial Notes**

Schedule of Actual Revenues and Debt Coverage (Page 8 of 10)

The figures included in this table were derived from the *Town of Fort Myers Beach Comprehensive Annual Financial Report Fiscal Year Ending September 30, 2018* and from the *Town of Fort Myers Beach Comprehensive Annual Financial Report Fiscal Year Ending September 30, 2019*. Select pages from these reports have been included in this attachment.

Schedule of Projected Revenues and Debt Coverage (Page 9 of 10)

In August 2020, the Town of Fort Myers Beach adopted the recommendations proposed in the *Town of Fort Myers Beach, Florida Water and Stormwater Rate Study* completed by GovRates, Inc. Revenues listed in this table were obtained from projections outlined in the rate study which recommended stormwater rate increases for FY 2021, FY 2022, and FY 2023. No increase in revenues was projected for FY 2024 forward.

Expenditures were calculated based on information obtained from the Town for Fort Myers Beach. Prior to FY 2020, the Town incurred few operating expenses while the stormwater system was being constructed. Expenses were mostly allocated to the Town's general fund. Beginning with FY 2020 and beyond, projected operating expenses have been substantially increased to account for associated costs of personnel and other expenses required to operate and maintain the newly constructed stormwater system.

Conclusions

Based on the information presented in this application, the pledged revenues currently generated by the Town's stormwater system are sufficient to support the anticipated annual SRF loan debt payments.

Reconciliation Worksheet

	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Net Revenues	<u>\$ 1,153,491</u>	<u>\$ 1,461,143</u>	<u>\$ 1,774,318</u>	<u>\$ 1,770,037</u>	<u>\$ 1,765,598</u>
Revenue (including coverage) pledged to debt service, excluding SRF loans	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>
Revenue (including coverage) pledged to outstanding SRF loans*	<u>\$ 652,511</u>	<u>\$ 652,511</u>	<u>\$ 652,511</u>	<u>\$ 652,511</u>	<u>\$ 652,511</u>
Revenue (including coverage) pledged to proposed SRF loans	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 950,412</u>	<u>\$ 950,412</u>	<u>\$ 950,412</u>
Revenue Remaining	<u>\$ 500,980</u>	<u>\$ 808,632</u>	<u>\$ 171,395</u>	<u>\$ 167,114</u>	<u>\$ 162,676</u>

*The project associated with Loan SW360830 is nearing completion. This project will be completed under budget. As a result, it is anticipated that the loan will be reduced to \$10,134,947.52 excluding capitalized interest and loan service fee based on the current contract amounts and anticipated expenditures. The amount listed above in the "Revenue pledged to outstanding SRF loans" for each year represents an estimate of the revised semi-annual loan payments including coverage resulting from the reduced loan amount.



SRF PROJECT COST WORKSHEET / LOAN CALCULATION AMOUNT FOR AMORTIZATION

Planning		\$	0
Design		\$	0
Construction, Demolition and Related Procurement		\$	13,504,000
Eligible Land		\$	0
Contingency (10% of construction and land)		\$	1,350,400
Legal and Technical Services during Construction		\$	1,350,400
Interim Financing (excluding SRF capitalized interest)		\$	0
Cost of Refinancing (such as underwriter fees)		\$	0
Start-up Services		\$	0
Allowance		\$	0
Amount of Principal Forgiveness		\$	0
Subtotal		\$	16,204,800
Loan Repayment Reserve (3% of subtotal)		\$	0
Service Fee (2% of subtotal; obtain percent amount from Department)		\$	324,096
Total Cost		\$	16,528,896
Capitalized Interest	Years to construct 2.5	\$	0
Total Cost for Amortization and Priority List		\$	16,528,896

Angie Brewer & Associates, L.C.

Estimated SRF Amortization Schedule



Enter Values	
Loan Amount	\$ 16,528,896.00
Annual Interest Rate	0.00 %
Loan Period in Years	20
Number of Payments Per Year	2
Start Date of Loan	10/15/2022
Optional Extra Payments	

Lender Name: FDEP

Loan Summary	
Scheduled Payment	\$ 413,222.40
Scheduled Number of Payments	40
Actual Number of Payments	40
Total Early Payments	\$ -
Total Interest	\$ 0.00
Annual Payment	\$ 826,444.80
Annual Payment with Coverage	\$ 950,411.52
Total Payments	\$ 16,528,896.00

Pmt No.	Payment Date	Beginning Balance	Scheduled Payment	Extra Payment	Total Payment	Principal	Interest	Ending Balance
1	4/15/2023	\$ 16,528,896.00	\$ 413,222.40	\$ -	\$ 413,222.40	\$ 413,222.40	\$ 0.00	\$ 16,115,673.60
2	10/15/2023	16,115,673.60	413,222.40	-	413,222.40	413,222.40	0.00	15,702,451.20
3	4/15/2024	15,702,451.20	413,222.40	-	413,222.40	413,222.40	0.00	15,289,228.80
4	10/15/2024	15,289,228.80	413,222.40	-	413,222.40	413,222.40	0.00	14,876,006.40
5	4/15/2025	14,876,006.40	413,222.40	-	413,222.40	413,222.40	0.00	14,462,784.00
6	10/15/2025	14,462,784.00	413,222.40	-	413,222.40	413,222.40	0.00	14,049,561.60
7	4/15/2026	14,049,561.60	413,222.40	-	413,222.40	413,222.40	0.00	13,636,339.20
8	10/15/2026	13,636,339.20	413,222.40	-	413,222.40	413,222.40	0.00	13,223,116.80
9	4/15/2027	13,223,116.80	413,222.40	-	413,222.40	413,222.40	0.00	12,809,894.40
10	10/15/2027	12,809,894.40	413,222.40	-	413,222.40	413,222.40	0.00	12,396,672.00
11	4/15/2028	12,396,672.00	413,222.40	-	413,222.40	413,222.40	0.00	11,983,449.60
12	10/15/2028	11,983,449.60	413,222.40	-	413,222.40	413,222.40	0.00	11,570,227.20
13	4/15/2029	11,570,227.20	413,222.40	-	413,222.40	413,222.40	0.00	11,157,004.80
14	10/15/2029	11,157,004.80	413,222.40	-	413,222.40	413,222.40	0.00	10,743,782.40
15	4/15/2030	10,743,782.40	413,222.40	-	413,222.40	413,222.40	0.00	10,330,560.00
16	10/15/2030	10,330,560.00	413,222.40	-	413,222.40	413,222.40	0.00	9,917,337.60
17	4/15/2031	9,917,337.60	413,222.40	-	413,222.40	413,222.40	0.00	9,504,115.20
18	10/15/2031	9,504,115.20	413,222.40	-	413,222.40	413,222.40	0.00	9,090,892.80
19	4/15/2032	9,090,892.80	413,222.40	-	413,222.40	413,222.40	0.00	8,677,670.40
20	10/15/2032	8,677,670.40	413,222.40	-	413,222.40	413,222.40	0.00	8,264,448.00
21	4/15/2033	8,264,448.00	413,222.40	-	413,222.40	413,222.40	0.00	7,851,225.60
22	10/15/2033	7,851,225.60	413,222.40	-	413,222.40	413,222.40	0.00	7,438,003.20
23	4/15/2034	7,438,003.20	413,222.40	-	413,222.40	413,222.40	0.00	7,024,780.80
24	10/15/2034	7,024,780.80	413,222.40	-	413,222.40	413,222.40	0.00	6,611,558.40
25	4/15/2035	6,611,558.40	413,222.40	-	413,222.40	413,222.40	0.00	6,198,336.00
26	10/15/2035	6,198,336.00	413,222.40	-	413,222.40	413,222.40	0.00	5,785,113.60
27	4/15/2036	5,785,113.60	413,222.40	-	413,222.40	413,222.40	0.00	5,371,891.20
28	10/15/2036	5,371,891.20	413,222.40	-	413,222.40	413,222.40	0.00	4,958,668.80
29	4/15/2037	4,958,668.80	413,222.40	-	413,222.40	413,222.40	0.00	4,545,446.40
30	10/15/2037	4,545,446.40	413,222.40	-	413,222.40	413,222.40	0.00	4,132,224.00
31	4/15/2038	4,132,224.00	413,222.40	-	413,222.40	413,222.40	0.00	3,719,001.60
32	10/15/2038	3,719,001.60	413,222.40	-	413,222.40	413,222.40	0.00	3,305,779.20
33	4/15/2039	3,305,779.20	413,222.40	-	413,222.40	413,222.40	0.00	2,892,556.80
34	10/15/2039	2,892,556.80	413,222.40	-	413,222.40	413,222.40	0.00	2,479,334.40
35	4/15/2040	2,479,334.40	413,222.40	-	413,222.40	413,222.40	0.00	2,066,112.00
36	10/15/2040	2,066,112.00	413,222.40	-	413,222.40	413,222.40	0.00	1,652,889.60
37	4/15/2041	1,652,889.60	413,222.40	-	413,222.40	413,222.40	0.00	1,239,667.20
38	10/15/2041	1,239,667.20	413,222.40	-	413,222.40	413,222.40	0.00	826,444.80
39	4/15/2042	826,444.80	413,222.40	-	413,222.40	413,222.40	0.00	413,222.40
40	10/15/2042	413,222.40	413,222.40	-	413,222.40	413,222.40	0.00	0.00

These worksheets are intended to assist in determining the affordability index and estimated loan financing rate. To use this form, input the CENSUS PLACE of the rate payers who will be paying for the project on tab Afford 1. Your affordability index will be calculated and shown on tab Afford 1 line 34. Complete the form below and your estimated loan financing rate will be shown on line 43 on Tab Afford 1. Note that a population must be entered for the financing rate to appear.

Project Sponsor -	Town of Fort Myers Beach
Project Number -	SW36086
Current Service Area Population (include population to be served)*	6,966
Does this project have Davis-Bacon provisions?*	Yes
Does this project qualify as a "Green Project"*	Yes
Does the sponsor have an approved Asset Mangement Plan?*	Yes
Does the project need to comply with American Iron and Steel (after 1/17/2014)?*	Yes
Financing Rate Reduction	1.20%

* Required fields for financing rate calculation

USER INTERFACE

Enter Census Place Number below

(a list of census place numbers and names is found on page 2)

Project Sponsor

Town of Fort Myers Beach

Project Number

SW36086

Number	Census Place Number	Census Place Name	Index Number	Population
1	24150	Fort Myers Beach	109.05	6,539
2	0	0	0.00	0
3	0	0	0.00	0
4	0	0	0.00	0
5	0	0	0.00	0
6	0	0	0.00	0
7	0	0	0.00	0
8	0	0	0.00	0
9	0	0	0.00	0
10	0	0	0.00	0
11	0	0	0.00	0
12	0	0	0.00	0
13	0	0	0.00	0
14	0	0	0.00	0
15	0	0	0.00	0
16	0	0	0.00	0
17	0	0	0.00	0
18	0	0	0.00	0
19	0	0	0.00	0
20	0	0	0.00	0
21	0	0	0.00	0
22	0	0	0.00	0
23	0	0	0.00	0
24	0	0	0.00	0
25	0	0	0.00	0
Summary			109.05	6,539

Bond Buyer 20-Bond GO Index Rate = 2.34%

Financing Rate = 0.000%

TOWN OF FORT MYERS BEACH, FLORIDA

**BASIC FINANCIAL STATEMENTS AND
SUPPLEMENTARY REPORTS**

YEAR ENDED SEPTEMBER 30, 2018

DRAFT

TOWN OF FORT MYERS BEACH, FLORIDA
STATEMENT OF REVENUES, EXPENSES, AND CHANGES IN
FUND NET POSITION – PROPRIETARY FUNDS
YEAR ENDED SEPTEMBER 30, 2018

	Water Fund	Stormwater Fund	Total
OPERATING REVENUES			
Charges for Services	\$ 4,577,441	\$ 1,106,047	\$ 5,683,488
Other Revenue	243,193	5,775	248,968
Total Operating Revenues	<u>4,820,634</u>	<u>1,111,822</u>	<u>5,932,456</u>
OPERATING EXPENSES			
Bulk Water	1,822,287	-	1,822,287
Depreciation Expense	410,337	81,499	491,836
Repairs and Maintenance	150,774	61,159	211,933
Insurance	88,262	-	88,262
Salaries and Benefits	518,252	-	518,252
Utilities	46,438	-	46,438
Professional Services	35,000	-	35,000
Other Operating Supplies and Expenses	183,201	201,380	384,581
Office Expenses	24,987	6,786	31,773
Total Operating Expenses	<u>3,279,538</u>	<u>350,824</u>	<u>3,630,362</u>
OPERATING INCOME	<u>1,541,096</u>	<u>760,998</u>	<u>2,302,094</u>
NONOPERATING REVENUE (EXPENSE)			
Interest Income	255	-	255
Other Income (Expense)	96,049	-	96,049
Interest Expense	(19,548)	-	(19,548)
Loss on Disposal of Capital Assets	-	-	-
Total Nonoperating Expenses	<u>76,756</u>	<u>-</u>	<u>76,756</u>
INCOME BEFORE CONTRIBUTIONS AND TRANSFERS	<u>1,617,852</u>	<u>760,998</u>	<u>2,378,850</u>
Contributions	-	249,084	249,084
Transfers In	-	605,000	605,000
Transfers Out	(12,821)	-	(12,821)
TOTAL CONTRIBUTIONS AND TRANSFERS	<u>(12,821)</u>	<u>854,084</u>	<u>841,263</u>
CHANGE IN NET POSITION	1,605,031	1,615,082	3,220,113
Total Net Position - Beginning of Year	<u>10,771,446</u>	<u>3,784,181</u>	<u>14,555,627</u>
TOTAL NET POSITION - END OF YEAR	<u>\$ 12,376,477</u>	<u>\$ 5,399,263</u>	<u>\$ 17,775,740</u>

See accompanying Notes to Financial Statements.

TOWN OF FORT MYERS BEACH, FLORIDA
NOTES TO FINANCIAL STATEMENTS
SEPTEMBER 30, 2018

NOTE 8 CAPITAL ASSETS (CONTINUED)

Depreciation expense was charged to functions/programs of the primary government as follows:

Governmental Activities

General Government	\$ 576,572
Transportation	4,629
Physical Environment	123,167
Culture and Recreation	273,782
Total Depreciation Expense, Governmental Activities	<u>\$ 978,150</u>

Business-Type Activities

Water	\$ 410,337
Stormwater	81,499
Total Depreciation Expense, Business-Type Activities	<u>\$ 491,836</u>

NOTE 9 LONG-TERM OBLIGATIONS

Changes in long-term obligations for the year ended September 30, 2018 are as follows:

	Beginning Balance	Increases	Decreases	Ending Balance	Amounts Due Within One Year
<u>Governmental Activities</u>					
Compensated Absences	\$ 157,022	\$ 192,309	\$ (140,341)	\$ 208,990	\$ -
Claims and Judgements	101,654	-	(101,654)	-	-
Total	<u>\$ 258,676</u>	<u>\$ 192,309</u>	<u>\$ (241,995)</u>	<u>\$ 208,990</u>	<u>\$ -</u>
<u>Business-Type Activities</u>					
Compensated Absences	\$ 26,962	\$ 28,642	\$ (34,500)	\$ 21,104	\$ -
Note Payable	1,260,000	-	(180,000)	1,080,000	180,000
State Revolving Fund Loans	7,205,898	3,335,164	-	10,541,062	491,270
Total	<u>\$ 8,492,860</u>	<u>\$ 3,363,806</u>	<u>\$ (214,500)</u>	<u>\$ 11,642,166</u>	<u>\$ 671,270</u>

Governmental Activities

For the governmental activities, compensated absences, claims and judgements, and other postemployment benefits are generally liquidated by the General Fund.

Claims and Judgements. In 2015, Florida Power and Light (FPL) determined there was an overpayment in municipal utility taxes paid to the Town due to FPL's billing errors to Town citizens. In order to recover the overpayment, FPL withheld a portion of the overpayment each month until fully recovered. As of September 30, 2018, the full overpayment was recovered.

TOWN OF FORT MYERS BEACH, FLORIDA
NOTES TO FINANCIAL STATEMENTS
SEPTEMBER 30, 2018

NOTE 9 LONG-TERM OBLIGATIONS (CONTINUED)

Business-Type Activities

The long-term debt at September 30, 2018, is summarized as follows:

<u>Description</u>	<u>Balance</u>
\$1,980,000 Utility Revenue Refunding Bonds, Series 2013 - issued for the principal purpose of paying off the Town's Public Utility Revenue Note, Series 2010 which was issued to refinance monies expended to acquire the water system of the Town and pay certain capital costs for additions and/or improvements to the water system. The bonds bear interest at 1.81%, and are payable from and secured by a lien upon and pledge of the net revenues of the utility. Additionally, payment of the bonds is secured by a covenant to budget and appropriate non-ad valorem revenues for payment of principal and interest in the event the utility's net revenues are insufficient to make those payments. Annual principal payments of \$180,000 plus interest are due on October 1 through final maturity on October 1, 2023.	\$ 1,080,000
\$17,148,027 State Revolving Fund Loan - issued for the purpose of funding the water main improvement projects. The loan bears interest ranging from .92% to 1.24%, and is collateralized by a subordinated pledge of the net revenues of the utility. Principal and interest is payable in 40 semi-annual payments commencing May 15, 2019. The semi-annual payment will be determined upon the last draw at the completion of the project.	8,393,719
\$10,111,190 State Revolving Fund Loan - issued for the purpose of funding the stormwater management system project. The loan bears interest ranging from .77% to .98%, and is collateralized by a subordinated pledge of the net revenues of the utility. Principal and interest is payable in 40 semi-annual payments commencing May 15, 2019. The semi-annual payment will be determined upon the last draw at the completion of the project.	<u>2,147,343</u>
Total Bonds and Loan Payable	<u><u>\$ 11,621,062</u></u>

TOWN OF FORT MYERS BEACH, FLORIDA
NOTES TO FINANCIAL STATEMENTS
SEPTEMBER 30, 2018

NOTE 9 LONG-TERM OBLIGATIONS (CONTINUED)

Annual Maturities of Long-Term Obligations

The annual debt service requirements to pay the bonds and loan payable at September 30, 2018 are as follows:

<u>Year Ending September 30,</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2019	\$ 671,270	\$ 17,919	\$ 689,189
2020	1,305,954	23,811	1,329,765
2021	1,460,421	18,650	1,479,071
2022	1,461,488	14,325	1,475,813
2023	1,462,556	9,999	1,472,555
2024 - 2027	5,259,373	11,374	5,270,747
Total	<u>\$ 11,621,062</u>	<u>\$ 96,078</u>	<u>\$ 11,717,140</u>

Loan Agreements

The loan agreements contain various covenants, including such items as debt service coverage, reporting requirements, and maintenance of facilities. Management believes that it has complied, in all material respects, with the covenants of the loan agreement for the year ended September 30, 2018.

NOTE 10 RISK MANAGEMENT

The Town is exposed to various risks of loss related to torts; theft of, damage to, and destruction of assets; errors and omissions; injuries to employees; and natural disasters.

The Town participates in the public entity risk pool administered by the Florida League of Cities, Inc. for general/professional liability, property, and workers' compensation. The Town pays an annual premium to Florida League of Cities, Inc. for this insurance program. Participation in this risk pool is non-assessable. There were no significant reductions in insurance coverage in the past two fiscal years. The amount of settlements did not exceed insurance coverage in each of the past three fiscal years.

The Florida League of Cities, Inc. published financial report for the year ended September 30, 2018, can be obtained from the Florida League of Cities, Inc., Public Risk Service, 135 East Colonial Drive, Orlando, Florida 32853-0065.

The Town retains the risk of loss up to a deductible amount (ranging from \$-0- to \$250) with the risk of loss in excess of this amount transferred to the pool with limits of liability of \$1,000,000 to \$3,000,000 per occurrence.

The Town carries commercial coverage for all other risks of loss such as for mooring field operations and flood insurance for Town owned buildings. There have been no significant reductions in insurance coverage in the prior year, and claims have not exceeded coverage in any of the past three fiscal years.

TOWN OF FORT MYERS BEACH, FLORIDA

FINANCIAL STATEMENTS

**FOR THE FISCAL YEAR ENDED
SEPTEMBER 30, 2019**

TOWN OF FORT MYERS BEACH, FLORIDA
STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION
PROPRIETARY FUNDS
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2019

	Water Fund	Stormwater Fund	Total
Operating revenues			
Charges for services	\$ 5,113,591	\$ 1,120,536	\$ 6,234,127
Miscellaneous	70,264	7,098	77,362
Total operating revenues	<u>5,183,855</u>	<u>1,127,634</u>	<u>6,311,489</u>
Operating expenses			
Bulk water	1,761,527	-	1,761,527
Depreciation expense	408,225	91,579	499,804
Repairs and maintenance	171,429	356	171,785
Salaries and benefits	537,893	-	537,893
Insurance	119,529	-	119,529
Power	44,920	-	44,920
Professional services	48,950	-	48,950
Other operating supplies and expenses	422,388	125	422,513
Total operating expenses	<u>3,514,861</u>	<u>92,060</u>	<u>3,606,921</u>
Operating income	<u>1,668,994</u>	<u>1,035,574</u>	<u>2,704,568</u>
Nonoperating revenues (expenses)			
Interest income	40,239	-	40,239
Interest expense	(93,026)	-	(93,026)
Total nonoperating revenues (expenses)	<u>(52,787)</u>	<u>-</u>	<u>(52,787)</u>
Income before capital contributions and transfers	<u>1,616,207</u>	<u>1,035,574</u>	<u>2,651,781</u>
Capital contributions	-	500,000	500,000
Transfers in	-	450,000	450,000
Change in net position	1,616,207	1,985,574	3,601,781
Net position, beginning of year	<u>12,376,477</u>	<u>5,399,263</u>	<u>17,775,740</u>
Net position, end of year	<u>\$ 13,992,684</u>	<u>\$ 7,384,837</u>	<u>\$ 21,377,521</u>

The accompanying notes to financial statements are an integral part of this statement.

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2019

NOTE 6 – CAPITAL ASSETS (CONTINUED)

Depreciation expense was charged to functions/programs as follows:

Governmental Activities	
General government	\$ 607,811
Transportation	6,182
Physical environment	177,368
Culture and recreation	312,690
Total depreciation expense, governmental activities	<u>\$ 1,104,051</u>
Business-type Activities	
Water	\$ 408,225
Stormwater	91,579
Total depreciation expense, business-type activities	<u>\$ 499,804</u>

NOTE 7 – LONG-TERM OBLIGATIONS

Long-term Obligations

Changes in long-term obligations for the year ended September 30, 2019, are as follows:

	Beginning Balance	Additions	Reductions	Ending Balance	Due Within One Year
Governmental Activities					
Compensated absences	\$ 208,990	\$ 198,735	\$ (175,249)	\$ 232,476	\$ 177,878
Capital lease payable	-	49,486	(711)	48,775	8,813
Total OPEB liability	114,875	67,420	(34,128)	148,167	-
	<u>\$ 323,865</u>	<u>\$ 315,641</u>	<u>\$ (210,088)</u>	<u>\$ 429,418</u>	<u>\$ 186,691</u>
Business-type Activities					
Utility revenue refunding bonds	\$ 1,080,000	\$ -	\$ (180,000)	\$ 900,000	\$ 180,000
Notes payable from direct borrowings:					
State revolving fund loans	10,541,062	11,647,668	(451,725)	21,737,005	773,884
Compensated absences	21,104	19,655	(14,469)	26,290	14,686
Total OPEB liability	12,594	10,975	(227)	23,342	-
	<u>\$11,654,760</u>	<u>\$11,678,298</u>	<u>\$ (646,421)</u>	<u>\$22,686,637</u>	<u>\$ 968,570</u>

For the governmental activities, compensated absences and other post-employment benefits are generally liquidated by the General Fund.

Business-type Activities

\$1,980,000 Utility Revenue Refunding Bonds, Series 2013—Issued for the principal purpose of paying off the Town's Public Utility Revenue Note, Series 2010 which was issued to refinance monies expended to acquire the water system of the Town and pay certain capital costs for additions and/or improvements to the water system. The bonds bear interest at 1.81%, and are payable from and secured by a lien upon and pledge of the net revenues of the utility. Additionally, payment of the bonds is secured by a covenant to budget and appropriate non-ad valorem revenues for payment of principal and interest in the event the utility's net revenues are insufficient to make those payments. Annual principal payments of \$180,000 plus interest are due on October 1 through final maturity on October 1, 2023. The outstanding balance as of September 30, 2019, was \$900,000.

TOWN OF FORT MYERS BEACH, FLORIDA

**NOTES TO THE FINANCIAL STATEMENTS
SEPTEMBER 30, 2019**

NOTE 7 – LONG-TERM OBLIGATIONS (CONTINUED)

Notes Payable from Direct Borrowings:

\$17,148,027 State Revolving Fund Loan – issued for the purpose of funding the water main improvement projects. The loan bears interest ranging from 0.92% to 1.24%, and is collateralized by a subordinated pledge of the net revenues of the utility. Principal and interest is payable in 40 semi-annual payments commencing May 15, 2019. The semi-annual payment will be determined upon the last draw of at the completion of the project. The outstanding balance as of September 30, 2019, including amounts receivable for eligible expenses was \$15,468,679.

\$10,111,190 State Revolving Fund Loan – issued for the purpose of funding the stormwater management system project. The loan bears interest ranging from 0.77% to 0.98%, and is collateralized by a subordinated pledge of the net revenues of the utility. Principal and interest is payable in 40 semi-annual payments commencing May 15, 2019. The semi-annual payment will be determined upon the last draw of at the completion of the project. The outstanding balance as of September 30, 2019, including amounts receivable for eligible expenses was \$6,268,326.

The annual debt service requirements to maturity for the business-type activities (including estimated amounts due for the two SRF loans) as of September 30, 2019, are as follows:

	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2020	\$ 953,884	\$ 132,127	\$ 1,086,011
2021	1,183,217	224,901	1,408,118
2022	1,204,960	199,899	1,404,859
2023	1,214,982	186,619	1,401,601
2024	1,225,120	173,224	1,398,344
2025-2029	5,381,788	701,786	6,083,574
2030-2034	5,653,316	430,257	6,083,573
2035-2039	5,819,738	143,525	5,963,263
	<u>\$22,637,005</u>	<u>\$ 2,192,338</u>	<u>\$24,829,343</u>

Loan Agreements

The loan agreements contain various covenants, including such items as debt service coverage, reporting requirements, and maintenance of facilities. Management believes that it has complied, in all material respects, with the covenants of the loan agreement for the year ended September 30, 2019.

NOTE 8 – CAPITAL LEASE

The Town has entered into a lease agreement for the financing of various mower equipment. The lease agreement qualifies as a capital lease for accounting purposes and, therefore, have been recorded at the present value of their future minimum lease payments as of the inception date.

The asset acquired through capital lease is as follows:

	<u>Governmental Activities</u>
Mowing equipment	\$ 49,486
Less: accumulated depreciation	(1,658)
Total	<u>\$ 47,828</u>

DRAFT

**Town of Fort Myers Beach
Stormwater System Improvements
SRF Clean Water Loan Application**

Attachment 8

Special Considerations and Requests

**Town of Fort Myers Beach
Stormwater System Improvements
Special Considerations and Requests**

Advanced Payment Language:

Advanced payment language is not requested.

Equipment and Materials Purchased Separately:

No equipment or materials will be purchased as a part of this project.

Other Governmental Assistance:

It is not anticipated that the Town will apply for any other governmental assistance for work associated with this project.

Asset Management Plan:

Please include the asset management plan language in the loan agreement.

DRAFT

1. **Requested Motion:**

Meeting Date: November 2, 2020

Resolution No. 20-51; A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING A LOAN FROM FIRST FLORIDA INTEGRITY BANK, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$10,000,000 FOR THE PURPOSE OF FINANCING THE REDEVELOPMENT OF CERTAIN TOWN-WIDE CAPITAL IMPROVEMENT PROJECTS, AS DESCRIBED HEREIN; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF A TOWN OF FORT MYERS BEACH, FLORIDA CAPITAL IMPROVEMENT REVENUE NOTE, SERIES 2020 TO EVIDENCE THE TOWN'S OBLIGATIONS UNDER THE LOAN AGREEMENT, SUCH NOTE TO BE A LIMITED OBLIGATION OF THE TOWN, PAYABLE FROM AND SECURED BY A PLEDGE OF AND LIEN ON THE TOWN'S PUBLIC SERVICE TAX REVENUES AND IF EVER INSUFFICIENT TO PAY DEBT SERVICE ON THE NOTE, A PLEDGE OF AND LIEN ON THE TOWN'S COMMUNICATION SERVICE TAX REVENUES; PROVIDING FOR THE RIGHTS AND SECURITIES OF THE OWNER OF THE NOTE; MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

5. **Background:**

During FY19/20, Town Council tasked staff with initiating funding for redevelopment projects at Bay Oaks Recreational Campus, Bayside Park and Times Square.

A Loan Commitment was executed in September 2020 with First Florida Integrity Bank.

Approval of this resolution is the final required step to close on the loan and complete the final loan documentation for the projects.

Attachments:

1. 20-51, 115551105_1_Resolution Authorizing 2020 Loan-C2
2. Loan Agreement (01672376-5)-C3

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Deputy Town Clerk
Robert Lange, Finance Director

Created/Initiated - 10/27/2020
Approved - 10/27/2020

John R Herin Jr, Town Attorney
Amy Baker, Deputy Town Clerk
Roger Hernstadt, Town Manager
Town Council,

Approved - 10/27/2020
Approved - 10/28/2020
Approved - 10/28/2020
Final Approval - 10/28/2020

RESOLUTION NO. 20-51

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING A LOAN FROM FIRST FLORIDA INTEGRITY BANK, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$10,000,000 FOR THE PURPOSE OF FINANCING THE REDEVELOPMENT OF CERTAIN TOWN-WIDE CAPITAL IMPROVEMENT PROJECTS, AS DESCRIBED HEREIN; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF A TOWN OF FORT MYERS BEACH, FLORIDA CAPITAL IMPROVEMENT REVENUE NOTE, SERIES 2020 TO EVIDENCE THE TOWN'S OBLIGATIONS UNDER THE LOAN AGREEMENT, SUCH NOTE TO BE A LIMITED OBLIGATION OF THE TOWN, PAYABLE FROM AND SECURED BY A PLEDGE OF AND LIEN ON THE TOWN'S PUBLIC SERVICE TAX REVENUES AND IF EVER INSUFFICIENT TO PAY DEBT SERVICE ON THE NOTE, A PLEDGE OF AND LIEN ON THE TOWN'S COMMUNICATION SERVICE TAX REVENUES; PROVIDING FOR THE RIGHTS AND SECURITIES OF THE OWNER OF THE NOTE; MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

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

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach ("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 of Fort Myers Beach, Florida (the "Town") desires to borrow money to fund the redevelopment of Bay Oaks, Bayside Park and Times Square, all located in the Town, and referred to herein collectively, as the "Project"; and

WHEREAS, the Town Council of the Town ("Town Council") has determined it to be in the best interests of the citizens to finance the Project; and

WHEREAS, the Town Council has determined it to be in the best interest of the Town and the citizens thereof to finance the Project through a loan from First Florida Integrity Bank (the "Bank") in an aggregate principal amount not to exceed \$10,000,000 to be payable from and secured by a pledge of the Town's public service tax levied pursuant to Chapter 24 of the Town Code, as supplemented and amended, as authorized by Section 166.231, *Florida Statutes*, as amended (the "Public Service Tax") and if ever insufficient to pay debt service on the Note (as hereinafter defined), a pledge of the Town's communication service tax revenues authorized by

Section 202, *Florida Statutes*, as amended and authorized by the Chapter 26 of the Town Code (the “Communications Tax, and together with the Public Service Tax, the “Pledged Revenues”); and

WHEREAS, the Town Council adopted Resolution 20-32 on August 17, 2020 authorizing the borrowing of not to exceed \$10,000,000 to finance the Project in accordance with the Town Charter; and

WHEREAS, the Town Council has determined that it is in the best interests of the Town to borrow \$10,000,000 from the Bank to finance the Project (the “Loan”) pursuant to the terms and conditions of a Loan Agreement to be entered into between the Town and the Bank, substantially in the form attached hereto as Exhibit “A” (the “Loan Agreement”); and

WHEREAS, amounts due under the Loan will be evidenced by the Town's Capital Improvement Revenue Note, Series 2020 (the “Note”) authorized herein to be issued pursuant to the Loan Agreement; and

WHEREAS, debt service on the Note shall be payable from and secured solely by a first priority pledge of and lien on the Public Service Tax and if ever insufficient to pay debt service on the Note, the Communications Tax; and

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

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant the provisions of the Constitution and the laws of the State of Florida, Chapter 166, *Florida Statutes*, as amended, Chapter 202, *Florida Statutes*, as amended, the Town Charter, Resolution No. 20-32 adopted by the Town on August 17, 2020, Chapters 24 and 26 of the Town Code, and other applicable provisions of law.

SECTION 2. FINDINGS. It is hereby found, ascertained, determined and declared that:

A. The above recitals are true and correct and are hereby incorporated herein as a part of this Resolution.

B. The Town is a duly constituted and validly existing municipal corporation and public body corporate and politic of the State of Florida, with requisite powers derived from the Constitution and laws of the State of Florida and the Charter and ordinances of the Town to authorize, execute and deliver this Resolution and the Note and to carry out and perform its duties and obligations hereunder and thereunder.

C. It is in the public interest and serves a valid and proper public purpose to finance the Project.

D. It is in the best interests of the Town and the citizens thereof to accept the Bank's offer to provide the Loan to the Town on the terms set forth in the Loan Agreement to finance the Project and to pay the costs of issuance of the Note, including the Bank's Commitment Fee (as defined in the Loan Agreement).

E. Because of the characteristics of the security pledged to repay the Loan and prevailing conditions in the financial markets, it is in the best interest of the Town to accept the offer of the Bank to enter into the Loan Agreement and sell the Note to the Bank at a negotiated sale.

F. In consideration of the purchase and acceptance by the Bank of the Note authorized to be issued hereunder, this Resolution, together with the terms and provisions of the Loan Agreement, shall constitute a contract between the Town and the Bank.

SECTION 3. AUTHORIZATION OF LOAN AGREEMENT. To provide for the issuance of and security for the Note and to express the contract between the Town and the holder thereof, the Town does hereby authorize the execution and delivery, on behalf of the Town, by the Mayor, under the seal of the Town, attested by the Town Clerk of the Town, of the Loan Agreement by and between the Town and the Bank. The form of the Loan Agreement attached hereto as Exhibit "A" is hereby authorized and approved, subject to such changes, insertions, omissions and filling of blanks therein as shall be made in such form and approved by the Mayor, execution of the Loan Agreement by the Mayor constituting conclusive evidence of such approval. Subject and pursuant to the provisions of this Resolution and the terms and provisions of the Loan Agreement, there is hereby authorized to be issued a promissory note to evidence the Town's obligations under the Loan Agreement. The Note is authorized to be issued in the aggregate principal amount not to exceed \$10,000,000 and subject to the provisions of Section 4 hereof.

SECTION 4. AUTHORIZATION OF THE PROJECT AND THE NOTE. Financing of the Project is hereby authorized. To finance the Project, there is hereby authorized to be issued the "Town of Fort Myers Beach, Florida Capital Improvement Revenue Note, Series 2020," in an aggregate principal amount not to exceed TEN MILLION DOLLARS (\$10,000,000), which shall evidence and secure amounts outstanding under the Loan Agreement, and will be repaid over a term ending not later than November 1, 2040 as provided in the Loan Agreement. The Note shall bear interest at the Note Rate, as defined in the Loan Agreement, subject to adjustment and prepayment as provided in the Loan Agreement and the Note, and shall be dated the date of delivery. Interest on the Note shall be paid monthly on the first day of each month, as provided in the Loan Agreement and the Note. Principal on the Note will be payable in monthly installments payable on the first day of each month, commencing December 1, 2023 in accordance with Schedule I to the Note, subject to prepayment as provided in the Note and in the Loan Agreement.

The Note shall be substantially in the form attached to the Loan Agreement, with such changes, insertions, omissions and filling of blanks therein as shall be made in such form and approved by the Mayor of the Town, such approval to be conclusively evidenced by the execution thereof by the Mayor. The Note shall be executed on behalf of the Town with the manual signature of the Mayor and the Town Clerk and the official seal of the Town, and be approved as to form and correctness with the manual signature of the Town Attorney. In case any one or more of the officers who shall have signed or sealed the Note shall cease to be such officer of the Town

before the Note so signed and sealed has been actually sold and delivered, such Note may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Note had not ceased to hold such office. The Note may be signed and sealed on behalf of the Town by such person who at the actual time of the execution of such Note shall hold the proper office of the Town, although, at the date of such Note, such person may not have held such office or may not have been so authorized.

SECTION 5. PAYMENT OF PRINCIPAL AND INTEREST; LIMITED OBLIGATION.

The Town promises that it will promptly pay the principal of and interest on the Note and all other amounts due under the Note and Loan Agreement at the place, on the dates and in the manner provided in the Loan Agreement according to the true intent and meaning hereof and thereof. Amounts due under the Note and Loan Agreement shall not be or constitute a general obligation or indebtedness of the Town as a "bond" within the meaning of the Constitution and the laws of the State of Florida, but shall be payable solely from the Pledged Revenues in accordance with the terms hereof and of the Loan Agreement. The holder of the Note issued hereunder shall never have the right to compel the exercise of any ad valorem taxing power to pay the Note, or be entitled to payment of such Note from any funds of the Town except from the Pledged Revenues as described herein and in the Loan Agreement.

SECTION 6. USE OF PROCEEDS. The proceeds of the Note shall be used by the Town to finance the Project and to pay the costs of issuance related thereto, including the Bank's Commitment Fee (as defined in the Loan Agreement).

SECTION 7. GENERAL AUTHORIZATION. The Town Council hereby authorizes the Mayor, the Town Clerk, the Town Manager and the Town Attorney to execute the Note, the Loan Agreement, this Resolution, and any and all other documents necessary to initiate the loan closing in this matter.

SECTION 8. PREREQUISITES PERFORMED. The Town has performed all acts, conditions, and things relating to the passage of this Resolution and the authorization of the Loan, the Loan Agreement and the Note, as are required by the Constitution and Laws of the State of Florida and the Charter and ordinances of the Town.

SECTION 9. SEVERABILITY. If any provision of this Resolution shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable in any context, the same shall not affect any other provision herein or render any other provision (or such provision in any other context) invalid, inoperative or unenforceable to any extent whatever.

SECTION 10. APPLICABLE PROVISIONS OF LAW. This Resolution shall be governed by and construed in accordance with the laws of the State of Florida.

SECTION 11. RULES OF INTERPRETATION. Unless expressly indicated otherwise, references to sections or articles are to be construed as references to sections or articles of this instrument as originally executed. Use of the words "herein," "hereby," "hereunder," "hereof,"

“hereinbefore,” “hereinafter” and other equivalent words refer to this Resolution and not solely to the particular portion in which any such word is used.

SECTION 12. CAPTIONS. The captions and headings in this Resolution are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Resolution.

SECTION 13. MEMBERS OF THE TOWN COUNCIL EXEMPT FROM PERSONAL LIABILITY. No recourse under or upon any obligation, covenant or agreement of this Resolution, the Loan Agreement or the Note or for any claim based thereon or otherwise in respect thereof, shall be had against any member of the Town Council, as well as any appointee, employee or agent, of said Town, past, present or future, either directly or through the Town it being expressly understood (a) that no personal liability whatsoever shall attach to, or is or shall be incurred by, any member of the Town Council, appointee, employee or agent of the Town as such, under or by reason of the obligations, covenants or agreements contained in this Resolution, the Loan Agreement or the Note or implied therefrom, and (b) that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such member of the Town Council, appointee, employee or agent as such, are waived and released as a condition of, and as a consideration for, the execution of this Resolution and the Loan Agreement and the issuance of the Note, on the part of the Town.

SECTION 14. REPEALER. All resolutions or parts thereof in conflict herewith, if any, are hereby repealed.

SECTION 15. NO THIRD PARTY BENEFICIARIES. Except such other persons as may be expressly described in this Resolution, nothing in this Resolution, expressed or implied, is intended or shall be construed to confer upon any person, other than the Town and the holder of the Note, any right, remedy or claim, legal or equitable, under and by reason of this Resolution, or any provision thereof, all provisions thereof being intended to be and being for the sole and exclusive benefit of the Town and the persons who shall from time to time be the holders of the Note.

SECTION 16. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption and authentication as provided by law.

[Remainder of this page intentionally left blank]

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by _____ and _____ upon being put to a vote, the result 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 2nd day of November 2020 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH, FLORIDA

Raymond P. Murphy, Mayor

ATTEST:

Amy Baker, Deputy Town Clerk

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

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of November 2020.

EXHIBIT A
FORM OF LOAN AGREEMENT

LOAN AGREEMENT

dated November 4, 2020

by and between

THE TOWN OF FORT MYERS BEACH, FLORIDA
(the "Town")

and

FIRST FLORIDA INTEGRITY BANK
(the "Bank")

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EXHIBIT A - FORM OF NOTE

A-1

LOAN AGREEMENT

THIS LOAN AGREEMENT (the “Agreement”), made and entered as of the 4th day of November, 2020, by and between the **TOWN OF FORT MYERS BEACH, FLORIDA** (the “Town”), a municipal corporation and public body corporate and politic of the State of Florida duly organized and existing under the laws of the State of Florida and its successors and assigns, and **FIRST FLORIDA INTEGRITY BANK**, a Florida banking corporation authorized to do business in Florida, and its successors (the “Bank”).

WITNESSETH:

WHEREAS, capitalized terms used in these recitals and not otherwise defined shall have the meanings specified in Article I of this Agreement; and

WHEREAS, the Town, pursuant to the provisions of the Constitution and the laws of the State of Florida, Chapter 166, Florida Statutes, as amended, the Town Charter, Resolution 20-32 adopted by the Town Council of the Town on August 17, 2020, Chapters 24 and 26 of the Town Code, and other applicable provisions of law (collectively, the “Act”) and Resolution No. [_____] adopted by the Town Council of the Town on November 2, 2020 (the “Note Resolution”), is authorized to borrow money to finance the redevelopment Bay Oaks, Bayside Park and Times Square, all located in the Town and referred to herein collectively as the “Project”, and to pay the costs of issuance related thereto, including, but not limited to the Bank’s Commitment Fee; and

WHEREAS, the Town receives the Pledged Revenues, as described herein; and

WHEREAS, the Town desires to borrow \$10,000,000 to finance the Project (the “Loan”) and to secure the repayment of the Loan with a pledge of and lien on the Pledged Revenues; and

WHEREAS, the Bank is willing to provide the Loan to the Town as provided herein, but only upon the terms and conditions of this Agreement and the Note;

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I DEFINITION OF TERMS

Section 1.01. Definitions. Capitalized terms used in this Agreement and not otherwise defined shall have the respective meanings as follows:

“Act” shall have the meaning assigned to that term in the recitals hereof.

“Agreement” shall mean this Loan Agreement and all modifications, alterations, amendments and supplements hereto made in accordance with the provisions hereof.

“Bank” shall mean First Florida Integrity Bank, a Florida banking corporation and its successors or affiliates.

“Business Day” shall mean any day other than a Saturday, a Sunday, or a day on which banks in the Lee County, Florida are authorized or required to be closed.

“Code” shall mean the Internal Revenue Code of 1986, as amended from time to time, and the applicable regulations promulgated thereunder.

“Commitment Fee” means a fee charged by the Bank in an amount equal to \$20,000.00 payable on the Date of Delivery.

“Communication Service Tax Revenues” shall mean monies received by the Town from the communications services tax authorized under Chapter 202, Florida Statutes, as amended.

“Date of Delivery” shall mean November 4, 2020.

“Debt Service” means principal of and interest on the Note, and other debt related costs, due in connection with the Note and this Agreement.

“Debt Service Account” means the Town of Fort Myers Beach, Florida Capital Improvement Revenue Note, Series 2020 Debt Service Account created pursuant to Section 3.09 hereof.

“Determination of Taxability” shall mean, with respect to the Note, (i) the issuance by the Internal Revenue Service of a statutory notice of deficiency or other written notification which holds in effect that the interest payable on the Note is includable for federal income tax purposes in the gross income of the Owner thereof, or (ii) a determination by a court of competent jurisdiction that the interest payable on the Note is includable for federal income tax purposes in the gross income of the Owner thereof, which determination either is final and non-appealable or is not appealed within the requisite time period for appeal, or (iii) the admission in writing by the Town to the effect that interest on the Note is includable for federal income tax purposes in the gross income of the Owner thereof.

“Event of Default” shall mean an Event of Default as defined in Section 5.01 of this Agreement.

“Fiscal Year” shall mean the twelve month period commencing [_____] of each year and ending on the succeeding [____], or such other twelve month period as the Town may designate as its “fiscal year” as permitted by law.

“Loan” shall refer to the loan in a principal amount of Ten Million Dollars (\$10,000,000), together with the interest accrued thereon pursuant to and in accordance with this Agreement.

“Maturity Date” shall mean November 1, 2040.

“Maximum Rate” means the maximum rate of interest permitted by applicable law to be borne by the Note.

“Note” shall mean the Town of Fort Myers Beach, Florida Capital Improvement Revenue Note, Series 2020 issued by the Town under the Note Resolution and this Agreement to evidence amounts due under this Agreement, the form of which is attached hereto as Exhibit A.

“Note Rate” shall mean the rate of interest to be borne by the Note, which shall be for the period from the Date of Delivery of the Note through November 1, 2030, at an interest rate equal to 3.15% per annum, and as described in Section 3.02(e) hereof, so long as no Event of Default has occurred and is continuing on November 2, 2030 the interest rate on the Note shall be adjusted to a fixed rate based on the prevailing ten-year treasury rate plus 255 basis points, subject to the fees as described herein.

“Note Resolution” shall mean the Resolution No. [____] adopted by the Town Council of the Town on November 2, 2020, which, among other things, authorized and confirmed the borrowing of the Loan and execution and delivery of this Agreement and the issuance of the Note.

“Noteholder,” “Owner” or “Holder” shall mean the Bank as the purchaser and initial holder of the Note and any subsequent registered owner of the Note.

“Pledged Revenues” means the Public Service Tax Revenues, and if ever insufficient to pay Debt Service on the Note, the Communications Service Tax Revenues.

“Project” has the meaning provided in the Recitals hereof.

“Public Service Tax Revenues” shall mean the moneys received by the Town from the utility services tax levied by the Town or the purchase of electricity pursuant to Chapter 24 of the Town Code, as supplemented and amended, as authorized by Section 166.231, Florida Statutes, as amended.

“Taxable Rate” shall mean a rate equal to the interest rate per annum which after the Determination of Taxability will result in the same after-tax yield to the Owner of the Note as before said Determination of Taxability, as determined by the Owner of the Note in good faith and communicated in writing to the Town.

“Town” shall mean the Town of Fort Myers Beach, Florida, a municipal corporation and public body corporate and politic of the State of Florida.

Section 1.02. Interpretation. Unless the context clearly requires otherwise, words of masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. Any capitalized terms used in this

Agreement not herein defined shall have the meaning ascribed to such terms in the Note Resolution. This Agreement and all the terms and provisions hereof shall be construed to effectuate the purpose set forth herein and to sustain the validity hereof.

Section 1.03. Titles and Headings. The titles and headings of the Articles and Sections of this Agreement, which have been inserted for convenience of reference only and are not to be considered a part hereof, shall not in any way modify or restrict any of the terms and provisions hereof, and shall not be considered or given any effect in construing this Agreement or any provision hereof or in ascertaining intent, if any question of intent should arise.

ARTICLE II REPRESENTATIONS AND WARRANTIES OF THE PARTIES

Section 2.01. Representations and Warranties of Town. The Town represents and warrants to the Bank as follows:

(a) **Existence.** The Town is a municipal corporation and a public body corporate and politic of the State of Florida, duly created and validly existing under the laws of the State of Florida, with full legal right, power and authority to adopt the Note Resolution, to enter into this Agreement, to perform its obligations hereunder and to issue and deliver the Note to the Bank. The making, execution and performance of this Agreement on the part of the Town and the issuance and delivery of the Note have been duly authorized by all necessary action on the part of the Town and will not violate or conflict with the Act, or any agreement, indenture or other instrument by which the Town or any of its material properties is bound.

(b) **Validity, Etc.** This Agreement, the Note and the Note Resolution are valid and binding obligations of the Town enforceable against the Town in accordance with their respective terms, except to the extent that enforceability may be subject to valid bankruptcy, insolvency, financial emergency, reorganization, moratorium or similar laws relating to or from time to time affecting the enforcement of creditors' rights and except to the extent that the availability of certain remedies may be precluded by general principles of equity.

(c) **No Financial Material Adverse Change.** There are no actions, proceedings or investigations pending against the Town or affecting the Town (or any basis therefor known to the Town) which, either in any case or in the aggregate, might result in any material adverse change in the financial condition, business, prospects, affairs or operations of the Town or in any of its properties or assets, or in any material impairment of the right or ability of the Town to carry on its operations as now conducted or proposed to be conducted, or in the levy, receipt and/or collection of the Pledged Revenues or in any material liability on the part of the Town and none which questions the validity of this Agreement, the Note or the Note Resolution or of any action taken or to be taken in connection with the transactions contemplated hereby or thereby.

(d) **Liens and Encumbrances.** There are no pledges of, or liens or encumbrances on, the Public Service Tax Revenues.

(e) Levy and Collection of Pledged Revenues. The Town currently levies the utilities services tax on purchases of electricity at the rate of [ten percent (10%)] of the amount of such sale, exclusive of governmental charges with respect to the Public Service Tax Revenues, and receives the communications services tax as authorized by Chapter 202, Florida Statutes, as amended.

(f) No Litigation. There are no suits or proceedings pending or to the knowledge of the Town, threatened, in any court or before any regulatory commission, board or other administrative governmental agency against or affecting the Town, concerning or affecting the Pledged Revenues or which would have a material adverse affect on the ability of Town to fulfill its obligations under this Agreement.

(g) Confirmation. The representations and warranties of the Town contained in the Note Resolution are hereby confirmed to be true and accurate and are incorporated as a part of this Agreement.

Section 2.02. Representations and Warranties of Bank. The Bank represents and warrants to the Town as follows:

(a) Existence. The Bank is a Florida banking corporation, with full power to enter into this Agreement, to perform its obligations hereunder and to make the Loan. The performance of this Agreement on the part of the Bank and the making of the Loan have been duly authorized by all necessary action on the part of the Bank and will not violate or conflict with applicable law or any material agreement, indenture or other instrument by which the Bank or any of its material properties is bound.

(b) Validity. This Agreement is a valid and binding obligation of the Bank enforceable against the Bank in accordance with its terms, except to the extent that enforceability may be subject to valid bankruptcy, insolvency, financial emergency, reorganization, moratorium or similar laws relating to or from time to time affecting the enforcement of creditors' rights (and specifically creditors' rights as the same relate to Georgia banking corporations) and except to the extent that the availability of certain remedies may be precluded by general principles of equity.

(c) Knowledge and Experience. The Bank (i) has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of making the Loan and investing in the Note, (ii) has received and reviewed such financial information concerning the Town as it has requested in order to fairly evaluate the merits and risks of making the Loan and investing in the Note; (iii) is an "accredited investor" as such term is defined in Regulation D to the Securities Act of 1933; and (iv) is purchasing the Note as an investment for its own account and not with a view toward resale to the public. The Bank will not transfer the Note except to another accredited investor.

ARTICLE III THE NOTE

Section 3.01. The Loan; Purpose and Use. On the date of this Agreement, the Bank shall provide the Loan to the Town in the aggregate principal amount of Ten Million Dollars (\$10,000,000).

(a) The proceeds of the Loan shall be used to finance the Project and to pay the costs of issuance related thereto, including the Commitment Fee.

(b) Proceeds of the Loan may be drawn down by the Town as needed during the initial thirty-six (36) months of the Loan. On the Date of Delivery a minimum amount of \$50,001 must be drawn down by the Town. In no event shall the total principal amount drawn exceed \$10,000,000. The Town shall make draw requests in writing to the Bank stating the amount and use of the funds requested. Each amount drawn shall be funded by the Bank within 24 hours of the written request into a checking account of the Town held by the Bank.

Section 3.02. The Note. The Town shall issue the Note to the Bank to evidence and secure its obligation to repay the Loan. The Note shall be substantially in the form set forth as Exhibit "A" to this Agreement. The general terms of the Note shall be as follows; provided, however, that in the event of a conflict between the terms of this Agreement and the terms of the executed Note, the terms of the Note shall prevail:

(a) Amount of Note. The Note shall have an initial principal amount of Ten Million Dollars (\$10,000,000).

(b) Interest. The Note shall bear interest on the outstanding principal amount thereof at the Note Rate from the Date of Delivery through November 1, 2030. Thereafter, subject to subject subsection (e) below, interest on the Note shall be adjusted through the Maturity Date at a fixed rate of interest based on the prevailing ten year treasury rate plus 255 basis points. In connection with such adjustment, the City shall pay to the Bank a loan fee equal to 50 basis points on the outstanding principal amount of the Loan, plus reasonable costs and expenses of the Bank, including reasonable legal fees in documenting the adjustment. Upon the occurrence of one or more of the events specified in Section 3.03 of this Agreement, the Note Rate shall be adjusted as therein provided. Interest on the Note shall be computed on the basis of a 365/360 day year, that is by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance multiplied by the actual number of days the principal balance is outstanding. Interest shall accrue only on the outstanding principal amount of the Loan drawn down.

(c) Payments. Interest on the Note shall be paid on the first day of each month, with interest payments commencing December 1, 2020 until the Note is paid in full and principal payments paid on the first day of each month commencing on December 1, 2023, as set forth on Schedule I attached to the Note, subject to prepayment by the Town prior to the Note's maturity

as provided in subsection 3.02(d) below and mandatory prepayment subject to subsection 3.02(e) below.

(d) Prepayment. The Town may prepay the Note in whole or in part on any date at a redemption price equal to the principal amount to be prepaid, plus accrued interest thereon to the redemption date, without premium or prepayment penalty.

(e) Mandatory Prepayment. The Note shall be subject to mandatory prepayment by the City on November 1, 2030 (the "Redemption Date") if there has occurred or is continuing any Event of Default under this Agreement or the Note. The Bank will notify the City of its intent to call the Note due and payable along with the total amount of principal and interest to be paid within 30 days prior to November 1, 2030.

Section 3.03. Adjustments to Note Rate.

(a) Adjustment of Note Rate in the Event of a Determination of Taxability. In the event a Determination of Taxability shall have occurred, the Note Rate shall be increased to the Taxable Rate, effective retroactively to the date on which the interest payable on the Note is includable for federal income tax purposes in the gross income of the Owner thereof. In addition, the Owner of the Note or any former Owners of the Note, as appropriate, shall be paid an amount equal to any additions to tax, interest and penalties, and any arrears in interest that are required to be paid to the United States of America by the Owner or former Owners of the Note as a result of such Determination of Taxability. All such additional interest, additions to tax, penalties and interest shall be paid by the Town within sixty (60) days following the Determination of Taxability and demand by the Owner.

(b) Adjustment of Note Rate for Partial Taxability. In the alternative, in the event that interest on the Note during any period becomes partially taxable as a result of a Determination of Taxability applicable to less than all of the Note, then the interest rate on the Note shall be increased during such period by an amount equal to: $(A-B) \times C$ where:

(A) "A" equals the Taxable Rate (expressed as a percentage);

(B) "B" equals the interest rate on the Note (expressed as a percentage); and

(C) "C" equals the portion of the Note the interest on which has become taxable as the result of such tax change (expressed as a decimal).

In addition, the Owner of the Note or any former Owners of the Note, as appropriate, shall be paid an amount equal to any additions to tax, interest and penalties, and any arrears in interest that are required to be paid to the United States by the Owner or former Owners of the Note as a result of such Determination of Taxability. All such additional interest, additions to tax, penalties and interest shall be paid by the Town within sixty (60) days following the Determination of Taxability and demand by the Owner.

(c) Anything provided herein or in the Note to the contrary notwithstanding, in no event shall the Note bear interest in excess of the Maximum Rate. In the event the Note Rate exceeds the Maximum Rate, the Note shall continue to bear interest at the Maximum Rate regardless of the reduction of the Note Rate to a rate less than the Maximum Rate until such time as interest shall accrue on the Note in an amount (the "Excess Interest") that would have accrued thereon had the Note Rate not been limited by the Maximum Rate. Upon the Maturity Date, in consideration for the limitation of the rate of interest otherwise payable on the Note, the Town shall pay to the Owner of the Note a fee equal to the amount of the unpaid amount of all unpaid deferred Excess Interest.

(d) If required, the Town agrees to take whatever action is necessary to comply with the provisions of Section 215.84, Florida Statutes, relating to the Maximum Rate of interest including, but not limited to, filing a request with the State Board of Administration for the authorization of an adjusted interest rate derived by the terms of this Section 3.03, if such rate is in excess of the Maximum Rate.

Section 3.04. Compliance with Section 215.84. The Town represents, warrants, and covenants that the Note Rate, as currently calculated in accordance with Section 215.84, Florida Statutes, is in compliance with Section 215.84, Florida Statutes.

Section 3.05. Conditions Precedent to Funding. Prior to or simultaneously with the delivery of the Note by the Town there shall be filed with the Bank the following, each in form and substance reasonably acceptable to the Bank:

(a) an opinion of counsel to the Town to the effect that (i) the Town is a municipal corporation and a public body corporate and politic of the State of Florida, duly created and validly existing under the laws of the State of Florida and has full legal right, power and authority to adopt and perform its obligations under the Note Resolution, and to authorize, execute and deliver and to perform its obligations under this Agreement and the Note; (ii) the Town has duly adopted the Note Resolution and duly authorized, executed and delivered this Agreement and such instruments constitute legal, binding and valid obligations of the Town, enforceable in accordance with their respective terms; provided, however, the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity and the exercise of judicial discretion; (iii) except for post-closing disclosures to be filed with the State Division of Bond Finance and Form 8038-G to be filed with the Internal Revenue Service, all authorizations, consents, approvals and reviews of governmental bodies or regulatory authorities required for the Town's enactment, adoption, execution, approval and performance of this Agreement, the Note, and the Note Resolution have been obtained, provided that no opinion shall be required with respect to any authorizations, consents, approvals or reviews required by the securities laws of the United States of America or of any state, or of any other jurisdiction; (iv) the meetings of the Town Council during which matters relating to the Note, the Note Resolution and this Agreement were considered were held in accordance with all applicable rules and all of the laws of the State that govern the meetings of

the Town Council; (v) the adoption of the Note Resolution and the authorization, execution and delivery of this Agreement and the Note, and compliance with the provisions hereof and thereof, will not conflict with, or constitute a breach of or default under, any law, administrative regulation, consent decree, resolution or any agreement or other instrument to which the Town is subject nor will such adoption, execution, delivery, authorization or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the Town, or under the terms of any law, administrative regulation, resolution or instrument, except as expressly provided hereby; (vi) this Agreement and the Note have been duly executed and delivered and the Town is in compliance with all conditions precedent contained in the Note Resolution, and under applicable law and this Agreement to the issuance of the Note; and (vii) the Town is duly authorized to pledge the Pledged Revenues for payment of amounts due under the Note; and (viii) as of the Date of Delivery that there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or, to the best of his knowledge, threatened against the Town, affecting or seeking to prohibit, restrain or enjoin the Town from adopting the Note Resolution, entering into this Agreement or the issuance or delivery of the Note or contesting or affecting as to the Town the validity or enforceability of the Act in any respect relating to the authorization of this Agreement or authorization for the issuance of the Note and the Note Resolution, or contesting the tax-exempt status of interest on the Note, or contesting the powers of the Town to impose, levy, collect and pledge the Pledged Revenues or any authority for the issuance of the Note or the adoption of the Note Resolution. Notwithstanding the foregoing, no opinion shall be required as to the applicability of any approvals, consents or orders as may be required under the blue sky or securities laws or legal investment laws of any state in connection with the offering and sale of the Note or in connection with the registration of the Note under the Federal securities laws.

(b) an opinion of Bryant Miller Olive P.A., counsel to the Bank, (who may rely on the opinion of Counsel to the Town), stating that such counsel is of the opinion that assuming compliance by the Town with certain covenants in this Agreement relating to requirements contained in the Code, interest on the Note is excluded from gross income for purposes of federal income taxation, and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations.

(c) a copy of a completed and executed Form 8038-G to be filed with the Internal Revenue Service by the Town; and

(d) a certificate of the Town indicating that since September 30, 2009, there has been no material adverse change in the financial condition, operations or prospects of the Town or laws, rules or regulations (or their interpretation or administration) that, in any case, may adversely affect the Town's ability to comply with its obligations hereunder and under the Note.

(e) such other documents as the Bank reasonably may request (including, without limitation, appropriate executed Florida Division of Bond Finance forms).

When the documents and items mentioned in clauses (a) through (e), inclusive, of this Section shall have been filed with the Bank, and when the Note shall have been executed as required by this Agreement, and all conditions of the Note Resolution have been met, the Town shall deliver the Note to or upon the order of the Bank, but only against the Town's receipt of the proceeds of the Loan.

Section 3.06. Registration of Transfer; Assignment of Rights of Bank. The Town shall keep at the office of the Town Clerk in the Town's records the registration of the Note and the registration of transfers of the Note as provided in this Agreement. Subject to the restriction set forth in the fourth paragraph of this Section, the transfer of the Note may be registered only upon the books kept for the registration of the Note and registration of transfer thereof upon surrender thereof to the Town together with an assignment duly executed by the Bank or its attorney or legal representative in the form of the assignment set forth on the form of the Note attached as Exhibit "A" to this Agreement; provided, however, that the Note may be transferred only in whole and not in part. In the case of any such registration of transfer, the Town shall execute and deliver in exchange for the applicable Note a new Note registered in the name of the transferee. In all cases in which the Note shall be transferred hereunder, the Town shall execute and deliver at the earliest practicable time a new Note in accordance with the provisions of this Agreement. The Town may make a charge for every such registration of transfer of the Note sufficient to reimburse it for any tax or other governmental charges required to be paid (other than a tax or other governmental charge imposed by the Town) with respect to such registration of transfer, but no other charge shall be made for registering the transfer hereinabove granted. The Note shall be issued in fully registered form and shall be payable in any coin or currency of the United States.

The registration of transfer of the Note on the registration books of the Town shall be deemed to affect a transfer of the rights and obligations of the Bank under this Agreement to the transferee. Thereafter, such transferee shall be deemed to be the Bank under this Agreement and shall be bound by all provisions of this Agreement that are binding upon the Bank. The Town and the transferor shall execute and record such instruments and take such other actions as the Town and such transferee may reasonably request in order to confirm that such transferee has succeeded to the capacity of Bank under this Agreement and the Note.

In the event any Note is mutilated, lost, stolen, or destroyed, the Town shall execute a new Note of like date and denomination as that mutilated, lost, stolen or destroyed, provided that, in the case of such a mutilated Note, such mutilated Note shall first be surrendered to the Town, and in the case of a lost, stolen, or destroyed Note, there first shall be furnished to the Town evidence of such loss, theft or destruction together with an indemnity satisfactory to it.

Nothing in this Agreement or in the Note shall be construed to prohibit the Bank from granting a participation or participations in the Note to any other bank or banks affiliated with the Bank or any subsidiary thereof. No such bank participant shall, however, be a registered holder of the Note or any portion thereof.

Section 3.07. Ownership of the Note. The person in whose name the Note is registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the Note shall be made only to the registered owner thereof or such owner's legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Note, and interest thereon, to the extent of the sum or sums so paid.

The registered owner of the Note is hereby granted power to transfer absolute title thereof by assignment thereof to a bona fide purchaser for value (present or antecedent) without notice of prior defenses or equities or claims of ownership enforceable against such owner's assignor or any person in the chain of title and before the maturity of the Note; provided, however, that the Note may be transferred only in whole and not in part. Every prior registered owner of the Note shall be deemed to have waived and renounced all of such owner's equities or rights therein in favor of every such bona fide purchaser, and every such bona fide purchaser shall acquire absolute title thereto and to all rights represented thereby.

Section 3.08. Use of Proceeds of Loan Permitted Under Applicable Law. The Town represents, warrants and covenants that the proceeds of the Loan will be used solely to finance costs of the Project in accordance with applicable law.

Section 3.09. [Reserved].

ARTICLE IV COVENANTS OF THE CITY

Section 4.01. Performance of Covenants. The Town covenants that it will perform faithfully at all times its covenants, undertakings and agreements contained in this Agreement and the Note or in any proceedings of the Town relating to the Loan.

Section 4.02. Use of Proceeds. The proceeds of the Note shall be applied by the Town to pay to pay the costs of the Project, and the costs of issuance related thereto, including the Bank's Commitment Fee.

Section 4.03. Payment of the Note. The Town promises that it will promptly pay the Debt Service on the Note and all other amounts due under this Agreement at the place, on the dates and in the manner provided in Section 3.02 hereof and in the Note according to the true intent and meaning hereof and thereof. Debt Service on the Note and all other amounts due under this Agreement shall not be or constitute a general obligation or indebtedness of the Town as a "bond" within the meaning of Article VII, Section 12 of the Constitution of Florida, but shall be payable solely from the Public Service Tax Revenues, and if ever insufficient from the Town's Communication Service Tax Revenues in accordance with the terms hereof and of the Note. The holder of the Note shall never have the right to compel the exercise of any ad valorem taxing power to pay Debt Service on the Note, or be entitled to payment of such from any funds of the Town except from the Pledged Revenues, as described herein and in the Note.

Section 4.04. Security for Note. The payment of the principal of and interest on the Note and all other amounts payable under this Agreement or the Note or in connection therewith shall be secured by a first priority pledge of and lien on the Public Service Tax Revenues, and if ever insufficient to pay Debt Service on the Note, a pledge of the Town's Communication Service Tax Revenues. The Town does hereby create and grant to the Owner of the Note a first priority pledge of and lien on the Public Service Tax Revenues, and if ever insufficient to pay Debt Service on the Note, from the Town's Communication Service Tax Revenues, to provide for and secure the payment of principal of and interest on the Note and all other obligations of the Town under the Note and this Agreement.

The Pledged Revenues shall immediately be subject to the pledge and lien created and granted hereby without physical delivery thereof or further act, and such pledge and liens shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the Town.

The Town shall not grant, create or suffer to be created a pledge of or lien on the Pledged Revenues prior to or on a parity with the pledge thereof and lien thereon created hereby securing the Note. Any pledge of or lien on the Pledged Revenues shall be, and shall be expressed to be, junior and subordinate in all respects to the pledge of and lien on the Pledged Revenues securing the Note.

Section 4.05. Books and Records. The Town shall keep books and records of the receipt of the Pledged Revenues and the application of the proceeds of the Note in accordance with generally accepted accounting principles, and the Owners of the Note shall have the right at all reasonable times to inspect the records, accounts and data of the Town relating thereto.

Section 4.06. Annual Audit. The Town shall, within a reasonable amount of time after the close of each Fiscal Year, cause the financial statements of the Town to be properly audited by a recognized independent certified public accountant or recognized independent firm of certified public accountants, and shall require such accountants to complete their report on the annual financial statements in accordance with applicable law. Such annual financial statements shall contain, but not be limited to, a balance sheet, a statement of revenues, expenditures and changes in fund balance, and any other statements as required by law or accounting convention. The annual financial statements shall be prepared in conformity with generally accepted accounting principles and shall include a separate line item showing the annual amount of the Pledged Revenues received during the subject fiscal year. A copy of the audited financial statements for each Fiscal Year shall be furnished within one hundred eighty (180) days following the close of each Fiscal Year to the Owner of the Note. The Town will annually provide to the Owner of the Note the Town's annual budget within 30 days after the Town Council's approval thereof.

Section 4.07. No Impairment. As long as the Note remains outstanding, the pledging of the Pledged Revenues in the manner provided herein shall not be subject to repeal, modification or impairment by any subsequent ordinance, resolution or other proceedings of the Town Council.

Section 4.08. Collection of Pledged Revenues. The Town covenants to do all things necessary on its part to continue the receipt of the Pledged Revenues in compliance with the Act, and any successor provision of law governing the same and will not reduce the rate at which the Public Service Tax Revenues are currently levied. The Town will proceed diligently to perform legally and effectively all steps required on its part to receive the Pledged Revenues and shall exercise all legally available remedies to enforce such collections, as applicable, now or hereafter available under State law.

Section 4.09. Federal Income Tax Covenants.

(A) The Town covenants with the Owners from time to time of the Note that it shall not use the proceeds of the Note in any manner which would cause the interest on the Note to be or become includable in the gross income of the Owner thereof for federal income tax purposes.

(B) The Town covenants with the Owners from time to time of the Note that neither the Town nor any Person under its control or direction will make any use of the proceeds of the Note (or amounts deemed to be proceeds under the Code) in any manner which would cause the Note to be an “arbitrage bond” within the meaning of Section 148 of the Code and neither the Town nor any other Person shall do any act or fail to do any act which would cause the interest on the Note to become includable in the gross income of the Owner thereof for federal income tax purposes.

(C) The Town hereby covenants with the Owners from time to time of the Note that it will comply with all provisions of the Code necessary to maintain the exclusion of interest on the Note from the gross income of the Owner thereof for federal income tax purposes, including, in particular, the payment of any amount required to be rebated to the U.S. Treasury pursuant to the Code.

Section 4.10. Coverage Covenant. The Town covenants that for each Fiscal Year it shall generate a minimum annual Debt Service Coverage Ratio during such Fiscal Year of not less than 1.10 to 1. “Debt Service Coverage Ratio” shall mean total annual revenues less total annual expenses divided by the annual aggregate total debt service obligations of the Town.

Section 4.11. Primary Bank Deposit Accounts. So long as the Loan is outstanding, the Town covenants that it will maintain its primary bank deposit accounts with the Bank.

**ARTICLE V
EVENTS OF DEFAULT AND REMEDIES**

Section 5.01. Events of Default. Each of the following is hereby declared an “Event of Default:”

1. payment of the principal of or interest on the Note or other fees or amounts due thereunder or hereunder shall not be made when such amounts are due and payable and such amounts shall remain unpaid for a period of ten (10) days;

2. the Town shall default in the due and punctual performance of any other of the material covenants, conditions, agreements and provisions contained in the Note or in this Agreement and such default shall continue for thirty (30) consecutive days after written notice shall have been given to the Town by the Noteholder specifying such default and requiring the same to be remedied;

3. any representation or warranty of the Town contained in this Agreement or in any certificate or other closing document executed and delivered by the Town in connection with the closing of this Loan shall prove to have been untrue in any material respect when executed and delivered, thereby adversely impairing the security for the Note;

4. any proceedings are instituted with the consent or acquiescence of the Town, for the purpose of effecting a compromise between the Town and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereinafter enacted;

5. the Town admits in writing its inability to pay its debts generally as they become due, or files a petition in bankruptcy or makes an assignment for the benefit of its creditors, declares a financial emergency or consents to the appointment of a receiver or trustee for itself or shall file a petition or answer seeking reorganization or any arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof;

6. the Town is adjudged insolvent by a court of competent jurisdiction or is adjudged bankrupt on a petition of bankruptcy filed against the Town, or an order, judgment or decree is entered by any court of competent jurisdiction appointing, without the consent of the Town, a receiver or trustee of the Town or of the whole or any part of its property and any of the aforesaid adjudications, orders, judgments or decrees shall not be vacated or set aside or stayed within sixty (60) days from the date of entry thereof;

7. if, under the provisions of any law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Town or of the whole or any substantial part of its property and such custody or control shall not be terminated within ninety (90) consecutive days from the date of assumption of such custody or control; or

8. the Town fails to pay when due any payment of principal of or interest on any other obligation of the Town held by the Bank.

9. failure by the Town to maintain its primary bank deposit accounts with the Bank.

Section 5.02. Exercise of Remedies. Upon the occurrence and during the continuance of an Event of Default, a Noteholder may, upon providing written notice, declare the principal of the Note (if not then due and payable) to be immediately due and payable, and upon such declaration, the same shall be immediately due and payable, anything contained in the Note or this Agreement to the contrary notwithstanding. Upon the occurrence and during the continuance of an Event of Default, the Noteholder may proceed to protect and enforce its rights under the laws of the State of Florida or under this Agreement by such suits, actions or special proceedings in equity or at law, or by proceedings in the office of any board or officer having jurisdiction, either for the specific performance of any covenant or agreement contained herein or in aid or execution of any power herein granted or for the enforcement of any proper legal or equitable remedy, as the Noteholder shall deem most effective to protect and enforce such rights. Without limiting the generality of the foregoing, the Noteholder shall have the right to bring a mandamus action to require the Town to perform its obligations under Article IV of this Agreement.

Notwithstanding anything herein, or in the Note to the contrary, an Event of Default under Section 5.01.9 above for which the Bank does not accelerate the Loan as a result of the Town's failure to maintain the required deposit accounts as required pursuant to Section 4.11 hereof, the Bank shall increase the Note Rate by 0.50% beginning ten (10) days after written notice of said Event of Default to the Town. Such Event of Default interest rate shall apply to the outstanding principal balance of the Loan. Upon the curing of the Event of Default, the interest rate on the Loan shall revert to the initially agreed upon Note Rate effective on the date on which such Event of Default is cured.

In the enforcement of any remedy under this Agreement, to the extent permitted by law, the Noteholder shall be entitled to sue for, enforce payment of and receive any and all amounts then or during any default becoming, and at any time remaining, due from the Town for principal, interest or otherwise under any of the provisions of this Agreement or of the Note then unpaid, with interest on overdue payments of principal and interest (to the extent permitted by law) at the Default Rate, together with any and all costs and expenses of collection and of all proceedings hereunder and under the Note (including, without limitation, reasonable legal fees in all proceedings, including administrative, appellate and bankruptcy proceedings), without prejudice to any other right or remedy of the Noteholder, and to recover and enforce any judgment or decree against the Town, but solely as provided herein and in the Note, for any portion of such amounts remaining unpaid and interest, costs, and expenses as above provided, and to collect in any manner provided by law, the monies adjudged or decreed to be payable.

Section 5.03. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Noteholder is intended to be exclusive of any other remedy or remedies herein provided, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder.

Section 5.04. Waivers, Etc. No delay or omission of the Noteholder to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or any acquiescence therein; and every power and remedy given by this Agreement to the Noteholder may be exercised from time to time and as often as may be deemed expedient.

The Noteholder may waive any default which in its opinion shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted by it under the provisions of this Agreement or before the completion of the enforcement of any other remedy under this Agreement, but no such waiver shall be effective unless in writing and no such waiver shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon.

ARTICLE VI MISCELLANEOUS PROVISIONS

Section 6.01. Covenants of Town, Etc.; Successors. All of the covenants, stipulations, obligations and agreements contained in this Agreement shall be deemed to be covenants, stipulations, obligations and agreements of the Town to the full extent authorized or permitted by law, and all such covenants, stipulations, obligations and agreements shall be binding upon the successor or successors thereof from time to time, and upon any officer, board, commission, authority, agency or instrumentality to whom or to which any power or duty affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law.

Section 6.02. Term of Agreement. This Agreement shall be in full force and effect from the date hereof until the Note and all other sums payable to the Bank hereunder have been paid in full and shall survive the termination of this Agreement in relation to those provisions that deal with retroactive cost increases for the Bank in relation to the tax-exempt status of the Note.

Section 6.03. Notice of Changes in Fact. Promptly after the Town becomes aware of the same, the Town will notify the Bank of (a) any changes in any material fact or circumstance represented or warranted by the Town in this Agreement or in connection with the issuance of the Note, and (b) any default under this Agreement, specifying in each case the nature thereof and what action the Town has taken, is taking and/or proposes to take with respect thereto.

Section 6.04. Amendments and Supplements. This Agreement may be amended or supplemented from time to time only by a writing duly executed by the Town and the Noteholder.

Section 6.05. Notices. Any notice, demand, direction, request or other instrument authorized or required by this Agreement to be given to or filed with the Town or the Bank, shall be deemed to have been sufficiently given or filed for all purposes of this Agreement if and when sent by certified mail, return receipt requested:

As to the Town:

Town of Fort Myers Beach, Florida
2525 Estero Boulevard
Fort Myers Beach, Florida 33931
Attention: Town Manager

As to the Bank:

First Florida Integrity Bank of Florida, N.A.
3560 Kraft Road
Naples, Florida 34105
Attention: Michael Kozak

Either party may, by notice sent to the other, designate a different or additional address to which notices under this Agreement are to be sent.

Section 6.06. Waiver of Jury Trial. To the extent permitted by applicable law, each of the Town and the Bank, knowingly, voluntarily and intentionally waives any right each may have to a trial by jury in respect of any litigation based on, or arising out of, under or in connection with the Note Resolution, this Agreement, the Note or any agreement contemplated to be executed in connection with this Agreement, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party with respect hereto. This provision is a material inducement to the Bank to enter into this Agreement.

Section 6.07. Benefits Exclusive. Except as herein otherwise provided, nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon any person, firm or corporation, other than the Town and the Noteholder, any right, remedy or claim, legal or equitable, under or by reason of this Agreement or any provision hereof, this Agreement and all its provisions being intended to be and being for the sole and exclusive benefit of the Town and the Noteholder.

Section 6.08. Severability. In case any one or more of the provisions of this Agreement, any amendment or supplement hereto or of the Note shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement, any amendment or supplement hereto or the Note, but this Agreement, any amendment or supplement hereto and the Note shall be construed and enforced at the time as if such illegal or invalid provisions had not been contained therein, nor shall such illegality or invalidity or any application thereof affect any legal and valid application thereof from time to time. In case any covenant, stipulation, obligation or agreement contained in the Note or in this Agreement shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation, or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the Town to the full extent from time to time permitted by law.

Section 6.09. Business Days. In any case where the date of maturity of interest on or principal of the Note or the date fixed for prepayment of the Note shall not be a Business Day, then payment of such interest or principal shall be made on the next succeeding Business Day with the same force and effect as if paid on the date of maturity or the date fixed for prepayment, but interest on any such principal amount shall accrue through the date payment is received.

Section 6.10. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Agreement, and, in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

Section 6.11. Applicable Law. This Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Florida.

Section 6.12. No Personal Liability. Notwithstanding anything to the contrary contained herein or in the Note, or in any other instrument or document executed by or on behalf of the Town in connection herewith, no stipulation, covenant, agreement or obligation of any present or future member of the Town Council, officer, employee or agent of the Town, officer, employee or agent of a successor to the Town, in any such person's individual capacity, and no such person, in his or her individual capacity, shall be liable personally for any breach or non-observance of or for any failure to perform, fulfill or comply with any such stipulations, covenants, agreements or obligations, nor shall any recourse be had for the payment of the principal of or interest on the Note or for any claim based thereon or on any such stipulation, covenant, agreement or obligation, against any such person, in his or her individual capacity, either directly or through the Town or any successor to the Town, under any rule or law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise and all such liability of any such person, in his or her individual capacity, is hereby expressly waived and released.

Section 6.13. Incorporation by Reference. All of the terms and obligations of the Note Resolution and the Exhibit hereto are hereby incorporated herein by reference as if all of the foregoing were fully set forth in this Agreement. All recitals appearing at the beginning of this Agreement are hereby incorporated herein by reference.

[Remainder of page intentionally left blank – Signatures follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first set forth herein.

**TOWN OF FORT MYERS BEACH,
FLORIDA**

(SEAL)

By: _____
Raymond P. Murphy, Mayor

ATTEST:

By: _____
Michelle D. Mayher, Town Clerk

APPROVED AS TO FORM AND
LEGAL

:

John R. Herin, Jr., Town Attorney

FIRST FLORIDA INTEGRITY BANK

By: _____
Name: Michael J. Kozak
Title: Senior Vice President

EXHIBIT A

FORM OF NOTE

**TOWN OF FORT MYERS BEACH, FLORIDA
CAPITAL IMPROVEMENT REVENUE NOTE,
SERIES 2020**

Principal Sum	Interest Rate	Maturity Date	Date of Issuance
\$10,000,000	The "Note Rate" as defined herein.	November 1, 2040	November 4, 2020

The **TOWN OF FORT MYERS BEACH, FLORIDA** (the "Town"), for value received, hereby promises to pay to the order of **FIRST FLORIDA INTEGRITY BANK**, a Florida banking corporation, or its registered assigns (the "Holder"), at 3560 Kraft Road, Naples, Florida 34105, or at such other place as the Holder may from time to time designate in writing, solely from the Public Service Tax Revenues, and if ever insufficient to pay Debt Service on this Note, from the Communication Service Tax Revenues, each as defined in and in the manner and to the extent described in that certain Loan Agreement by and between the Holder and the Town, dated November 4, 2020 (the "Agreement"), the Principal Sum stated above loaned to the Town by the Holder pursuant to the Agreement, together with interest thereon at the Note Rate as hereinafter provided until the Maturity Date or the date the principal amount of this Note is paid in the manner hereinafter set forth in any coin or currency of the United States of America which, at the time of payment, is legal tender for the payment of public and private debts, which payments shall be made to the Holder hereof by bank wire or bank transfer as such Holder may specify in writing to the Town or otherwise as the Town and the Holder may agree.

All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

This Note shall bear interest per annum at the Note Rate, as defined below, calculated on the basis of a 365/360 day year, that is by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance multiplied by the actual number of days the principal balance is outstanding. The "Note Rate" shall mean the rate of interest to be borne by this Note, which shall be for the period from the Date of Issuance of this Note through November 1, 2030, at an interest rate equal to 3.15% per annum, and as described in Section 3.02(e) of the Agreement, so long as no Event of Default has occurred and is continuing, on November 2, 2030 the interest rate on the Note shall be adjusted to a fixed rate based on the prevailing ten-year treasury rate plus 255 basis points, subject to the fees as described therein.

Interest Rate on this Note is subject to adjustment as provided herein and in the Agreement. The Holder shall provide to the Town such documentation to evidence any adjustment to the Note Rate and the calculations made in connection therewith. All calculations and determinations by the Holder of the amounts payable pursuant to the following Interest Rate adjustment provisions or of any element thereof, if made in accordance with its then standard procedures for so calculating or determining such amounts, shall be conclusive absent manifest arithmetic error.

In the event a Determination of Taxability shall have occurred, the Interest Rate shall be increased to the Taxable Rate, effective retroactively to the date on which the interest payable on this Note is includable for federal income tax purposes in the gross income of the Holder hereof. In addition, the Holder of this Note or any former Holders of this Note, as appropriate, shall be paid an amount equal to any additions to tax, interest and penalties, and any arrears in interest that are required to be paid to the United States of America by the Holder or former Holders of this Note as a result of such Determination of Taxability. All such additional interest, additions to tax, penalties and interest shall be paid by the Town within sixty (60) days following the Determination of Taxability and demand by the Holder. "Determination of Taxability" shall mean, with respect to this Note, (i) the issuance by the Internal Revenue Service of a statutory notice of deficiency or other written notification which holds in effect that the interest payable on this Note is includable for federal income tax purposes in the gross income of the Holder hereof, or (ii) a determination by a court of competent jurisdiction that the interest payable on this Note is includable for federal income tax purposes in the gross income of the Holder hereof, which determination either is final and non-appealable or is not appealed within the requisite time period for appeal, or (iii) the admission in writing by the Town to the effect that interest on this Note is includable for federal income tax purposes in the gross income of the Holder hereof.

"Taxable Rate" shall mean a rate equal to the interest rate which after the Determination of Taxability will result in the same after-tax yield to the Holder of this Note as before said Determination of Taxability.

In the alternative, in the event that interest on this Note during any period becomes partially taxable as a result of a Determination of Taxability applicable to less than all of this Note, then the Interest Rate on this Note shall be increased during such period by an amount equal to: $(A-B) \times C$ where:

- (A) "A" equals the Taxable Rate (expressed as a percentage);
- (B) "B" equals the Interest Rate on this Note (expressed as a percentage); and
- (C) "C" equals the portion of this Note the interest on which has become taxable as the result of such tax change (expressed as a decimal).

In addition, the Holder of this Note or any former Holders of this Note, as appropriate, shall be paid an amount equal to any additions to tax, interest and penalties, and any arrears in interest that are required to be paid to the United States by the Holder or former Holders of this

Note as a result of such Determination of Taxability. All such additional interest, additions to tax, penalties and interest shall be paid by the Town within sixty (60) days following the Determination of Taxability and demand by the Holder.

Proceeds from the sale of the Note may be drawn down by the Town as needed during the initial thirty-six (36) months of the Loan as provided in the Agreement. Interest on this Note shall be paid monthly on the first day of each month, commencing December 1, 2020 until this Note is paid in full. Principal on this Note shall be paid in accordance with the amortization schedule as set forth on Schedule I attached hereto and made a part hereof, subject to prepayment by the Town prior to the Note's maturity as provided below and in subsections 3.02(d) and (e) of the Agreement.

The Town may prepay this Note in whole or in part on any date at a redemption price equal to the principal amount to be prepaid, plus accrued interest thereon to the redemption date, without premium or prepayment penalty.

This Note shall be subject to mandatory prepayment by the City on November 1, 2030 (the "Redemption Date") if there has occurred or is continuing any Event of Default under the Agreement or this Note. The Holder will notify the City of its intent to call this Note due and payable along with the total amount of principal and interest to be paid within 30 days prior to November 1, 2030.

All payments made by the Town hereon shall apply first to accrued interest, then to other charges due the Holder, and the balance thereof shall apply to the principal amount then due on this Note.

This Note is authorized to be issued in the outstanding aggregate principal amount equal to the Principal Sum under the authority of and in full compliance with the provisions of the Constitution and the laws of the State of Florida, Chapter 166, Florida Statutes, as amended, the Town Charter of the Town, Chapters 24 and 26 of the Town Code, Resolution 20-32 adopted by the Town Council on August 17, 2020, and other applicable provisions of law and Resolution No. [____] adopted by the Town Council of the Town on November 2, 2020 (the "Note Resolution"), and is subject to all terms and conditions of said Note Resolution and the Agreement.

Notwithstanding any provision in this Note to the contrary, in no event shall the Note bear interest in excess of the Maximum Rate, as defined in the Agreement. In the event the Interest Rate exceeds the Maximum Rate, the Note shall continue to bear interest at the Maximum Rate regardless of the reduction of the Interest Rate to a rate less than the Maximum Rate until such time as interest shall accrue on this Note in an amount (the "Excess Interest") that would have accrued thereon had the Interest Rate not been limited by the Maximum Rate. Upon the Maturity Date, in consideration for the limitation of the Interest Rate otherwise payable on this Note, the Town shall pay to the Holder of the Note a fee equal to the amount of the unpaid amount of all unpaid deferred Excess Interest.

THIS NOTE, WHEN DELIVERED BY THE CITY PURSUANT TO THE TERMS OF THE AGREEMENT AND THE NOTE RESOLUTION, SHALL NOT BE OR CONSTITUTE AN INDEBTEDNESS OF THE CITY OR THE STATE OF FLORIDA (THE "STATE"), WITHIN THE MEANING OF ANY CONSTITUTIONAL, STATUTORY OR OTHER LIMITATIONS OF INDEBTEDNESS, BUT SHALL BE PAYABLE SOLELY FROM THE PLEDGED REVENUES AS PROVIDED IN THE AGREEMENT. THE HOLDER SHALL NEVER HAVE THE RIGHT TO COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OF THE CITY OR THE STATE, OR TAXATION IN ANY FORM OF ANY PROPERTY THEREIN TO PAY THIS NOTE OR THE INTEREST THEREON.

Payment of the principal of and interest on this Note and all other amounts payable hereunder and under the Agreement are secured by a first priority pledge of and lien upon the Public Service Tax Revenues, and if ever insufficient a pledge of the Town's Communication Service Tax Revenues, in accordance with the terms of this Agreement.

Upon the occurrence of an Event of Default the principal of this Note may become or be declared due and payable before the Maturity Date in the manner, with the effect and subject to the conditions set forth in the Agreement. The Holder shall also have such other remedies as described in the Agreement.

The Town hereby waives presentment, demand, protest and notice of dishonor. This Note is governed and controlled by the Note Resolution and the Agreement and reference is hereby made thereto regarding interest rate adjustments, acceleration, and other matters.

This Note is transferrable in accordance with the terms of the Agreement only on the registration books of the Town. The Town may treat the registered owner hereof as the absolute owner hereof for all purposes, whether or not this Note shall be overdue, and shall not be affected by any Notice to the contrary.

It is hereby certified and recited that all acts, conditions and things required to exist, to happen and be performed precedent to and in the issuance of this Note, exist, have happened and have been performed, in regular and due form and time as required by the laws of and Constitution of the State of Florida and the Charter and Ordinances of the Town, applicable thereto, and that the issuance of this Note does not violate any constitution or statutory or other legal limitations or provisions.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Town has caused this Note to be signed by the Mayor, and the seal of the Town to be affixed hereto or imprinted or reproduced hereon, and attested by the Town Clerk of the Town and this Note to be dated the Date of Issuance set forth above.

TOWN OF FORT MYERS BEACH,

FLORIDA

(SEAL)

By: _____
Raymond P. Murphy, Mayor

ATTEST:

By: _____
Michelle D. Mayher, Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:

By: _____
John R. Herin, Jr, Town Attorney

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns and transfers unto _____ (please print or typewrite name, address and tax identification number of assignee) _____ the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints _____ Attorney to transfer the within Note on the books kept for registration thereof, with full power of substitution in the premises.

Name of Noteholder: _____

By: _____

SCHEDULE I

Principal Amortization Schedule

Interest only shall be due and payable on the outstanding balance drawn down on the Loan on the first day of each month, commencing December 1, 2020 through December 1, 2023. Thereafter, principal and interest on this Note shall be payable in equal monthly installments of \$48,445.70 each payable on the first day of each month through November 1, 2030. The interest rate and amortization schedule shall thereafter be adjusted, or the Loan paid in full as provided in the Agreement and this Note.