

Town of Fort Myers Beach
Public Works Services, Inc.
Agenda Item Summary

Blue Sheet Number: **2012-086**

1. Requested Motion: Motion to approve/deny the appeal and allow /not **Meeting Date:** 10/1/12
Allow the property owner to build according to the base flood elevation that was in effect when the building permit was issued.

Why the action is necessary: The property owner is appealing the staff's determination that current FEMA regulations govern an expired building permit that has been extended under state law

What the action accomplishes: Determines which FEMA regulations will govern the extended building permit.

2. Agenda:

Consent
 Administrative

3. Requirement/Purpose:

Resolution
 Ordinance
 Other

4. Submitter of Information:

Council
 Town Staff
 Town Attorney

5. Background: At the April 4, 2011 Town Council meeting, Attorney Robert Pritt, representing the property owner of 2500 Estero, appealed the Community Development Director's Administrative Action extending the building permit for the property, but with the caveat that the property must comply with the current Town Floodplain Ordinance. At that meeting, the Town Council directed the Town Attorney to request an opinion from the State of Florida Attorney General concerning which legislation prevailed. On March 20, 2012, the Town Attorney requested the Attorney General Opinion and included in that request documentation from the State of Mississippi because that state had recently had a similar experience concerning the priority of FEMA floodplain ordinances that arguably conflict with state law mandates. On July 25, 2012, the Attorney General responded and stated that, due to the speculative nature of the question involved, that is, whether compliance with the special act which would require noncompliance with the floodplain ordinance could result in action by FEMA to disqualify the Town from the National Flood Insurance Program, they would not be rendering an opinion. Attorney Pritt has requested that this matter be brought back before the Town Council for a final determination of his appeal in light of the recent action by the Attorney General. A copy of the original appeal submittal, the Town Attorney's request for an opinion, and the Attorney General's response is attached.

6. Alternative Action: Deny the appeal.

7. Management Recommendations:

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk
	rwmm					

9. Council Action:

Approved Denied Deferred Other

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: 2011-031

1. **Requested Motion:** Motion to affirm/reverse Community Development Director's Administrative Action for 2500 Estero Blvd.

Meeting Date: Apr 4, 2011

Why the action is necessary: Section 34-86 of the LDC permits appeals from administrative action where it is alleged there is an error in any order, requirement, decision, interpretation, determination or action of any administrative official.

What the action accomplishes: Determines whether there has been an error in the interpretation by the DCD Director with respect to the property owner's building permit

2. **Agenda:**

Consent
 Administrative

3. **Requirement/Purpose:**

Resolution
 Ordinance
 Other

4. **Submitter of Information:**

Council
 Town Staff
 Town Attorney

5. **Background:** On December 29, 2009, the owner of property located at 2500 Estero Boulevard requested a two-year extension of a development order (DOS2008-00018) that had an expiration date of July 29, 2011 and a building permit (COM08-0003) that had an expiration date of February 27, 2009. The request was made pursuant to extensions mandated by the Florida Legislature in what is commonly known as Senate Bill 360. The development order extension was granted on March 8, 2010 and operates to extend the development order until July 29, 2013. The building permit extension request was denied based on a finding by the DCD Director that the permit was in significant non-compliance with the conditions of the permit and because the rules in effect at the time the permit was issued. That determination was subsequently revised and the applicant was issued a revised determination that approved the building permit extension, but conditioned that approval because the rules with respect to base flood elevation that were in effect at the time the permit was issued will create an immediate threat to public safety or health. When the building permit was originally issued, there were different base flood elevation rules in effect. On August 28, 2008, the Town adopted new base flood elevation rules that place this property in a Special Flood Hazard Area in flood zone VE, partly with a base flood elevation of 14 feet NAVD 88 and partly with a base flood elevation of 15 feet NAVD. The letter determination advised the applicant that they could present scientific and technical data to FEMA that the Flood Insurance Rate Maps and Flood Insurance Study applicable to the property are incorrect and seek a map amendment, or make application to the Town Council for a variance from the required base flood elevation in accordance with the Town's floodplain regulations, which would also require scientific and technical data. Instead of pursuing either of those options, the applicant has appealed the administrative determination pursuant to Section 34-86 of the LDC because the applicant is of the opinion that applying the rules with respect to base flood elevation that were in effect at the time the permit was issued will NOT create an immediate threat to public safety or health.

6. **Alternative Action:** Affirm/Reverse the administrative determination.

7. **Management Recommendations:** Affirm the administrative determination.

8. **Recommended Approval:**

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director	Town Clerk
<i>[Signature]</i> for T. Stewart				<i>[Signature]</i> for W. F. Vogel		

9. **Council Action:**

Approved Denied Deferred Other

**FORT MYERS BEACH, FLORIDA
DEPARTMENT OF COMMUNITY DEVELOPMENT
STAFF REPORT**

Type of Case: Appeal of Administrative Action
Case Number: ADM2010-0001
Town Council Hearing Date: TBA

I. Application Summary:

Applicants: 2500 Estero Blvd LLC (Robert Pritt, Esq., agent)
Request: Appeal denial of 2-year permit extension under Town Council Resolution 09-30
Location: 2500 Estero Boulevard, Fort Myers Beach, FL
Legal description attached as **Exhibit A**

II. Background Information and Analysis:

A. Introduction

On June 1, 2009, the Governor of Florida signed into law SB 360, (confirmed by successor bill SB 1752) which, among other provisions, mandated 2-year extensions of local development orders and building permits that had expired between September 1, 2008 and January 1, 2012. The Town Council of the Town of Fort Myers Beach adopted Resolution 09-30 on October 5, 2009, to create procedures and authorize Town staff to administer these extensions. Appellant was issued a building permit, COM08-0003, that when issued on August 27, 2008, initially had an expiration date of February 27, 2009. Appellant requested the 2-year extension prior to December 31, 2009 (Exhibit 1). Upon review of appellant's request, staff found that building permit COM08-0003 became null and void on February 23, 2009 for failing to comply with the regulations in effect on August 27, 2008, the date the permit was issued, and therefore denied the requested extension on March 8, 2010(Exhibit 2). On December 23, 2010, the Appellant requested a review and clarification of the Town's March 28, 2010 denial of COM 08-00003 (Exhibit 3). Upon reviewing the findings Staff issued a revised opinion on February 8, 2011(Exhibit 4), determining that the COM 08-00003 could be extended until February 27, 2011, subject to the Building Permit meeting current FEMA requirements for Base Floor Elevation or disputing the validity of the elevation requirement with FEMA. On March 7, 2011, the Appellant requested an appeal hearing of this administrative decision (Exhibit 5).

B. Appellants' Allegations of Error

The essence of Appellants' appeal is an argument that only three reasons are valid reasons for denying a properly requested extension of a local building permit or

development order under SB 360, that none of those three reasons existed, and that therefore the denial is not authorized. Expanding upon this argument, appellant comments briefly that state law typically prevails over local ordinances in the event of apparent conflict. Appellant suggests that SB 360 conflicts with Ordinance 08-09, which amended the floodplain regulations of LDC Chapter 6, Article IV to reference the Flood Insurance Rate Maps (FIRMs) with effective date of August 28, 2008, that Federal law required to be adopted by the Town as a mandatory condition of participation in the National Flood Insurance Program.

C. Issues on Appeal

1. Standing

Appellant 2500 Estero Blvd LLC owns the subject property, which is located at 2500 Estero Boulevard in Fort Myers Beach. Land Development Code Section 34-201(a)(1) authorizes a landowner or his authorized representative to initiate an appeal of an administrative action for his own property, and specifies that where the landowner is a corporation, any duly authorized corporate official may initiate the application. The instant appeal affects the subject property. It is clear that LDC Section 34-201(a)(1), by authorizing a landowner to initiate an appeal affecting his property, indicates that a landowner has standing to challenge administrative decisions that affect his own property.

2. Merits: allegation of error

Appellants allege there was an error in the administrative decision, pursuant to Town Council Resolution 09-30, in imposing conditions upon the requested 2-year extension of building permit COM08-0003. LDC Section 34-86 provides the following criteria for consideration by Town Council in appeals:

- a. Whether the appeal is of a nature properly brought for decision, or whether there is an established procedure for handling the request other than through the appeal process

It is clear that LDC Section 34-201(a)(1) authorizes a landowner to initiate an appeal of an administrative decision that affects his property. However, a request to deviate from the floodplain regulations required to be adopted by the Town as a condition of its participation in the National Flood Insurance Program (NFIP) would be more properly considered through the variance process, including consideration of the criteria found in LDC Section 6-466 as well as the criteria found in LDC Section 34-87. Requesting extension of a voided permit and then appealing the denial of the extension is not a proper method of bringing the matter of deviating from the NFIP-minimum floodplain regulations before the Town Council for decision. The Administrator of the Federal Emergency Management Agency has established minimum criteria to be considered by participating communities when choosing to grant variances from the minimum standards required to be adopted and enforced by participating communities. The

Town incorporated these criteria into LDC Section 6-466, which addresses requests for variances from the flood protection regulations, in order to comply with these minimum requirements for participation in the NFIP. Granting a variance from the minimum flood protection standards required to be adopted and enforced as a mandatory condition of participation in the NFIP without considering these criteria would not comply with the Town's responsibility as a participating community.

b. The intent of the ordinance being applied or interpreted

The intent of Resolution 09-30 was to authorize administrative staff to implement the extensions provided by SB 360. Both Resolution 09-30 and SB 360 serve to extend development orders and building permits that "expire" between September 1, 2008, and January 1, 2012.

Among other purposes, but most pertinently, with regard to the Nation's unified program for flood protection, the United States Congress declared that:

The purpose of this Act [the Flood Disaster Protection Act of 1973] is to[:]
(1) substantially increase the limits of coverage authorized under the national flood insurance program; (2) provide for the expeditious identification of, and the dissemination of information concerning, flood-prone areas; (3) **require States or local communities, as a condition of future Federal financial assistance, to participate in the flood insurance program and to adopt adequate flood plan [sic] ordinances with effective enforcement provisions consistent with Federal standards to reduce or avoid future flood losses;** and (4) require the purchase of flood insurance by property owners who are being assisted by Federal programs or by federally supervised, regulated, or insured agencies or institutions in the acquisition or improvement of land or facilities located or to be located in identified areas having special flood hazards.

Flood Disaster Protection Act of 1973, 42 USC §4002 (2006) (emphasis added).

Federal regulations authorized by the National Flood Insurance Act of 1968 (as amended), 42 USC §4102 (2006), require the Town to adopt and enforce specific flood protection regulations as a condition of participation in the NFIP. One such minimum required regulation is the requirement that all new construction and substantial improvements in Zone VE have the bottom of the lowest horizontal structural member of the lowest floor elevated to or above the base flood elevation, with all space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood latticework, or insect screening, with such space enclosed by breakaway walls used solely for parking of vehicles, building access, or storage. (44 CFR §60.3 (2009)).

The term "new construction" is defined for floodplain management purposes in Section 59.1 of Title 44, Code of Federal Regulations, as "structures for which the start of

construction commenced on or after the effective date of a floodplain management regulation adopted by a community". The intent of the federal statute and regulation does not provide any justification for states and communities to pick and choose which new construction will be required to comply with the minimum standards, except through the variance process.

c. The effect the ruling will have when applied generally to [the LDC]

The extensions mandated by SB 360 appear to be *sui generis* and are unprecedented under the Town's Land Development Code. Granting appellant's appeal in this case would also be inconsistent with sound floodplain management principles and could subject the Town to probation or suspension from the National Flood Insurance Program as provided in Section 59.24 of Title 44, Code of Federal Regulations, for failing adequately to enforce floodplain management regulations meeting the minimum criteria for participation in the NFIP. Probation or suspension from the NFIP would have wide-ranging financial consequences for every owner of improved real estate in the Town. Denying appellant's appeal and upholding staff's determination that the permit must be modified to comply with the FEMA base flood elevation requirements that took effect on August 28, 2008 would be consistent with the Town's commitment to participate in the NFIP.

C. Discussion

The United States has a unified national program for flood protection, which includes structural and nonstructural efforts to prevent and to mitigate future flood damage, and to lessen the economic burden on owners of property in floodprone areas without inequitably shifting the expense of such owners' unwise decisions onto the American public at large. As a part of the program by which federally-subsidized flood insurance is made available to property owners in the Town, the Town is required to adopt and enforce flood protection regulations meeting minimum standards established by FEMA ("NFIP minimum standards"). The NFIP minimum standards apply to "new construction" and also to "substantial improvements" of pre-existing buildings. "New construction" is any structure for which the "start of construction" commenced on or after the effective date of any flood regulation adopted by the community. The "start of construction" is the date that the permit was issued, provided that the actual start of construction occurred within 180 days of the permit date. The "actual start" means the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation, but not including clearing, grading, filling, excavation, or erection of temporary forms.

The NFIP minimum standards require that the Town require the lowest horizontal structural member of the lowest floor of all new construction and substantial improvements on the subject property to be elevated on piles or columns to or above the base flood elevation, with all space below either open so as not to impede the flow

of flood waters or enclosed only with insect screening, latticework, or breakaway walls with any such enclosed space used only for parking, building access, or limited storage. These specific standards were already in place at all relevant times but began to apply to the subject property on August 28, 2008, because the Town was required to make these standards effective on the subject property through reference to the revised FIRMs and FIS no later than August 28, 2008 as a condition of its continued participation in the NFIP. The Town Council unanimously adopted Ordinance 08-09 on August 18, 2008. Ordinance 08-09 was effective immediately upon its adoption, and amended the Town's flood protection regulations to reference the FIS and FIRMs with effective date of August 28, 2008.

Appellant obtained a building permit from the Town on August 27, 2008, after the effective date of the Ordinance providing for the revised FIRMs and FIS to take effect on August 28, 2008. The start of construction would have been August 27, 2008 if the actual start had commenced by February 23, 2009. No construction meeting the definition of "actual start" within the definition of "start of construction" took place by February 23, 2009. The start of construction will not be prior to August 28, 2008, so under the regulations that were in effect on August 27, 2008, construction on the subject property will be "new construction" in relation to the revised FIRMs whose effective date was August 28, 2008, and must meet the standards that apply to new construction on the date of the start of construction. The federal statute and federal regulations do not provide any exception to allow the Town to "extend" the period of time incorporated within the definition of "start of construction" to allow for relief from permit "expiration," of a purely economic nature, envisioned by the Florida legislature. The NFIP minimums require that the Town allow variances from the minimum flood protection regulations only upon consideration of a series of factors consistent with sound floodplain management practices. Arbitrarily granting a variance, even if it were actually required by what one might characterize as a retroactive preemption of municipal authority by the state legislature "in recognition of 2009 real estate market conditions," would not be consistent with the NFIP minimum requirements or with sound floodplain management practices.

Even if appellant's argument is assumed to be valid, and the director does not have the authority to revoke a permit based on its failure to comply with the conditions under which it was issued, Section 14 of Chapter 2009-096 also provides that "permits extended under this section will continue to be governed by the rules in effect at the time the permit was issued." The rules in effect at the time the permit was issued will still require that new construction on the subject property comply with the flood protection regulations in effect on the date of the start of construction, which will not be before August 28, 2008, regardless of whether the expiration date of a building permit is extended. Construction of the improvements that had been allowed by COM08-0003 will violate the flood protection requirements that apply to the subject property on the date of the start of construction unless the permit is revised to comply, a variance is issued, or the FIRM affecting the subject property is revised according to established Federal procedures.

III. Conclusion

The Town Council is the Town's sole policy-making body. It has the authority in an appeal to affirm, reverse, or modify an administrative decision. However, shortly after the Town incorporated, the Town Council passed Resolution 96-33, resolving as follows:

The Town Council assures the Federal Insurance Administration that it will enact as necessary, and maintain in force in those areas having flood, or flood-related erosion hazards, adequate land use and control measures with effective enforcement provisions consistent with the Criteria set forth in Part 60 of the National Flood Insurance Program Regulations CFR 44; and agrees to take such other official action as may be reasonably necessary to carry out the objectives of the program.

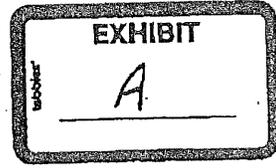
The Town is constrained by its participation in the NFIP to require compliance with the "adequate land use and control measures" it promised to enact and enforce. Town Council has the authority to grant a waiver from the FEMA requirement for Base Floor Elevation. However, granting such a variance could expose the Town and residents with additional liability. In the event of a loss at 2500 Estero, due to rising waters, FEMA could DENY any claim relating to damages from those rising waters, thus potentially place the financial liability upon the Town for granting the waiver. Further, if the Town were to grant a waiver, it could result in FEMA re-rating the Town's NFIP rates, thus causing residents to pay more for Flood Insurance. Further, granting a waiver could result a dangerous precedent and may subject the Town to further requests for variances from FEMA and requirements and further NFIP rate increases.

Staff recommends that Town Council **deny** the appeal and **affirm** staff's administrative action in approving the extension with conditions.

EXHIBIT A

INSTR # 2005000109992, Doc Type D, Pages 4, Recorded 11/08/2005 at 03:47 PM, Charlie Green, Lee County Clerk of Circuit Court, Deed Doc. D \$12705.00 Rec. Fee \$35.50 Deputy Clerk WMILLER

187-19-35



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

Property Appraisers Parcel Identification (Folio) Numbers: 19-46-24-W3-012BA.010019-46-24-W3-01302.0000
Grantee SS #: _____

SPACE ABOVE THIS LINE FOR RECORDING DATA

THIS WARRANTY DEED, made the ____ day of September, 2005 by

COITL, INC., a Florida corporation, herein called the grantor, to

2500 ESTERO BLVD, LLC, a Florida limited liability company, whose post office address is 3585 NW 31st Avenue, Oakland Park, FL 33309, hereinafter called the Grantee:
(Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

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

Lot 2, BLAKES SUBDIVISION, according to the map or plat thereof on file and recorded in Plat Book 4, Page 44, and Lots 10, 11, 12 and 13, Block A, SEAGRAPE SUBDIVISION, according to the map or plat thereof on file and recorded in the office of the Clerk of the Circuit Court in Plat Book 4, Page 17, all in the Public Records of Lee County, Florida, LESS AND EXCEPT a portion of said Lot 13, more particularly described as follows: From the SE corner of Lot 13, Block A, SEAGRAPE SUBDIVISION, as recorded in Plat Book 4, Page 17, Lee County, Florida, run westerly along the northerly right-of-way of Cottage Avenue for 67.20'; thence by an interior angle of 94 degrees 24'39" run 60.30'; thence by an interior angle of 99 degrees run 8.00'; thence by an interior angle of 270 degrees run 3.00'; thence by an interior angle of 90 degrees run 38.01' to the east line of said Lot 13; thence southerly 71.61' along said east line to the Point of Beginning.

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

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

AND, the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple, that the grantor has good right and lawful authority to sell and convey said land, and hereby warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 2004.

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

Signed, sealed and delivered in the presence of:

COITL, INC., a Florida corporation

Witness #1 Signature for Spas Pasev
Witness #1 Printed Name
Witness #2 Signature for Spas Pasev
Witness #2 Printed Name

By: _____
Spas Pasev, President
6309 Corporate Court, #113, Fort Myers, FL 33919

COUNTRY OF CZECH REPUBLIC
PROVINCE OF PRAHA
COUNTY OF PRAHA 2, s.r.o.

The foregoing instrument was acknowledged before me this 14th day of September, 2005, by Spas Pasev, President of COITL, INC., a Florida corporation, who executed on behalf of the corporation. Spas Pasev is () personally known to me or has (X) produced _____ as identification.

Signature of Notary
Type/Print Name of Notary
Commission Number
Commission Expiration Date

Case # ADM 2010-0001
 Planner _____

Date Received 4/6/2010
 Date of Sufficiency/Completeness _____

Town of Fort Myers Beach
 Department of Community Development



Zoning Division

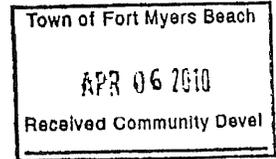


EXHIBIT (1)

Application for Public Hearing

This is the first part of a two-part application. This part requests general information required by the Town of Fort Myers Beach for any request for a public hearing. The second part will address additional information for the specific type of action requested.

Project Name: 2500 Estero Boulevard
Authorized Applicant: 2500 Estero Blvd., LLC c/o Robert D. Pritt, Roetzel & Andress, LPA
LeePA STRAP Number(s): 19-46-24-W3-0120A.0100

Current Property Status:
Current Zoning: Commercial Planned Development (CPD)
Future Land Use Map (FLUM) Category: Boulevard
Platted Overlay? <input type="checkbox"/> yes <input checked="" type="checkbox"/> no FLUM Density Range: 6 du/acre

Action Requested	Additional Form Required
<input type="checkbox"/> Special Exception	Form PH-A
<input type="checkbox"/> Variance	Form PH-B
<input type="checkbox"/> Conventional Rezoning	Form PH-C
<input type="checkbox"/> Planned Development	Form PH-D
<input type="checkbox"/> Master Concept Plan Extension	Form PH-E
<input checked="" type="checkbox"/> Appeal of Administrative Action	Form PH-F
<input type="checkbox"/> Development of Regional Impact	Schedule Appointment
<input type="checkbox"/> Other (cite LDC section number: _____)	Attach Explanation

Town of Fort Myers Beach
Department of Community Development
 2523 Estero Boulevard
 Fort Myers Beach, FL 33931
 (239) 765-0202

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

PART I – General Information

A. Applicant:

Name(s): 2500 Estero Blvd. LLC c/o Robert D. Pritt, Roetzel & Andress, LPA		
Address: 850 Street: Park Shore Drive, Trianon Centre, Third Floor, Naples, FL 34103		
City:	State:	Zip Code:
Phone: (239) 649-2714		
Fax: (239) 261-3659		
E-mail address: rpritt@ralaw.com		

B. Relationship of applicant to property (check appropriate response)

<input checked="" type="checkbox"/> Owner (indicate form of ownership below)	
<input type="checkbox"/> Individual (or husband/wife)	<input type="checkbox"/> Partnership
<input type="checkbox"/> Land Trust	<input type="checkbox"/> Association
<input checked="" type="checkbox"/> Corporation	<input type="checkbox"/> Condominium
<input type="checkbox"/> Subdivision	<input type="checkbox"/> Timeshare Condo
<input checked="" type="checkbox"/> Authorized representative (attach authorization(s) as Exhibit AA-1)	
<input type="checkbox"/> Contract Purchaser/vendee (attach authorization(s) as Exhibit AA-2)	
<input type="checkbox"/> Town of Fort Myers Beach (Date of Authorization: _____)	

C. Agent authorized to receive all correspondence:

Name: Robert D. Pritt, Esq., Roetzel & Andress, LPA		
Mailing address: Street: 850 Park Shore Dr., 3rd Floor, Naples, FL 34103		
City:	State:	Zip Code:
Contact Person: Robert D. Pritt		
Phone: (239) 649-2714		Fax: (239) 261-2659
E-mail address: rpritt@ralaw.com		

D. Other agents:

Name(s):		
Mailing address: Street:		
City:	State:	Zip Code:
Phone:	Fax:	
E-mail address:		

Use additional sheets if necessary, and attach to this page.

Case # _____
 Planner _____

Date Received _____
 Date of Sufficiency/Completeness _____

PART II – Nature of Request

Requested Action (check applicable actions):

<input type="checkbox"/> Special Exception for:
<input type="checkbox"/> Variance for:
<input type="checkbox"/> Conventional Rezoning from _____ to:
<input type="checkbox"/> Planned Development
<input type="checkbox"/> Rezoning (or amendment) from _____ to:
<input type="checkbox"/> Extension/reinstatement of Master Concept Plan
<input type="checkbox"/> Public Hearing of DRI
<input type="checkbox"/> No rezoning required
<input type="checkbox"/> Rezoning from _____ to:
<input checked="" type="checkbox"/> Appeal of Administrative Action
<input type="checkbox"/> Other (explain):

PART III – Waivers

Waivers from application submittal requirements: Indicate any specific submittal items that have been waived by the Director for the request. Attach copies of the Director’s approval(s) as Exhibit 3-1.

Code Section Number	Describe Item
N/A	

PART IV – Property Ownership

<input type="checkbox"/> Single owner (individual or husband and wife)
Name:
Address: Street:
City: State: Zip Code:
Phone: Fax:
E-mail Address:

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

<input checked="" type="checkbox"/> Multiple owners (including corporation, partnership, trust, association, condominium, timeshare condominium, or subdivision)
Attach Disclosure Form as Exhibit 4-1
Attach list of property owners as Exhibit 4-2
Attach map showing property owners' interests as Exhibit 4-3 if multiple parcels are involved
For condominiums, timeshare condominiums, and subdivisions, see instructions.

PART V – Property Information

A. Legal Description of Subject Property

Is the property entirely made up of one or more undivided platted lots officially recorded in the Plat Books of the Public Records of Lee County?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If yes: Yes
Subdivision name: Seagrape, Plat Book 4, Page 17 Blk A, Lots 10,11,12 and Pt. of 13
Plat Book Number: Page: Unit: Block: Lot:
If no:
Attach a legible copy of the metes and bounds legal description, with accurate bearings and distances for every line, as Exhibit 5-1. The initial point in the description must be related to at least one established identifiable real property corner. Bearings must be referenced to a well-established and monumented line.

B. Boundary Survey

Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code, as Exhibit 5-2. 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.
--

C. STRAP Number(s):

19-46-24-W3-0120A.0100

D Property Dimensions:

Area: Approx. 21,045 square feet 0.48 acres
Width along roadway Avg. 140.3 feet Depth: 150 feet

E. Property Street Address:

2500 Estero Boulevard, Fort Myers Beach, FL 33931

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

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

From Sky Bridge, travel 0.8 miles on Estero Blvd., to address of 2500 Estero Blvd., on right.
Attach Area Location Map as Exhibit 5-3

G. Property Restrictions (check applicable):

<input checked="" type="checkbox"/> There are no deed restrictions or covenants on this property that affect this request.
<input type="checkbox"/> Restrictions and/or covenants are attached as Exhibit 5-4
<input type="checkbox"/> A narrative statement explaining how the deed restrictions and/or covenants may affect the request is attached as Exhibit 5-5.

H. Surrounding property owners:

Attach list of surrounding property owners (within 500 feet) as Exhibit 5-6
Attach two sets of mailing labels as Exhibit 5-7
Attach a map showing the surrounding property owners as Exhibit 5-8

I. Future Land Use Category: (see Comprehensive Plan Future Land Use Map)

<input type="checkbox"/> Low Density	<input type="checkbox"/> Marina
<input type="checkbox"/> Mixed Residential	<input type="checkbox"/> Recreation
<input checked="" type="checkbox"/> Boulevard	<input type="checkbox"/> Wetlands
<input type="checkbox"/> Pedestrian Commercial	<input type="checkbox"/> Tidal Water
Is the property located within the "Platted Overlay" area on the Future Land Use Map? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

J. Zoning: (see official zoning map, as updated by subsequent actions)

<input type="checkbox"/> RS (Residential Single-family)	<input type="checkbox"/> CM (Commercial Marina)
<input type="checkbox"/> RC (Residential Conservation)	<input type="checkbox"/> CO (Commercial Office)
<input type="checkbox"/> RM (Residential Multifamily)	<input type="checkbox"/> CB (Commercial Boulevard)
<input type="checkbox"/> VILLAGE	<input type="checkbox"/> SANTINI
SANTOS	DOWNTOWN
<input type="checkbox"/> IN (Institutional)	<input type="checkbox"/> RPD (Residential Planned Dev.)
<input type="checkbox"/> CF (Community Facilities)	<input checked="" type="checkbox"/> CPD (Commercial Planned Dev.)
CR (Commercial Resort)	<input type="checkbox"/> EC (Environmentally Critical)
<input type="checkbox"/> BB (Bay Beach)	

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

PART VI – Affidavit

Application Signed by Individual Owner or Authorized Applicant

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

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town 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 supplemental matter attached hereto and made a part of this application are honest and true;
3. I hereby authorize Town staff or their designee(s) to enter upon the property during normal working hours (including Saturdays and Sundays) for purposes reasonably related to the subject matter of this application; and
4. The property will not be transferred, conveyed, sold, or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Robert D. Pritt
Signature

Robert D. Pritt
Typed or Printed Name

State of Florida
County of Lee

The foregoing instrument was sworn to (or affirmed) and subscribed

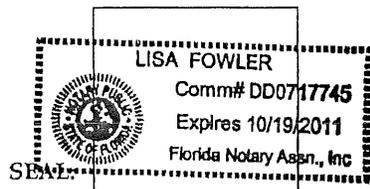
before me this 5th by Robert D. Pritt
(date) (name of person under oath or affirmation)

who is personally known to me or produced _____
(type of identification)

as identification.

Lisa Fowler
Signature of person administering oath

LISA Fowler
Typed or Printed Name



Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

PART VI - Affidavit

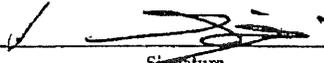
**Application Signed by a Corporation, Limited Liability Company (LLC),
Limited Company (LC), Partnership, Limited Partnership, or Trustee**

See attached explanatory notes for instructions

I, Scott Daiagi, as Managing Member
of 2500 Estero Blvd. LLC, swear or affirm under oath, that I am
the owner or the authorized representative of the owner(s) of the property and
that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town 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 supplemental matter attached hereto and made a part of this application are honest and true;
3. I hereby authorize Town staff or their designee(s) to enter upon the property during normal working hours (including Saturdays and Sundays) for purposes reasonably related to the subject matter of this application; and
4. The property will not be transferred, conveyed, sold, or subdivided unencumbered by the conditions and restrictions imposed by the approved action

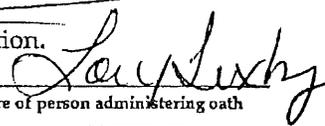
2500 Estero Blvd. LLC
Name of Entity (corporation, LLC, partnership, etc
Managing Member
Title of Signatory

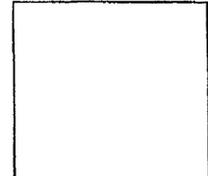

Signature
Scott Daiagi
Typed or Printed Name

State of Florida
County of Broward

The foregoing instrument was sworn to (or affirmed) and subscribed
before me this 4-2-10 by Scott Daiagi
Date Name of person under oath or affirmation

who is personally known to me or who has produced _____
Type of identification
as identification.


Signature of person administering oath
Lori Y. Tuxbury
Typed or Printed Name

SEAL: 



Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

Explanatory Notes – General

Submit any plans, sketches, drawings, or other attachments in hard copy and in a commonly accessible electronic format such as .pdf.

Application fees are set by resolution of the Town Council of the Town of Fort Myers Beach and must be paid before any materials submitted will be considered an application.

On page 1, place a check mark next to the type of action being requested.

1. To request a special exception, complete and attach supplemental form PH-A.
2. To request a variance, complete and attach supplemental form PH-B.
3. To request conventional rezoning, complete and attach supplemental form PH-C.
4. To request planned development rezoning or an amendment to an existing planned development that requires a public hearing, complete and attach supplemental form PH-D.
5. To request extension of a Master Concept Plan for a planned development, complete and attach supplemental form PH-E.
6. To request an appeal of an administrative action, complete and attach supplemental form PH-F.
7. For a Development of Regional Impact, schedule a pre-application meeting with the Community Development Director to discuss the process.
8. Other public hearing applications may require additional information.

Explanatory Notes – Part I

A. Applicant's name: The applicant may be the landowner or an authorized agent.

B. Relationship of applicant to property: Indicate if the applicant is the property owner, and if so, the type of ownership. If the applicant is not the owner of the property, indicate the relationship of the applicant to the owner and submit a notarized authorization from the owner(s) to the applicant.

C. Agent's name: If the applicant will have others representing him/her in processing the application, indicate name, address, and phone number.

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D. Other agents: Provide contact information for any other agents that may be involved in the request.

Explanatory Notes – Part II

Indicate the requested action. Refer briefly to the specific action requested, such as “variance for reduced rear setback to 15 feet” or “planned development rezoning from CB to CPD”

Explanatory Notes – Part III

If waiver of any application requirement has been approved by the Community Development Director, attach a copy of the approval. **Request waivers of requirements before applying.**

Explanatory Notes – Part IV

If the property owner is an individual or husband and wife, check the box and provide the information.

If there are multiple property owners, complete the disclosure form and include the names and mailing addresses of all persons or entities having an ownership interest in the property, including the names of all stockholders and trust beneficiaries. Disclosure is not required of any entity whose interests are solely equity interests that are regularly traded on an established securities market in the United States or another country.

If more than one parcel is involved, submit a list of all property owners and their mailing addresses. Provide a map keyed to the list of property owners showing their interests. The applicant is responsible for the accuracy of the list and map.

Where the property is a condominium or timeshare condominium, the application must be initiated by both the condominium association and no less than 75% of the total number of unit owners. To verify ownership, the list of property owners must be identified by unit number and/or timeshare period as applicable, along with proof that the owners who did not join in the application were given actual written notice of the application by the applicants, who must verify the list and the notice by sworn affidavit. Attach this affidavit as Exhibit 4-4. In addition, a letter of opinion from an attorney licensed to practice law in the

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State of Florida addressing the considerations in LDC Section 34-201(a)(1)b.3. must be attached as Exhibit 4-5.

Explanatory Notes – Part V

- A. If the application includes only one or more undivided platted lots within a subdivision officially recorded in the Plat Books of Lee County, Florida, identify the property by lot number(s), block if applicable, subdivision unit if applicable, subdivision name, and plat book number and page number. If the property is not one or more undivided platted lots or is in an “unrecorded” subdivision, attach a metes and bounds legal description giving accurate bearings and distances for each course. If multiple parcels are involved, the metes and bounds legal description must describe the perimeter of the entire property subject to the request. The initial point in the description must be related to at least one established identifiable real property corner, such as a government corner or a recorded corner. The bearings used in the description must be clearly referenced to a well-established and monumented line.
- B. Submit a Boundary Survey meeting the minimum technical standards for surveying set out in Chapter 61G17-6 of the Florida Administrative Code. Make sure that the surveyor is aware of any specific needs of the survey (location of Coastal Construction Lines, locations of existing structures, locations of easements, etc) that are relevant to your request. The perimeter boundary of the entire subject property should be indicated clearly with a heavy line.
- C. If more than one parcel is involved, list all STRAP numbers. If you don't know the STRAP number, you can look up the property in the records of the Lee County Property Appraiser at <http://www.leepa.org>.
- D. Provide the property dimensions or the approximate dimensions if the property is not a regular quadrilateral.
- E. Include the street address of the property.
- F. Describe how to get to the property starting from either the Sky Bridge or the Big Carlos Pass Bridge (specify which).

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- G. If there are any deed restrictions or covenants that might affect the requested action, provide the information.
- H. Attach a list of the surrounding property owners within 500 feet of the perimeter of the area of the request. Also include two sets of mailing labels providing the names and addresses of the owners on this list, and a map showing the parcel boundaries within the 500-foot radius. This information can be acquired for a small fee by requesting a "variance report" from the Map Sales Office at the Lee County Property Appraiser's Office. Contact information for the Property Appraiser can be found at <http://www.leepa.org>.
- I. Indicate the Future Land Use Map category or categories of the property as shown on the Fort Myers Beach Comprehensive Plan's Future Land Use Map, and whether the property is located in the "platted overlay" on the map.
- J. Indicate the current zoning of the property. In most cases the current zoning is shown on the official zoning map of the Town of Fort Myers Beach, as adopted by ordinance. If zoning actions affecting the subject property have been taken since March 2004, call Town Hall to verify the current zoning.

Explanatory Notes – Part VI

The applicant must sign and submit either of the affidavits in Part IV, as applicable.

The applicant is responsible for the accuracy and completeness of this application. Time delays or additional expenses necessitated by submitting inaccurate or incomplete information will be the responsibility of the applicant. Decisions regarding requests to waive submittal requirements are at the discretion of the Community Development Director and may not be appealed.

All information submitted with the application becomes a part of the public record and will be a permanent part of the file.

All attachments and exhibits must be legible, suitable for recording, and of a size that will fit or conveniently fold into a letter size (8 ½ by 11) folder.

Any oversized site plans, drawings, pictures, and similar materials should be submitted in a legible reduced format (no more than 11"x17", broken up onto multiple sheets if necessary).

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**EXHIBIT 4-1
DISCLOSURE OF INTEREST FORM**

STRAP# 19-46-24-W3-0120A.0100

Attach additional sheets in the same format for each separate STRAP number in the application if multiple parcels with differing ownership are included.

1. 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

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

Name, Address, and office	Percentage
2500 Estero Blvd LLC -	
Scott Daiagi, Managing Member, 1021 NW 12 Ter., Pompano Beach, FL 33069	33.33%
Zachary Grosser, Managing Member, 1021 NW 12 Ter., Pompano Beach, FL 33069	33.33%
Nathanson Investment Limited Partnership, 8809 Twin Lake Dr., Boca Raton, FL 33496	33.33%

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

Name and Address	Percentage

4. If the property is in the name of a GENERAL PARTNERSHIP or LIMITED PARTNERSHIP, list the names of the general and limited partners with the percentage of ownership.

Name and Address	Percentage

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

Name, Address, and Office (if applicable)	Percentage

Case # _____
Planner _____

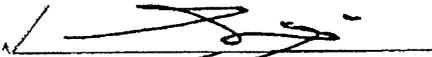
Date Received _____
Date of Sufficiency/Completeness _____

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

Name and Address

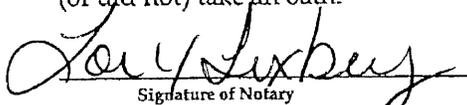
For any changes of ownership or changes in contracts for purchase subsequent to the date of the application but prior to the date of final public hearing, a supplemental disclosure of interest must be filed.

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

Signature 
Applicant
Scott Daiagi
Printed or typed name of applicant

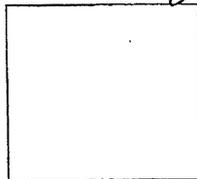
STATE OF Florida
COUNTY OF Broward

The foregoing instrument was acknowledged before me this 2 day of April, 2010, by Scott Daiagi who is personally known to me or who has produced _____ as identification and who did (or did not) take an oath.


Signature of Notary

Lori Y. Tuxbury
Typed or Printed Name of Notary

SEAL:



Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

Town of Fort Myers Beach
Department of Community Development



Zoning Division

Supplement PH-F

**Additional Required Information for an Appeal of an
Administrative Action**

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

Project Name: 2500 Estero Boulevard
Authorized Applicant: 2500 Estero Blvd., LLC c/o Robert D. Pritt, Roetzel & Andress, LPA
LeePA STRAP Number(s): 19-46-24-W3-0120A.0100

Current Property Status:
Current Zoning: Commercial Planned Development (CPD)
Future Land Use Map (FLUM) Category: Boulevard
Platted Overlay? __yes <input checked="" type="checkbox"/> __no <input type="checkbox"/> FLUM Density Range: 6 du/acre

Requested Action:

<input type="checkbox"/> Appeal interpretation of LDC Section(s) _____
<input checked="" type="checkbox"/> Appeal other administrative action (Explain: <u>Senate Bill 360 denial</u>)
<input type="checkbox"/> Appeal development permit (must be authorized by property owner)
<input type="checkbox"/> Appeal decision of LPA (Explain: _____)

Date of decision: March 8, 2010
--

NARRATIVE

2500 Estero Blvd., LLC (hereinafter, "the Applicant") is appealing the March 8, 2010 decision of Town of Ft. Myers Beach Community Development Director, Frank Shockey, Ph.D. (hereinafter, "the Director"), denying a two-year extension pursuant to Senate Bill 360 for Building Permit "COM08-0003" which expired on February 27, 2009. The Applicant made application on or before December 31, 2009 to the Town of Ft. Myers Beach for a 2 year extension of (1) Development Order "DOS2008-00018" which would expire on July 29, 2011 absent any extensions and (2) Building Permit "COM08-0003" which expired on February 27, 2009. The request to extend Development Order DOS2008-00018 for 2 years pursuant to Senate Bill 360 was approved; therefore, the expiration date of DOS2008-00018 is now July 29, 2013. The Applicant does not contest the Director's findings with respect to development order "DOS2008-00018." The Applicant is solely appealing the Director's decision to deny the extension of building permit "COM08-0003" which expired on February 27, 2009.

A copy of the Senate Bill 360 application filed by the Applicant and the Director's March 8, 2010 response are attached hereto as composite Exhibit "1"

Director's March 8, 2010 Decision

In the Director's March 8, 2010 Decision, the Director indicates that the requested extension of building permit "COM08-0003" for two years from February 27, 2008 is denied because the permit is (1) in significant noncompliance with the conditions of the permit and (2) because the rules in effect at the time the permit was issued make the permit null and void. Specifically, the Director indicates that the Town Council adopted Ordinance 08-09 on August 18, 2008, amending Land Development Code Chapter 6, Article IV and adopting a new Flood Insurance Study and Flood Insurance Rate Map for the Town. Therefore, as of August 28, 2008 the property located at 2500 Estero Blvd, Fort Myers Beach, FL (hereinafter, "the subject property") is located in a Special Flood Hazard Area in flood zone VE with base flood elevation of 14 feet NAVD 88 and base flood elevation of 15 feet NAVD 88. Further, the Director states that the "start of construction" would be deemed to be August 27, 2008 only if the actual start of construction occurred within 180 days after August 27, 2008; however, in the instant case because the start of construction did not occur within the prescribed 180 days the permit became void and invalid on February 23, 2009. Finally, the Director finds that the building permit "COM08-0003" no longer meets the required base flood elevations pursuant to the property's location on the newly adopted Flood Insurance Rate Map.

Applicant's Response

The Applicant firmly believes that the Director's March 8, 2010 decision was made in error. Section 14 of Chapter 2009-96, Laws of Florida clearly mandates that in recognition of the 2009 real estate market any local government issued development order or building permit that has an expiration date between September 1, 2008 through January 1, 2012 is extended and renewed for a period of 2 years following its date of expiration. The sole requirement to take the benefit of such 2 year extension is that, "the holder of a valid permit or other authorization...notify the authorizing agency in writing no later than December 31, 2009, identifying the specific authorization for which the holder intends to use the extension and the

anticipated timeframe for acting on the authorization. Section 14 of Chapter 2009-96 provides only three (3) reasons in which a local government may deny a holder of a development order or building permit that expires between September 1, 2008 through January 1, 2012 who notifies the agency in writing on or before December 31, 2009 of its intent to use the extension. The three (3) reasons for denial are found in subsection (4) of Section 14, Chapter 2009-96. Subsection (4) specifically states that the two year extension does not apply to:

- (a) A permit or other authorization under any programmatic or regional general permit issued by the Army Corps of Engineers; or
- (b) A permit or other authorization held by an owner or operator determined to be in significant noncompliance with the conditions of the permit or authorization as established through the issuance of a warning letter or notice of violation, the initiation of formal enforcement, or other equivalent action by the authorizing agency; or
- (c) A permit or other authorization, if granted an extensions, that would delay or prevent compliance with a court order.

None of the three (3) reasons specifically stated in Subsection (4) to deny a two year extension exist in the instant case. The two year extension is not a request to extend a permit or other authorization issued by the Army Corps of Engineers; rather it is a request to extend a local government issued building permit. The Applicant was not held or determined to be in significant noncompliance with the conditions of building permit "COM08-0003" as established through the issuance of a warning letter or notice of violation, the initiation of formal enforcement, or other equivalent action by the Town of Ft. Myers Beach. Although the Director's March 8, 2010 denial of the two-year extension for building permit "COM08-0003" states that the Applicant is in significant noncompliance with the conditions of the permits, Subsection 4(b) of Section 14, Chapter 2009-96 requires that there be evidence of such noncompliance in the form of a issued warning letter, notice of violation, enforcement action or equivalent. In the instant case, no action has been taken by the Town due to the alleged noncompliance. And, certainly, as of December 31, 2009 no action had been taken by the Town through issuance of a notice of violation, enforcement action, or warning letter to indicate that the Applicant was in noncompliance with building permit "COM08-0003." Finally, the granting of an extension of building permit "COM08-0003" would not delay or prevent compliance with a court order. Given that the Director's March 8, 2010 denial is not based on any of the factors contained in Subsection (4), Section 14, Chapter 2009-96, the Director may not and has no authorization to deny the extension of building permit "COM08-0003."

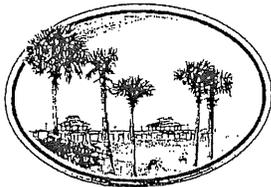
State Law vs. Local Law

It is well settled that where there is a conflict between state law and local law, the state law trumps the local law. Rinzler v. Carlson, 262 So.2d 661, 668 (Fla. 1972), clearly finds that, "[m]unicipal ordinances are inferior in stature and subordinate to the laws of the state. Accordingly, an ordinance must not conflict with any controlling provision of a state statute, and if any doubt exists as to the extent of a power attempted to be exercised which may affect the operation of a state statute, the doubt is to be resolved against the ordinance and in favor of the

statute.” Rinzler v. Carson, 262 So.2d. 661, 668. Rinzler goes on to state that, “[a] municipality cannot forbid what the legislature has expressly licensed, authorized or required, nor may it authorize what the legislature has expressly forbidden.” Id.; See also 23 Fla.Jur., Municipal Corporations, Section 93, p. 116; State ex rel. Baker v. McCarthy (1936) 122 Fla. 749, 166 So. 280; Wilton Manors v. Starling (1960, Fla.App.), 121 So.2d 172; Baltimore v. Sitnick, 254 Md. 303, 255 A.2d 376. Moreover, “[i]n order for a municipal ordinance to prohibit that which is allowed by the general laws of the state there must be an express legislative grant by the state to the municipality authorizing such prohibition.” Id.; See also McQuillin, Municipal Corporations, Vol. 5, Section 15.20.

In the instant case the Directors March 8, 2010 denial of building permit “COM08-0003” relies on Ordinance 08-09 adopted by the Town Council on August 18, 2008 and finding that the building permit expired on February 27, 2009 and cannot be extended. The Florida legislature, however, adopted and the Governor of Florida approved on June 1, 2009, Chapter 2009-96 Laws of Florida, which requires a two year extension of development orders and building permits that expire between September 1, 2008 and January 1, 2012 where the property owner or authorized agent notifies the local government in writing of its intent to utilize the extension. The expiration date of February 27, 2009 falls between September 1, 2008 and January 1, 2012 and the Applicant notified the Town of Fort Myers Beach on or before December 31, 2009 of its intent to utilize the two-year extension. There is therefore, an apparent conflict between Chapter 2009-96 and Ordinance 08-09. However, because a municipality cannot forbid what the legislature has clearly authorized pursuant to Chapter 2009-96, the Town of Fort Myers Beach must approve the extension of building permit “COM08-0003”. The only manner in which the Town of Ft. Myers Beach may prohibit what is allowed by the laws of Florida is where there is an express legislative grant authorizing the Town to deny an extension. The legislature provided three reasons or types of permits for which a two –year extension should not be granted pursuant to Subsection (4), Section 14, Chapter 2009-96; however, the Applicant and building permit “COM08-0003” did not meet any of the criteria for denial of the two year extension. Consequently, the Town must overturn the Director’s March 8, 2010 decision and grant a two-year extension of building permit “COM08-0003.”

Attachments: Exhibit “1”



Town of Fort Myers Beach

tabbier	EXHIBIT
	Narrative 1

Larry Kiker
Mayor

Herb Acken
Vice Mayor

Tom Babcock
Councilmember

Jo List
Councilmember

Bob Raymond
Councilmember

Robert D. Pritt, Esq.
Roetzel & Andress LPA
850 Park Shore Drive
Naples, FL 34103

March 8, 2010

Dear Mr. Pritt,

You have requested, on behalf of 2500 Estero Blvd LLC, a two-year extension of a development order, DOS2008-00018, which has an expiration date of July 29, 2011, and a building permit, COM08-0003, which had an expiration date of February 27, 2009, for development of property located at street address 2500 Estero Boulevard in the Town of Fort Myers Beach. Your request was received by the Town of Fort Myers Beach on December 29, 2009.

Chapter 2009-096, Laws of Florida, provided an extension of two years from the expiration date for each valid development order and building permit with an expiration date between September 1, 2008 and January 1, 2012. The Town Council of Fort Myers Beach adopted Resolution 09-30 to implement the statutory extensions on October 5, 2009. The extension does not apply to any permit or other authorization determined to be in significant noncompliance with the conditions of the permit or authorization, and any permit extended continues to be governed by the rules in effect at the time the permit was issued.

Staff has reviewed your request and concluded as follows:

(1) Development order "DOS2008-00018" has an expiration date between September 1, 2008 and January 1, 2012. **DOS2008-00018 is extended to July 29, 2013 as provided in Resolution 09-30.**

(2) Building permit "COM08-0003" had an expiration date of February 27, 2009. The requested extension of two years from February 27, 2009 **cannot be, and is not, approved**, because the permit is in significant noncompliance with the conditions of the permit, and because the rules in effect at the time the permit was issued make the permit null and void. COM08-0003 became null and void on February 23, 2009.

Following introduction to the Town Council on June 16, 2008 and a hearing before the Local Planning Agency on June 17, 2008, the Town Council held hearings on July 14,

2008, and August 18, 2008, and on August 18, 2008 adopted Ordinance 08-09, amending Land Development Code Chapter 6, Article IV, to reference a Flood Insurance Study ("FIS") and Flood Insurance Rate Maps ("FIRMs") with an effective date of August 28, 2008 as the basis for establishing flood regulations in the Town. The introduction of Ordinance 08-09 was advertised in the Fort Myers *News-Press* on June 10, 2008. The August 18, 2008 hearing at which Ordinance 08-09 was adopted was advertised in the *News-Press* on July 23, 2008.

Effective August 28, 2008, the property at 2500 Estero Boulevard is located in a Special Flood Hazard Area in flood zone VE, partly with base flood elevation of 14 feet NAVD 88 and partly with base flood elevation of 15 feet NAVD 88. New construction and substantial improvements must have the lowest horizontal supporting member elevated to or above the base flood elevation, with all space below the lowest horizontal supporting member open so as not to impede the flow of flood waters, and must meet other requirements pertaining to flood zone VE set forth with greater specificity in the Town's floodplain regulations.

Rules under which the permit was issued, in effect on the date the permit was issued, August 27, 2008, provided that the "start of construction" would be deemed to be August 27, 2008 only if the "actual start of construction" occurred within 180 days after August 27, 2008. The "actual start of construction" was and is defined by LDC Section 6-405 as:

the first placement of permanent construction of a structure on the site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory structures such as garages or sheds not occupied as dwelling units or not part of the main structure.

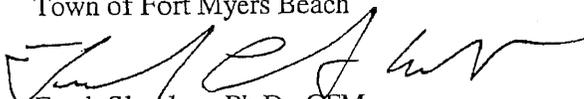
The actual start of construction did not occur within 180 days of August 27, 2008 and the permit became void and invalid on February 23, 2009. During all relevant periods of time before and after August 27, 2008, new construction was required to comply with the required base flood elevation in effect on the date of the start of construction. Current required base flood elevations took effect on August 28, 2008 as provided by Ordinance 08-09, which was adopted on August 18, 2008. New construction and substantial improvements for which the "start of construction" is on or after August 28, 2008 must comply with the standards pertaining to the Flood Insurance Rate Maps in effect on the date of the start of construction. **COM08-0003 is void and invalid for failure to comply with the requirements in effect on the date the permit was issued**, which required new construction to comply with the required base flood elevation at the start of construction. Resolution 09-30 does not reinstate a voided permit that has failed to meet conditions under which it was originally issued.

Your clients were on notice of the impending changes in base flood elevations substantially prior to August 27, 2008. The Federal Emergency Management Agency (FEMA) issued new preliminary Flood Insurance Rate Maps (FIRMs) covering the Town of Fort Myers Beach, including your clients' property, on July 31, 2006. A public notice regarding the release of these maps was published in the Fort Myers *News-Press* on October 27, 2006 and on November 3, 2006. Following an appeal process, FEMA issued revised preliminary FIRMs covering the Town of Fort Myers Beach on January 10, 2008, with an effective date of August 28, 2008 and notified the Town that adoption of these maps as the basis for floodplain regulations no later than August 28, 2008 was a mandatory condition of continued participation in the National Flood Insurance Program. Both the 2006 preliminary FIRMs and the 2008 final FIRMs would prevent the type of construction permitted by COM08-0003 because the site is entirely within flood zone VE. Your clients applied for DOS2008-00018 on January 29, 2008, after the revised preliminary FIRMs were issued and appeals of the required elevations were concluded. Your clients applied for COM08-0003 on June 23, 2008. Mr. McHarris, your clients' design professional, was well aware of the progress of these changes to the FIS and FIRMs affecting this area in general and your clients' property in particular, through many and repeated communications with Town staff beginning well before your clients applied for DOS2008-00018 or COM08-0003.

Town staff stand ready to assist you and your clients should they wish to request to amend the planned development zoning applicable to the subject property, amend DOS2008-00018, and revise construction plans as may be necessary in order to design a viable project that will comply with the base flood elevation at the start of construction. If your clients feel that the FIRMs and FIS applicable to the subject property are incorrect, they may present scientific and technical data so demonstrating to FEMA through the letter of map amendment process. Alternatively, if your clients feel that their situation can be found to meet the applicable criteria, they may apply to the Town Council for a variance from the required base flood elevation in accordance with the Town's floodplain regulations. Scientific and technical data are typically necessary to provide the Town with competent substantial evidence upon which to base the requisite findings and determinations prior to granting a variance.

Sincerely,

Department of Community Development
Town of Fort Myers Beach



Frank Shockey, Ph.D., CFM
Community Development Director

Town of Fort Myers Beach
 Department of Community Development



Request for two-year extension (SB 360)

For development orders and permits expiring between September 1, 2008 and January 1, 2012.
 This application must be filed before December 31, 2009

Project Name: 2500 Estero Boulevard
Owner or authorized applicant: Robert D. Pritt, Attorney
Mailing Address: 850 Park Shore Drive, Trianon Centre, Third Floor, Naples, FL 34103
Phone: (239) 649-2714 Fax (239) 261-3659 E-mail: rpritt@ralaw.com

Project Information
Case Number: DOS2008-00018 & COM 08-0003
Street Address: 2500 Estero Blvd. Fort Myers Beach, FL 33931
LeePA STRAP number(s): 19-46-24-W3-0120A.0100
Date of expiration: DOS 7-29-11/COM 2-23-09
Type of order/permit: DOS=DO Submittal Small/COM=Commercial New
Anticipated timeframe for future action: February 1, 2010

ATTACH ONE COPY OF THE APPROVED DEVELOPMENT ORDER OR BUILDING PERMIT FOR WHICH THE EXTENSION IS REQUESTED

Check to acknowledge the following:

It is the applicant's responsibility to apply for extensions of any and all related development permits (such as Water Management District and/or Department of Environmental Protection permits)

The new expiration date will be exactly 2 years from the date of expiration of the existing approved development order or permit.

A request for extension is not granted until approved in writing by the Town Manager or his/her designee in accordance with Town Council Resolution 09-30. Extensions will continue to be governed by the rules in effect at the time the development order or permit was issued.

Town of Fort Myers Beach
 Department of Community Development
 2523 Estero Boulevard
 Fort Myers Beach, FL 33931
 (239) 765-0202

Affidavit

Application Signed by Individual Owner or Authorized Applicant

I, Robert D. Pritt, Attorney, Roetzel & Andress L.P.A., swear or affirm under oath, that I am ~~the owner~~ or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town 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 supplemental matter attached hereto and made a part of this application are honest and true;
3. I hereby authorize Town staff or their designee(s) to enter upon the property during normal working hours (including Saturdays and Sundays) for purposes reasonably related to the subject matter of this application; and
4. The property will not be transferred, conveyed, sold, or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Robert D. Pritt

Signature

Robert D. Pritt, Attorney
Roetzel & Andress L.P.A.

Typed or Printed Name

State of Florida

County of Collier

The foregoing instrument was sworn to (or affirmed) and subscribed

before me this 12/28/2009 by Robert D. Pritt

(date)

(name of person under oath or affirmation)

who is personally known to me or produced _____

(type of identification)

as identification.

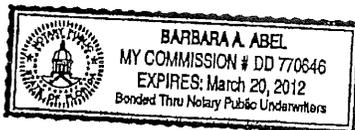
Barbara A. Abel

Signature of person administering oath

Barbara A. Abel

Typed or Printed Name

SEAL:



PART III – Affidavit

Application Signed by a Corporation, Limited Liability Company (LLC), Limited Company (LC), Partnership, Limited Partnership, or Trustee

See attached explanatory notes for instructions

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

- 1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town 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 supplemental matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of the Town of Fort Myers Beach and Lee County Department of Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made through this application; and
4. The property will not be transferred, conveyed, sold, or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

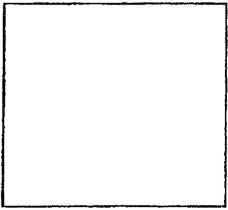
Name of Entity (corporation, LLC, partnership, etc) _____ Signature _____
Title of Signatory _____ Typed or Printed Name _____

State of _____
County of _____

The foregoing instrument was sworn to (or affirmed) and subscribed before me this _____ by _____
Date Name of person under oath or affirmation

who is personally known to me or who has produced _____
Type of identification
as identification.

Signature of person administering oath _____ Typed or Printed Name _____



SEAL:

606339 v.01 \
122725.0001

Mailed 11/28/09



850 PARK SHORE DRIVE
TRIANON CENTRE - THIRD FLOOR
NAPLES, FL 34103
239.649.2714 DIRECT
239.649.6200 MAIN
239.261.3659 FAX
rpritt@ralaw.com

December 28, 2009

Town of Fort Myers Beach
Attn: Dr. Frank Shockey and Eric Berris
Department of Community Development
2523 Estero Boulevard
Fort Myers Beach, FL 3393

Via: U.S. Mail and E-mail: Frank@Fort
MyersBeachFL.GOV;Eric@FortMyersBeachFL.GOV

Re: Our Client 2500 Estero Blvd, LLC Extension of Pursuant to Section 14 SB 360
DOS 2008-00018; COM 08-0003

Dear Doctor Shockey and Mr. Berris:

As a follow up to my meeting with Mr. Berris on Friday, December 18th, please take notice that my client, 2500 Estero Blvd, Florida, LLC hereby notifies the Town of Fort Myers Beach pursuant to Section 14(3) of Senate Bill 360 (2009 Session) of its intention to avail itself of the benefit of the law and to obtain the two year extension of the following permits and any permit related thereto:

- DOS 2008-00018 Development Order/Permit
- COM08-0003—Building New Construction—Amount \$725,000.00 date issued 06/23/2008).

It also includes any other open permit for the above described property that has an expiration date of September 1, 2008 through January 1, 2012.

The STRAP number for the property is: (19-46-24-W3-0120A.0100). The address of the property is as follows: 2500 Estero Boulevard, Fort Myers Beach, FL 33931.

We understand that the extension will be for two years following the date of expiration. We would appreciate your providing information on the date of expiration according to your records so we can reconcile any differences.

These specific authorization for which the holder of the permit intends to use the extension is as follows: Development of and construction of a commercial building located upon the site in accordance with the terms of the development order and building permit.

The anticipated timeframe for acting on the authorization for extension will be within 30 days from receipt of acknowledgement of extension (i.e., February 1, 2010).

In my conference with you, Mr. Berris, you indicated that there is no application form or fee for this extension. If that is incorrect, please notify me right away so I can file the application. Please contact me if there is any need to provide further information. Please acknowledge the extension.

December 28, 2009
Page 2

Very truly yours,

A handwritten signature in black ink, appearing to read "R.D. Pritt", with a stylized flourish at the end.

Robert D. Pritt
Board Certified City, County &
Local Government Lawyer
For the Firm

RDP/ca
cc: Scott Daiagi, Member/Manager, 2500 Estero Blvd, LLC
Joe McHarris, Architect

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View Case Status

The information below summarizes the permit/case you selected.

Case Number	Case Type	Value	Status
DOS2008-00018	DO Submittal Small		Issued

Project Name:	2500 ESTERO BOULEVARD		
Address:	2510 ESTERO BLVD FORT MYERS BEACH 33931	Strap #:	194624W3013020000
Directions:			
Description:	Approved for the construction of retail/office and residential condominiums in two buildings [Retail/Office: 8,823 square foot two-story bldg. (1st Floor: 4,449 sq.ft. retail, 2nd Floor: 4,374 sq.ft. office); Residential: 3 units in one three-story bldg.], with open parking, landscaping, water & sewer services, stormwater management facilities, and related site improvements. [CNC2008-00018]		
Important Dates:	Received: 1/29/2008	Issued: 7/28/2008	Finalized:

People

Role	Name	Address
Owner	2500 ESTERO BLVD LLC	3585 NW 31ST AVE OAKLAND PARK FL 33309
Applicant	SCOTT DAJAGI	3585 NW 31ST AV OAKLAND PARK FL 33309
Agent	JOCELYN N DE LESTANG, PE	2375 TAMIAMI TR N SUITE 207 NAPLES FL 34103
Engineer	JOCELYN N DE LESTANG	2375 TAMIAMI TR NORTH STE 207 NAPLES FL

Application Activity

Type	Requested	Scheduled	Completed	Disposition	County Staff
DO2 Application (Small DO) A	1/29/2008	2/12/2008	2/21/2008	DEN	Tom Sawtell
<i>Comments</i>	ETS-D02				
Rev Environmental Matters-SM	1/29/2008	2/11/2008	2/13/2008	DEN	Aaron D. Martin
<i>Comments</i>	DO2				
Rev Engineering Design-SM	1/29/2008	2/11/2008	2/12/2008	DEN	Tom Sawtell
<i>Comments</i>	ETS-D02				
Rev Zoning/Comp Pln Cmplnce-SM	1/29/2008	2/11/2008	2/12/2008	DEN	Tom Sawtell
<i>Comments</i>	ETS-D02				
Staff Contact	1/29/2008	1/30/2008	1/29/2008	DONE	Tom Sawtell

	Comments	ETS				
Check legal		1/29/2008	2/11/2008	2/4/2008	DEN	Rick Modesitt
	Comments	DO2 - The area of the Boundary Survey and Legal Description provided does close, BUT does not match the area indicated from the Property Appraisers Office and 2007 Aerial Photographs. Please resolve and resubmit.				
Initial GIS mapping		1/29/2008	2/11/2008	2/4/2008	DEN	Rick Modesitt
	Comments	DO2 - The area of the Boundary Survey and Legal Description provided does close, BUT does not match the area indicated from the Property Appraisers Office and 2007 Aerial Photographs. Please resolve and resubmit.				
Rev Fire Protection Design-SM		1/29/2008	2/11/2008	2/14/2008	DEN	Patricia A Kemerer
	Comments	DO2				
Rev Utility Design-SM		1/29/2008	2/11/2008	2/11/2008	DEN	Jessica Gutierrez
	Comments	DO2				
Rev Concurrency Requiremtns-SM		1/29/2008	2/11/2008	2/13/2008	APPR	Bob Rentz
	Comments	CNC2008-00018.[need revised TIS] {TIS approved 6/13/08}				
Rev Traffic Impact Statemnt-SM		1/29/2008	2/11/2008	2/13/2008	DEN	Bob Rentz
	Comments	DO2				
Rev Surface Water Design-SM		1/29/2008	2/11/2008	2/12/2008	DEN	Tom Sawtell
	Comments	ETS-D02				
Rev County Roads Impacts-SM		1/29/2008	2/11/2008	2/1/2008	N/A	Dan O Kirkpatrick
	Comments	DO2, FMB Mainatined Rd				
Review Architectural Design		2/12/2008	3/3/2008	2/12/2008	DEN	Tom Sawtell
	Comments	ETS-D02				
Rev Transportation Matters		2/12/2008	3/3/2008	2/12/2008	DEN	Tom Sawtell
	Comments	ETS-D02				
Rev Outdoor Lighting Design		2/12/2008	2/25/2008	2/12/2008	DEN	Tom Sawtell
	Comments	ETS				
Rev Bike Pedestrian Ways		2/12/2008	2/25/2008	2/12/2008	DEN	Tom Sawtell
	Comments	ETS-D02				
Ready for Pick-up		2/26/2008		2/26/2008	DONE	Liz Valver
	Comments	DO2 Application (Small DO) 2-21-2008 Denied				
RO1 Application (Resubmittal)A		5/23/2008	6/4/2008	6/16/2008	DEN	Tom Sawtell
	Comments	RO1				
Rev Environmental Matters-RS		5/23/2008	6/3/2008	6/2/2008	DEN	Aaron D. Martin
	Comments	RO1				
Rev Engineering Design-RS		5/23/2008	6/3/2008	6/2/2008	STP	Tom

					Sawtell
<i>Comments</i>	ETS-RO1				
Rev Zoning/Comp Pln Cmplnce-RS	5/23/2008	6/3/2008	6/2/2008	DEN	Tom Sawtell
<i>Comments</i>	RO1				
Staff Contact	5/23/2008	5/27/2008	5/27/2008	DONE	Tom Sawtell
<i>Comments</i>	ETS				
Rev Fire Protection Design-RS	5/23/2008	6/3/2008	5/30/2008	DEN	Patricia A Spaar
<i>Comments</i>	RO1				
Rev Utility Design-RS	5/23/2008	6/3/2008	5/29/2008	STP	Thom Osterhout
<i>Comments</i>	RO1				
Rev Traffic Impact Statemnt-RS	5/23/2008	6/3/2008	6/13/2008	APPR	Bob Rentz
<i>Comments</i>	RO1				
Rev Surface Water Design-RS	5/23/2008	6/3/2008	6/2/2008	APPR	Tom Sawtell
<i>Comments</i>	ETS-RO1				
Check Legal - RS	5/23/2008	6/3/2008	5/28/2008	DEN	Rick Modesitt
<i>Comments</i>	RO1 - The area of the Boundary Survey and Legal Description provided does close, BUT does not match the area indicated from the Property Appraisers Office and 2007 Aerial Photographs. Please resolve and resubmit.				
Initial GIS Mapping - RS	5/23/2008	6/3/2008	5/28/2008	DEN	Rick Modesitt
<i>Comments</i>	RO1 - The area of the Boundary Survey and Legal Description provided does close, BUT does not match the area indicated from the Property Appraisers Office and 2007 Aerial Photographs. Please resolve and resubmit.				
Review Utility Design	6/2/2008	6/20/2008	6/2/2008	DEN	Tom Sawtell
<i>Comments</i>	ETS-R01 (FMB water)				
Rev Transportation Matters	6/2/2008	6/20/2008	6/2/2008	DEN	Tom Sawtell
<i>Comments</i>	ETS-R01				
Rev Outdoor Lighting Design	6/2/2008	6/13/2008	6/2/2008	STP	Tom Sawtell
<i>Comments</i>	ETS-R01				
Ready for Pick-up	6/16/2008		6/16/2008	DONE	Liz Valver
<i>Comments</i>	RO1 Application (Resubmittal) 6-16-2008 Denied				
RO2 Application (Resubmittal)A	7/2/2008	7/14/2008	7/28/2008	STP	Tom Sawtell
<i>Comments</i>	ETS - R02				
Rev Environmental Matters-RS	7/2/2008	7/11/2008	7/7/2008	STP	Aaron D. Martin
<i>Comments</i>	R02				
Rev Engineering Design-RS	7/2/2008	7/11/2008	7/21/2008	STP	Tom Sawtell

	<i>Comments</i> ETS - R02				
Rev Zoning/Comp Pln Cmplnce-RS	7/2/2008	7/11/2008	7/21/2008	STP	Tom Sawtell
	<i>Comments</i> ETS - R02				
Staff Contact	7/2/2008	7/3/2008	7/3/2008	DONE	Tom Sawtell
	<i>Comments</i> ETS				
Rev Fire Protection Design-RS	7/2/2008	7/11/2008		APPR	Dan Notte
	<i>Comments</i> R02				
Rev Utility Design-RS	7/2/2008	7/11/2008	7/10/2008	STP	Tom Sawtell
	<i>Comments</i> ETS - R02 (FMB Water)				
Check Legal - RS	7/2/2008	7/11/2008	7/7/2008	APPR	Rick Modesitt
	<i>Comments</i> R02 - P.A. Office has modified and corrected maps.				
Initial GIS Mapping - RS	7/2/2008	7/11/2008	7/7/2008	DONE	Rick Modesitt
	<i>Comments</i> R02 - P.A. Office has modified and corrected maps.				
Review Fire Protection Design	7/10/2008	7/30/2008	7/10/2008	APPR	Dan Notte
Review Utility Design	7/18/2008	8/7/2008	7/18/2008	STP	Thom Osterhout
	<i>Comments</i> I will need to see the resubmittal please.				
Rev Bike/Pedestrian Ways-RS	7/21/2008	7/29/2008	7/28/2008	STP	Tom Sawtell
	<i>Comments</i> ETS-R02 FMB requires recordation of easement before DO				
Rev Transportation Matters	7/28/2008	8/15/2008	7/28/2008	APPR	Tom Sawtell
	<i>Comments</i> ETS-R02				
Review Engineers Cost Estimate	7/31/2008		7/31/2008	APPR	Pam Hendry
	<i>Comments</i> \$5,175.00 for off-site.				
Ready for Pick-up	8/1/2008		8/1/2008	DONE	Liz Valver
	<i>Comments</i> R02 Application (Resubmittal) 7-28-2008 Appv'd / Stips				

Fees

Item	Fee Amount	Fee Remaining
DO Base Fee Plus Acreage	3,060.00	0.00
DO Resubmittal Fee (R02 etc.)	435.00	0.00
Total	\$3,495.00	\$0.00

The total fee due on this permit/application is \$0.00

Documents for Activities

DO2 Application (Small DO) A	DOS2008-00018 2-21-08 DENIED	DO2 APPLICATION (SMALL DO) (0 bytes)
R02 Application (Resubmittal)A	DOS2008-00018 7-28-08 APPRV'D STIP	R02 APPLICATION (RESUBMITTAL) (0 bytes)

If you are unable to open a 'Certificate of Occupancy or an Elevation Certificate', please send an email to [Geoff Rinehart](mailto:Geoff.Rinehart). If you are unable to open any other type of document, please send an email to [Jean Mars](mailto:Jean.Mars). Please include the case number and the name of the document you are looking to receive. For General Permitting information please call 239-533-8329 or email eConnect@leegov.com.

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Version: 3.5.3.20051221.03

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Town of Fort Myers Beach



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Site Information

[Click here for Details](#)

Address	2500 ESTERO BLVD
APN	194624W30120A0100

Permit Information

Permit #	COM08-0003
Type	COMMERCIAL
Subtype	Commercial-New
Description	New Construction
Status	EXPIRED
Applied Date	6/23/2008
Issued Date	8/27/2008
Approved Date	8/27/2008
Final Date	

Contact Information

[Click here for Details](#)

APPLICANT	EnviroCore Construction
CONTRACTOR	EnviroCore Construction
OWNER	2500 ESTERO BLVD LLC



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Town of Fort Myers Beach

2523 Estero Boulevard, FL 33931

The eTrakit Online System was designed by CRW Associates

Town of Fort Myers Beach



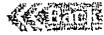
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[Detail](#)



Site Information - Detailed (COM08-0003)

Site Address	2500 ESTERO BLVD
City, State, Zip	FORT MYERS BEACH, FL 33931
Parcel Number	194624W30120A0100
Lot	
Block	
Tract	
Subdivision	
Legal Description	SEAGRAPE SUBD BLK A PB 4 PG 17 LTS 10 11 + 12 + PT 13
Lot Sq. Ft.	0
Building Sq. Ft.	0



Town of Fort Myers Beach

2523 Estero Boulevard, FL 33931

The eTrakit Online System was designed by CRW Associates

Town of Fort Myers Beach



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Contact Information - Detailed (COM08-0003)

Contact Type APPLICANT
 Name EnviroCore Construction
 Address 11390 Bent Pine Drive
 City Fort Myers
 State FL
 Zip 33913

Contact Type CONTRACTOR
 Name EnviroCore Construction
 Address 11390 Bent Pine Drive
 City Fort Myers
 State FL
 Zip 33913

Contact Type OWNER
 Name 2500 ESTERO BLVD LLC
 Address 3585 NW 31ST AVE
 City OAKLAND PARK
 State FL
 Zip 33309



Town of Fort Myers Beach

2523 Estero Boulevard, FL 33931

The eTrakit Online System was designed by CRW Associates

AUTHORIZATION

I, Scott Daiagi, as member/manager of 2500 Estero Blvd., LLC, the owner of the following property:

STRAP No. 19-46-24-W3.0120A.0100, 2500 Estero Boulevard, Fort Myers Beach, FL 33931,

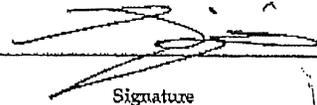
hereby authorize Robert D. Pritt, Attorney, Roetzel & Andress, L.P.A., to act as representative of the owner(s) of the property with regard to extensions of Permits pursuant to SB 360, Sec. 14, to wit:

DOS2008-00018 & COM08-0003, with:

1. 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 in accordance with this application and the Land Development Code;
2. Provide all answers to the questions in the application for extension;
3. I have authorized the staff of the Town of Fort Myers Beach and Lee County Department of Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made through this application; and
4. The property will not be transferred, conveyed, sold, or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

2500 Estero Blvd., LLC

Entity (corporation, LLC, partnership, etc)

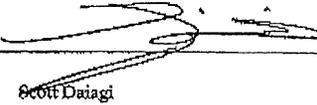


Signature

Name of

Manager

Title of Signatory

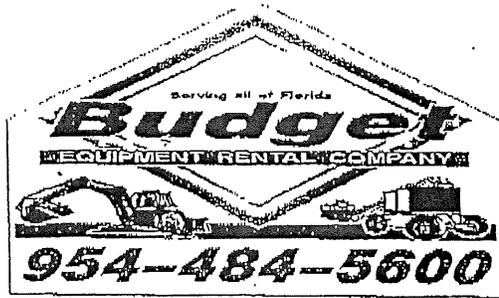


Scott Daiagi

Typed or Printed Name

Member/M

Date: 12/28/09



3585 NW 31 AVE
 OAKLAND PARK, FL.
 33309
 TEL# 954-781-1000
 FAX# 954-781-1500
**FROM THE DESK OF
 ZAK GROSSER**

Fax

To:	ATTN: Robert PAITT
Fax: 239-261-3659	Pages:
Phone:	Date:
Re:	CC:
<input checked="" type="checkbox"/> Urgent <input type="checkbox"/> For Review <input type="checkbox"/> Please Comment <input type="checkbox"/> Please Reply <input type="checkbox"/> Please Recycle	

You may request Budget not to send any further advertisements by calling 1-888-781-1027 or fax 954-714-9941 or email us at scozak@bellsouth.net and we will attempt to comply within 30 days or sooner. If you continue to receive faxes after you have opted-out, please call us at 18887811027 so we may remove you tel# from our system.

**LETTER OF AUTHORIZATION
TO TOWN OF FORT MYERS BEACH**

The undersigned does hereby swear or affirm that it is the fee simple titleholder and owner of the property commonly known as 2500 Estero Boulevard, Fort Myers Beach, Florida with STRAP # 19-46-24-W3-0120A.0100; legally described in the attached Exhibit A. The undersigned hereby designates Robert D. Pritt and K'Shana Haynie of Roetzel & Andress, LPA, to be an applicant to file an appeal of administrative action.

2500 ESTERO BLVD., LLC., a
Florida Limited Liability Company

BY: _____

SCOTT DALAGI

Its: Managing Member

STATE OF FLORIDA
COUNTY OF Broward

Sworn to (or affirmed) and subscribed before me this 2 day of April, 2010, by Scott Daiagi, as Managing Member of 2500 ESTERO BLVD. LLC., a Florida Limited Liability Company on behalf of the company. He is personally known to me or has produced _____ as identification and who ~~did~~ (did not) take an oath.



Lori Y. Tuxbury
Signature of Notary Public
Lori Y. Tuxbury
(Name typed, printed or stamped)

*If more than one owner then all owners must sign. See explanation on back.

EXPLANATORY NOTES

Where there is more than one owner, either legal or equitable, then all such owners must jointly initiate the application. Exceptions to this are:

- 1) It is not required that both husband and wife initiate the application on private real property owned by them.
- 2) Where the property is subject to a land trust agreement, the trustee may initiate the application.
- 3) Where the fee owner is a corporation, any duly authorized corporate official may initiate the application.
- 4) Where the fee owner is a partnership, the general partner may initiate the application.
- 5) Where the fee owner is an association, the association may appoint an agent to initiate the application on behalf of the association.
- 6) Where the property is a condominium or time-share condominium, refer to Sec. 34-201(a)(1)b. for rules.
- 7) Where the property is a subdivision, refer to Sec. 34-201(a)(1)c. for rules.
- 8) Rezoning initiated by the Board of County Commissioners on property not owned by the county.

INSTR # 2005000109992, Doc Type D, Pages 4, Recorded 11/08/2005 at 03:47 PM, Charlie Green, Lee County Clerk of Circuit Court, Deed Doc. D \$12705.00 Rec. Fee \$35.50 Deputy Clerk WMILLER

12/17/05



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

Property Appraisers Parcel Identification (Folio) Numbers: 19-46-24-W3-0128A, 0100/19-46-24-W3-01362-0000 Granise SS #: _____

SPACE ABOVE THIS LINE FOR RECORDING DATA

THIS WARRANTY DEED, made the ____ day of September, 2005 by

COTLE, INC., a Florida corporation, herein called the grantor, to

2590 ESTERO BLVD, LLC, a Florida limited liability company, whose post office address is 3585 NW 31st Avenue, Oakland Park, FL 33309, hereinafter called the Grantee: (Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

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

Lot 2, BLAKES SUBDIVISION, according to the map or plat thereof on file and recorded in Plat Book 4, Page 44, and Lots 10, 11, 12 and 13, Block A, SEAGRAPE SUBDIVISION, according to the map or plat thereof on file and recorded in the office of the Clerk of the Circuit Court in Plat Book 4, Page 17, all in the Public Records of Lee County, Florida, LESS AND EXCEPT a portion of said Lot 13, more particularly described as follows: From the SE corner of Lot 13, Block A, SEAGRAPE SUBDIVISION, as recorded in Plat Book 4, Page 17, Lee County, Florida, run westerly along the northerly right-of-way of Cottage Avenue for 67.20'; thence by an interior angle of 94 degrees 24'39" run 60.30'; thence by an interior angle of 90 degrees run 8.00'; thence by an interior angle of 270 degrees run 3.00'; thence by an interior angle of 90 degrees run 38.01' to the east line of said Lot 13; thence southerly 71.61' along said east line to the Point of Beginning.

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

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

AND, the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple, that the grantor has good right and lawful authority to sell and convey said land, and hereby warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 2004.

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

Signed, sealed and delivered in the presence of:

COTLE, INC., a Florida corporation

By: Spas Pasev, President 6309 Corporate Court, #115, Fort Myers, FL 33919

Witness #1 Signature for Spas Pasev Spas Pasev

Witness #1 Printed Name

Witness #2 Signature for Spas Pasev Spas Pasev

Witness #2 Printed Name

COUNTRY OF CZECH REPUBLIC PROVINCE OF PRAHA COUNTY OF PRAHA 2202/010

The foregoing instrument was acknowledged before me this 14th day of September, 2005, by Spas Pasev, President of COTLE, INC., a Florida corporation, who executed on behalf of the corporation. Spas Pasev is () personally known to me or has (X) produced I.D. as identification.

Signature of Notary [Signature] Type/Print Name of Notary MARY ALENA PROCHAZKOVA Commission Number 0508020000 Commission Expiration Date 12/31/2008

Certification – Authentication

Sequential number in the certification register:: O/III16669/2005
I herewith certify that Spas Pasev

Born on 5/24/1969
Prague 4 – Modřany
Na havránce 245/47

signed this deed in his own hand before the notary public,
His identity has been verified from an official identity card.
In Prague, on 9/14/2005

[Round stamp:]
JUDr. Alena Procházková
Notary Public in Prague

[Signature]
JUDr. Alena Procházková
NOTARY PUBLIC
in Prague

Certification – Authentication

Sequential number in the certification register:: O/II16672/2005.
I herewith certify that Mgr. Jana Svobodová

personal identification number: 586109 / 0246
Jesenice, Horní Jirčany
Azalkova 530

District of Praha- západ
signed this deed in her own hand before the notary public,
Her identity has been verified from an official identity card.
In Prague, on 9/14/2005

[Round stamp:]
JUDr. Alena Procházková
Notary Public in Prague

[Signature]
JUDr. Alena Procházková
NOTARY PUBLIC
in Prague



CERTIFICATE OF ACCURACY

STATE of New York) §:
County of New York)

Mark Patrick Banish, being duly sworn, deposes and says that Milan Kolac is a translator associated with CP Language Institute Inc., 225 W. 57th Street, Suite 404, New York, NY 10019, who is fluent in the Czech and English languages and he translated the attached document relating to:

Czech Certification Clauses

from the Czech language into the English language. It is a true and correct translation of the original, to the best of his knowledge and belief.

A handwritten signature in black ink, appearing to read 'Mark Patrick Banish', is written over a horizontal line.

Sworn before me this Twenty-second day of September of 2005

DANNY HSIAO
NOTARY PUBLIC, STATE OF NEW YORK
COMMISSION EXPIRES OCT. 23, 2008
QUEENSBORO, QUEENSBORO COUNTY

tabbles

EXHIBIT

5-0

Petition to Vacate
Description: for name change
Vacated Ave to Chapel St
Date of Approval: 03/21/52
CCMB: 11 Page: 429

SEACRAPE

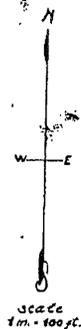
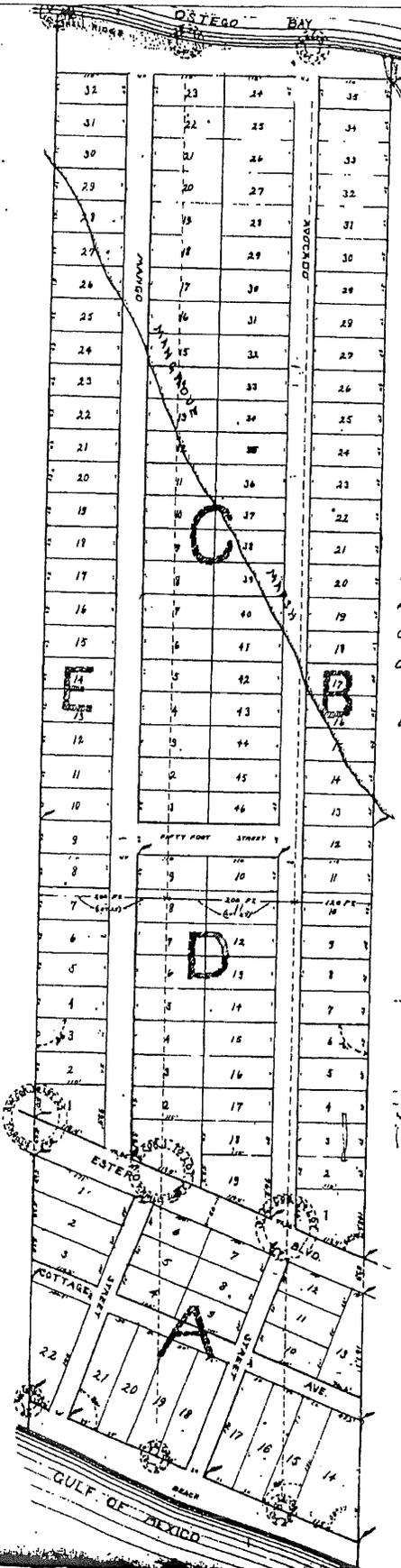
Being a Subdivision of Lots 25-26-27
28 and the West 120 Feet of Lots 29 and 30
of T.R. Hill's Subdivision of Gov't. Lots 2-3
and 4 in Section 19 T_p 46 S.-R. 24 E.
Estero Island

E.E. DAMKÖHLER AND C.S. FICKLAND, OWNERS

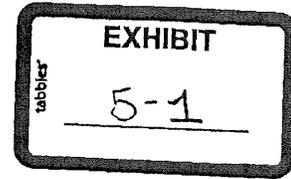
4 1/2 IN. IRON PIPE JOINTS

Petition to Vacate
Petition No: 84-13
Description: Vacation b/wm Block C&D
Date of Approval: 10/24/84
CCMB: 151 Page: 43

Vacated between
Block C & D. Ave.
CCMB: 151 4/83



SUBDIVIDED
JUNE 1950
BY
H.K. DAVIDSON, ENG.



Legal Description

Lots 10, 11, 12 and 13 Block A, SEAGRAPE SUBDIVISION, according to the map or plat thereof on file and recorded in the office of the Clerk of the Circuit Court in Plat Book 4, Page 17, all in the Public Records of Lee County, Florida, LESS AND EXCEPT a portion of said Lot 13, more particularly described as follows: From the SE corner of Lot 13, Block A, SEAGRAPE SUBDIVISION, as recorded in Plat Book 4, Page 17, Lee County, Florida, run westerly along the northerly right-of-way of Cottage Avenue for 67.20'; thence by an interior angle of 94 degrees 24'39" run 60.30'; thence by an interior angle of 90 degrees run 8.00'; thence by an interior angle of 270 degrees run 3.00'; thence by an interior angle of 90 degrees run 38.01' to the east line of said Lot 13; thence southerly 71.61' along said east line to the Point of Beginning.

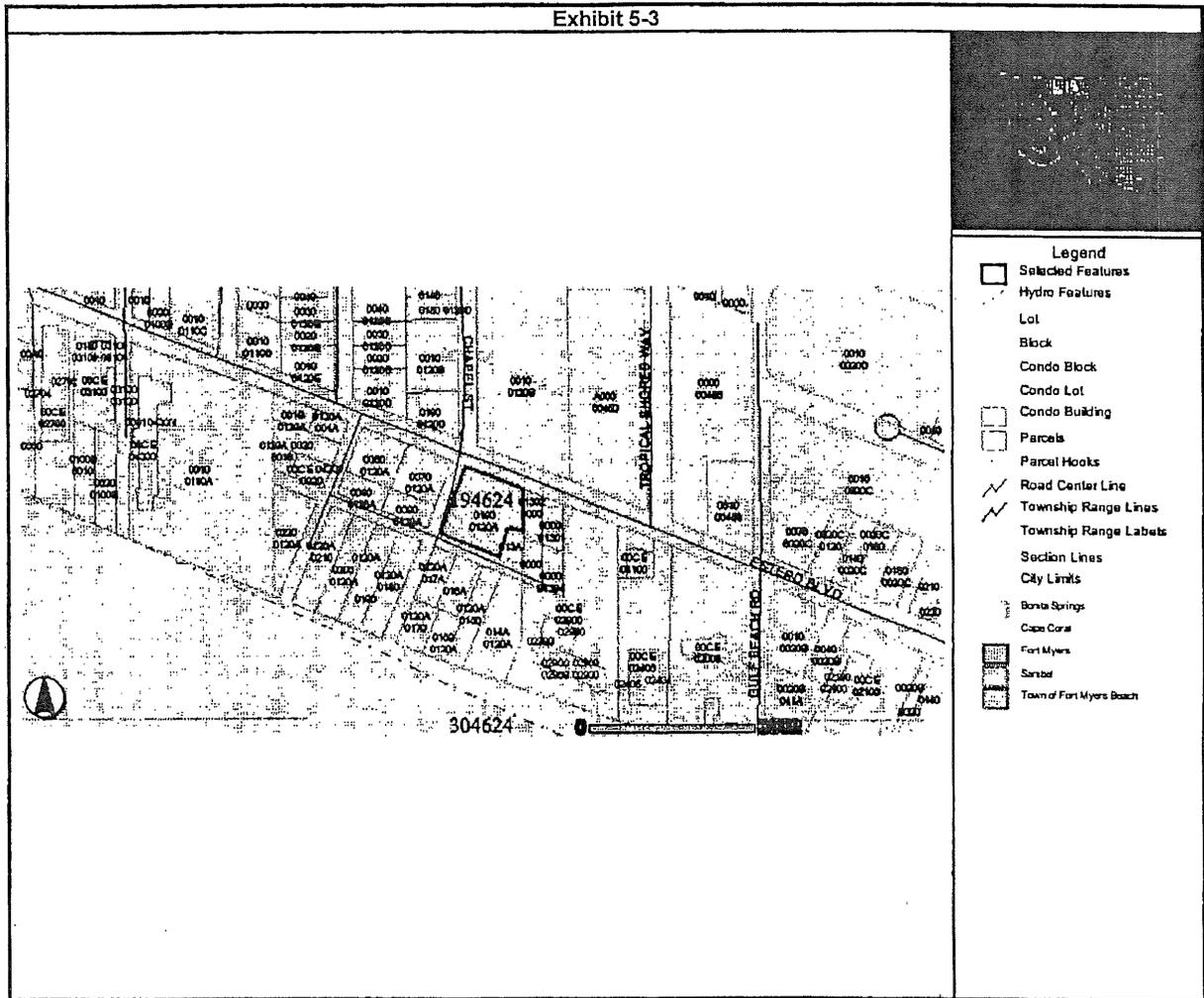


EXHIBIT
tabbles
5-3



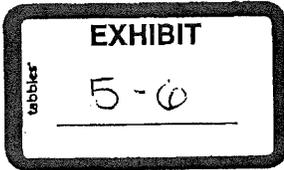
Lee County Property Appraiser

Kenneth M. Wilkinson, C.F.A.

GIS Department / Map Room

Phone: (239) 533-6159 • Fax: (239) 533-6139 • eMail: MapRoom@LeePA.org

VARIANCE REPORT



Date of Report: April 02, 2010
Buffer Distance: 500 ft
Parcels Affected: 157
Subject Parcel: 19-46-24-W3-0120A.0100

OWNER NAME AND ADDRESS	STRAP AND LOCATION	LEGAL DESCRIPTION	Map Index
HURT GEORGE CRALLE JR 9994 RADCLIFF RD NW ALBUQUERQUE NM 87114	19-46-24-W3-00449.0000 ACCESS UNDETERMINED FORT MYERS BEACH FL 33931	HILLS T P SUBD OR 577 P 258 PB 3 PG 84 LESS N 793 FT	1
HURT GEORGE CRALLE JR 9994 RADCLIFFE RD NW ALBUQUERQUE NM 87114	19-46-24-W3-00450.0000 99 TROPICAL SHORES WAY FORT MYERS BEACH FL 33931	HILLS T.P.SUBD. OR 355 P 98 PB 3 PG 84	2
FIRST STATES INVESTORS 5200 AMERICAN FINANCIAL REALTY TRUS PO BOX 167129 IRVING TX 75016	19-46-24-W3-00450.A000 2523 ESTERO BLVD #25 FORT MYERS BEACH FL 33931	HILLS T.P.SUBD. PB 3 PG 84 BEG AT SW COR LOT 31 TH N	3
HOLCOMB VICTOR W TR + 201 N ARMENIA AVE TAMPA FL 33609	19-46-24-W3-00458.0000 2545 ESTERO BLVD FORT MYERS BEACH FL 33931	HILLS T P SUBD PB 3 PG 84 PT LT 33 DESC OR 1965/302	4
HOLCOMB VICTOR W TR + 201 N ARMENIA AVE TAMPA FL 33609	19-46-24-W3-00458.0010 2555 ESTERO BLVD FORT MYERS BEACH FL 33931	HILL T P SUBD PB 3 PG 84 LOT PT 33 BEG SE COR	5
NEPTUNE HOLDINGS LLC ACCOUNTING 2310 ESTERO BLVD FORT MYERS BEACH FL 33931	19-46-24-W3-0110A.0010 2316/2320 ESTERO BLVD FORT MYERS BEACH FL 33931	BEACH ESTS PB6 PG68 BLKA+B +ALLEY + WATSON WW SUB BLKA PB5 PG67 LTS 1THRU10 LESS CONDO INST#2007000193360	6
DELUCAS JOAN M L/E 18307 DEEP PASSAGE LN FORT MYERS BEACH FL 33931	19-46-24-W3-0110D.0010 2301 ESTERO BLVD #07 FORT MYERS BEACH FL 33931	BEACH ESTATES BLK D PB 6 PG 68 LOTS 1 + 2	7
DYE GARY A 1/2 INT + S53 W31115 OLD VILLAGE RD MUKWONAGO WI 53149	19-46-24-W3-0110D.0030 110 FAIRWEATHER LN FORT MYERS BEACH FL 33931	BEACH ESTATES BLK.D PB 6 PG 68 LOT 3 LESS WLY 11 FT	8
STEFEL DONALD W + LINDA GAYLE PO BOX 2301 FORT MYERS BEACH FL 33932	19-46-24-W3-0120A.001A 2370 ESTERO BLVD FORT MYERS BEACH FL 33931	SEAGRAPE SUBD. BLK.A PB 4 PG 17 ELY 71 FT LOT 1	9
BRIDGENORTH PROPERTIES LLC PO BOX 1 FORT MYERS BEACH FL 33931	19-46-24-W3-0120A.001B 2330 ESTERO BLVD FORT MYERS BEACH FL 33931	SEAGRAPE SUBD. BLK A PB 4 PG 17 LOT 1 LESS ESTLRY 71 FT	10
PAOLERCIO WILLIAM 81 MANGO ST FORT MYERS BEACH FL 33931	19-46-24-W3-0120A.0020 81 MANGO ST FORT MYERS BEACH FL 33931	SEAGRAPE SUBD. BLK.A PB 4 PG 17 LOT 2	11
HUSSEY DEBORAH ANN TR 11230 MARBLEHEAD MANOR CT FORT MYERS FL 33908	19-46-24-W3-0120A.0040 70 MANGO ST FORT MYERS BEACH FL 33931	SEAGRAPE SUBD BLK A PB 4 PG 17 LOT 4	12
HUSSEY DEBORAH ANN TR 11230 MARBLEHEAD MANOR CT FORT MYERS FL 33908	19-46-24-W3-0120A.0050 2440 ESTERO BLVD FORT MYERS BEACH FL 33931	SEAGRAPE SUBD BLK A PB 4 PG 17 LOTS 5 + 6	13
HUSSEY DEBORAH ANN TR 11230 MARBLEHEAD MANOR CT FORT MYERS FL 33908	19-46-24-W3-0120A.0070 2450 ESTERO BLVD FORT MYERS BEACH FL 33931	SEAGRAPE SUBD BLK A PB 4 PG 17 LOTS 7 + 8	14

OWNER NAME AND ADDRESS	STRAP AND LOCATION	LEGAL DESCRIPTION	Map Index
HUSSEY DEBORAH ANN TR 11230 MARBLEHEAD MANOR CT FORT MYERS FL 33908	19-46-24-W3-0120A.0090 71 CHAPEL ST FORT MYERS BEACH FL 33931	SEAGRAPE SUBD BLK A PB 4 PG 17 LOT 9	15
SAND CASTLE COTTAGES LLC 6541 WINKLER RD FORT MYERS FL 33919	19-46-24-W3-0120A.013A 2543 COTTAGE AVE FORT MYERS BEACH FL 33931	SEAGRAPE SUBD BLK A PB 4 PG 17 PT LOT 13 DESC IN OR 1759 PG 0091	16
FRENCH EDWIN T III PO BOX 22538 INDIANAPOLIS IN 46222	19-46-24-W3-0120A.014A 2550 COTTAGE AVE FORT MYERS BEACH FL 33931	SEAGRAPE SUBD BLK A PB 4 PG 17 PT OF LT 14 DESC 3269/725	17
NATIONAL CITY BANK OF PHILLIP A TERRY MONARCH BEVERAGE CO 9347 E PENDLETON PIKE INDIANAPOLIS IN 46236	19-46-24-W3-0120A.0150 2548 COTTAGE AVE FORT MYERS BEACH FL 33931	SEAGRAPE SUBD BLK A PB 4 PG 17 E 40 FT LOT 15	18
VANOYEN NANCY L TR 2522 COTTAGE AVE FORT MYERS BEACH FL 33931	19-46-24-W3-0120A.016A 2520 COTTAGE AVE FORT MYERS BEACH FL 33931	SEAGRAPE SUBD BLK A PB 4 PG 17 NLY 70 FT LOT 16	19
VANOYEN NANCY L TR 2522 COTTAGE AVE FORT MYERS BEACH FL 33931	19-46-24-W3-0120A.016B 2522 COTTAGE AVE FORT MYERS BEACH FL 33931	SEAGRAPE SUBD BLK A PB 4 PG 17 PT LOTS 16 + 15	20
TEZAK WAYNE P + HELEN C TR 50 CHAPEL ST #4 FORT MYERS BEACH FL 33931	19-46-24-W3-0120A.0170 50 CHAPEL ST FORT MYERS BEACH FL 33931	SEAGRAPE SUBD. BLK.A PB 4 PG 17 LOT 17 S 100 FT + LT 16 W 7.75 FT	21
GOLDBERG GENNIE M TR 11793 ROYAL TEE CT CAPE CORAL FL 33991	19-46-24-W3-0120A.017A 2518 COTTAGE AVE FORT MYERS BEACH FL 33931	SEAGRAPE SUBD. BLK.A PB 4 PG 17 LOT 17 N 70 FT	22
FOSTER EDWINA G 2440 COTTAGE AVE FORT MYERS BEACH FL 33931	19-46-24-W3-0120A.0180 2440 COTTAGE AVE FORT MYERS BEACH FL 33931	SEAGRAPE SUBD BLK A PB 4 PG 17 LOT 18	23
TURNER WILLIAM D III 5660 SHADDELEE LN W FORT MYERS FL 33919	19-46-24-W3-0120A.0190 2434 COTTAGE AVE #36 FORT MYERS BEACH FL 33931	SEAGRAPE SUBD. BLK.A PB 4 PG 17 LOT 19	24
DEAN KATHRYN S +ROBERT S JR TR 18640 PARKINSON RD ALVA FL 33920	19-46-24-W3-0120A.0200 2430 COTTAGE AVE FORT MYERS BEACH FL 33931	SEAGRAPE SUBD BLK A PB 4 PG 17 LOT 20	25
MITCHELL BRIAN C + LAUREEN L 2062 NW 19TH WAY BOCA RATON FL 33431	19-46-24-W3-0120A.0210 2426 COTTAGE AVE FORT MYERS BEACH FL 33931	SEAGRAPE SUBD. BLK:A PB 4 PG 17 LOT 21	26
SCHLICHT EDITH 61 MANGO ST FORT MYERS BEACH FL 33931	19-46-24-W3-0120A.0220 61/63 MANGO ST FORT MYERS BEACH FL 33931	SEAGRAPE SUBD BLK A PB 4 PG 17 LOT 22	27
CHAPEL BY THE SEA PO BOX 2997 FORT MYERS BEACH FL 33932	19-46-24-W3-0120B.0010 100 CHAPEL ST FORT MYERS BEACH FL 33931	SEAGRAPE SUBD.PB 4 PG 17 BLK.B LTS 1-8 + BLK D LTS 16 -18 + OR 221 PG 436	28
HURT GEORGE CRALLE JR 9994 RADCLIFF RD NW ALBUQUERQUE NM 87114	19-46-24-W3-0120B.0090 166 CHAPEL ST FORT MYERS BEACH FL 33931	SEAGRAPE SUBD BLK B PB 4 PG 17 LOTS 9 10 11	29
GERSTENHABER RAM + FRIDA TR BEACH CONNECTION 2401 ESTERO BLVD FORT MYERS BEACH FL 33931	19-46-24-W3-0120D.0010 2401 ESTERO BLVD FORT MYERS BEACH FL 33931	SEAGRAPE SUBD BLK D PB 4 PG 17 LOT 1	30
CZULEWICZ MARYLU 4281 ORANGE RIVER LOOP RD FORT MYERS FL 33905	19-46-24-W3-0120D.0020 110 MANGO ST FORT MYERS BEACH FL 33931	SEAGRAPE SUBD. BLK.D PB 4 PG 17 LOT 2	31
MEADOR CHARLES R JR 2085 ESTERO BLVD FORT MYERS BEACH FL 33931	19-46-24-W3-0120D.0030 112 MANGO ST FORT MYERS BEACH FL 33931	SEAGRAPE SUBD BLK D PB 4 PG 17 LOT 3	32
MANGO STREET INN LLC 126 MANGO ST FORT MYERS BEACH FL 33931	19-46-24-W3-0120D.0040 126 MANGO ST FORT MYERS BEACH FL 33931	SEAGRAPE SUBD BLK D PB 4 PG 17 LOTS 4 + 5	33

OWNER NAME AND ADDRESS	STRAP AND LOCATION	LEGAL DESCRIPTION	Map Index
PAOLERCIO WILLIAM 81 MANGO ST FORT MYERS BEACH FL 33931	19-46-24-W3-0120D.0060 136 MANGO ST FORT MYERS BEACH FL 33931	SEAGRAPE SUBD, BLK.D PB 4 PG 17 LOT 6	34
DACRE ALBERT J 144 MANGO ST FORT MYERS BEACH FL 33931	19-46-24-W3-0120D.0070 144 MANGO ST FORT MYERS BEACH FL 33931	SEAGRAPE SUBD BLK D PB 4 PG 17 LOT 7	35
MEEHAN PATRICIA LYNN 293 ELM ST W SUDBURY ON P3C 1V6 CANADA	19-46-24-W3-0120D.0120 161 CHAPEL ST FORT MYERS BEACH FL 33931	SEAGRAPE SUBD, BLK.D PB 4 PG 17 LOT 12	36
LIGHT JAY S + KATHERINE K 151 CHAPEL ST FORT MYERS BEACH FL 33931	19-46-24-W3-0120D.0130 151 CHAPEL ST FORT MYERS BEACH FL 33931	SEAGRAPE SUBD BLK D PB 4 PG 17 LOT 13	37
PFÄFFINGER HEDWIG TR JAMES SCHULTZ 1030 SPINDLE HILL RD WOLCOTT CT 06716	19-46-24-W3-0120D.0140 145 CHAPEL ST FORT MYERS BEACH FL 33931	SEAGRAPE BLK.D PB 4 PG 17 LOT 14	38
BUNTING ROBERT C + ELEANOR E 21681 INDIAN BAYOU DR FORT MYERS BEACH FL 33931	19-46-24-W3-0120D.0150 139 CHAPEL ST FORT MYERS BEACH FL 33931	SEAGRAPE SUBD, BLK.D PB 4 PG 17 LOT 15	39
CHAPEL BY THE SEA PO BOX 2997 FORT MYERS BEACH FL 33932	19-46-24-W3-0120D.0190 2471 ESTERO BLVD FORT MYERS BEACH FL 33931	SEAGRAPE SUBD BLK D PB 4 PG 17 LT 19 LEASEHOLD INT	40
BLUE VISTA CAPITAL LLC JEFFREY RICE 1515 BROADWAY FORT MYERS FL 33901	19-46-24-W3-0120E.0010 2311 ESTERO BLVD FORT MYERS BEACH FL 33931	SEAGRAPE SUBD BLK E PB 4 PG 17 LOT 1	41
BLUE VISTA CAPITAL LLC JEFFREY RICE 1515 BROADWAY FORT MYERS FL 33901	19-46-24-W3-0120E.0020 111 MANGO ST FORT MYERS BEACH FL 33931	SEAGRAPE SUBD BLK E PB 4 PG 17 LOT 2	42
BLUE VISTA CAPITAL LLC JEFFREY RICE 1515 BROADWAY FORT MYERS FL 33901	19-46-24-W3-0120E.0030 121 MANGO ST FORT MYERS BEACH FL 33931	SEAGRAPE SUBD BLK E PB 4 PG 17 LOT 3	43
LAFRANCE DAVID R + JANICE S 9A JERED LN SOUTHWICK MA 01077	19-46-24-W3-0120E.0040 125 MANGO ST FORT MYERS BEACH FL 33931	SEAGRAPE SUBD, BLK.E PB 4 PG 17 LOT 4	44
HUGHES GARY D TR + PO BOX 2612 IOWA CITY IA 52244	19-46-24-W3-0120E.0050 135 MANGO ST FORT MYERS BEACH FL 33931	SEAGRAPE SUBD BLK E PB 4 PG 17 LOT 5	45
HOLMES MARTIN J JR 2930 QUARRY RD MAUMEE OH 43537	19-46-24-W3-01301.0000 2518 ESTERO BLVD FORT MYERS BEACH FL 33931	BLAKES SUBD, PB 4 PG 44 LOT 1	46
2500 ESTERO BLVD LLC 1021 NW 12TH TER POMPANO BEACH FL 33069	19-46-24-W3-01302.0000 2510 ESTERO BLVD FORT MYERS BEACH FL 33931	BLAKES SUBD, PB 4 PG 44 LOT 2	47
HENDERSON FREDERICK L + EDNA M 2553 COTTAGE AVE FORT MYERS BEACH FL 33931	19-46-24-W3-01303.0000 2553 COTTAGE AVE FORT MYERS BEACH FL 33931	BLAKES SUBD PB 4 PG 44 LOT 3	48
MCEWEN NORMAN G + 2563 COTTAGE AVE FORT MYERS BEACH FL 33931	19-46-24-W3-01304.0000 2563 COTTAGE AVE FORT MYERS BEACH FL 33931	BLAKES SUBD, PB 4 PG 44 LOT 4	49
ESTERO BEACH CLUB CONDO ASSOC 2580 ESTERO BLVD FORT MYERS BEACH FL 33931	19-46-24-W3-02000.00CE 2584 ESTERO BLVD FORT MYERS BEACH FL 33931	CONDO IN SE 1/4 SEC 19 TWP 46 R 24 RECORDED IN OR 761 P 849 COMMON ELEMENTS	50
HARMS PATRICIA J TR 693 GOLF LN BARRINGTON IL 60010	19-46-24-W3-0200A.0110 2580 ESTERO BLVD #11 FORT MYERS BEACH FL 33931	ESTERO BEACH CLUB CONDO DESC OR BK 0761 PG 0836 PH I APT 11	*51
POTTS JOHN C + JULIE 15404 N RIVER BEACH DR CHILLICOTHE IL 61523	19-46-24-W3-0200A.0120 2580 ESTERO BLVD #12 FORT MYERS BEACH FL 33931	ESTERO BEACH CLUB COND BLDG A OR 761 PG 849 APT A-12	*51

OWNER NAME AND ADDRESS	STRAP AND LOCATION	LEGAL DESCRIPTION	Map Index
COFFMAN JOYCE A 1/2 INT + ELIZABETH COFFMAN 55 HIAWATHA LANE GALESBURG IL 61401	19-46-24-W3-0200A.0140 2580 ESTERO BLVD #14 FORT MYERS BEACH FL 33931	ESTERO BEACH CLUB COND BLDG A OR 761 PG 849 APT A-14	*51
BARRIE JUDY E 75% INT + 42 MOORE AVE TORONTO ON M4T 1V3 CANADA	19-46-24-W3-0200A.0150 2580 ESTERO BLVD #15 FORT MYERS BEACH FL 33931	ESTERO BEACH CLUB COND BLDG A OR 761 PG 849 APT A-15	*51
VOLPE JOHN S + ELSIE V 1591 N WESTERN AVE LAKE FOREST IL 60045	19-46-24-W3-0200A.0210 2580 ESTERO BLVD #21 FORT MYERS BEACH FL 33931	ESTERO BEACH CLUB COND BLDG A OR 761 PG 849 APT A-21	*51
GOODWIN GLENNA J + OLEN D TR 1267 HAZELTINE DR FORT MYERS FL 33919	19-46-24-W3-0200A.0220 2580 ESTERO BLVD #22 FORT MYERS BEACH FL 33931	ESTERO BEACH CLUB COND BLDG A OR 761 PG 849 APT A-22	*51
HARRIS MICHAEL T + LINDA SUE PMB 380 STE 318 5100 S CLEVELAND AVE FORT MYERS FL 33907	19-46-24-W3-0200A.0230 2580 ESTERO BLVD #23 FORT MYERS BEACH FL 33931	ESTERO BEACH CLUB COND BLDG A OR 761 PG 849 APT A-23	*51
TUBBS THOMAS + PATRICIA M 2580 ESTERO BLVD #24 FORT MYERS BEACH FL 33931	19-46-24-W3-0200A.0240 2580 ESTERO BLVD #24 FORT MYERS BEACH FL 33931	ESTERO BEACH CLUB CONDO DESC OR BK 0761 PG 0836 PH I APT 24	*51
LAIRD W E + DORIS M 1125 MERCER DR TALLAHASSEE FL 32312	19-46-24-W3-0200A.0250 2580 ESTERO BLVD #25 FORT MYERS BEACH FL 33931	ESTERO BEACH CLUB COND BLDG A OR 761 PG 849 APT A-25	*51
ERVIN THOMAS + NANCY 1945 PINE RIDGE CT BLOOMFIELD HILLS MI 48302	19-46-24-W3-0200A.0310 2580 ESTERO BLVD #31 FORT MYERS BEACH FL 33931	ESTERO BEACH CLUB COND BLDG A OR 761 PB 849 APT A-31	*51
SANDRICK DEXTER + 25258 IVY LN LOMBARD IL 60148	19-46-24-W3-0200A.0320 2580 ESTERO BLVD #32 FORT MYERS BEACH FL 33931	ESTERO BEACH CLUB COND BLDG A OR 761 PG 849 APT A-32	*51
JOHNSTON DEAN + 448 WEST ST NORTH ORILLIA ON L3V 5E8 CANADA	19-46-24-W3-0200A.0330 2580 ESTERO BLVD #33 FORT MYERS BEACH FL 33931	ESTERO BEACH CLUB COND BLDG A OR 761 PG 849 APT A-33	*51
GARNETT GREGORY W TR + 5488 E CR450 N BROWNSBURG IN 46112	19-46-24-W3-0200A.0340 2580 ESTERO BLVD #34 FORT MYERS BEACH FL 33931	ESTERO BEACH CLUB COND BLDG A OR 761 PG 849 APT A-34	*51
MULDOWNEY ROSEMARY L TR + 5667 N CL MYERS RD BYRON IL 61010	19-46-24-W3-0200A.0350 2580 ESTERO BLVD #35 FORT MYERS BEACH FL 33931	ESTERO BEACH CLUB COND BLDG A OR 761 PG 849 APT A-35	*51
RAMEY STEVEN L + NANCY K 167 E STOP 13 RD SOUTHPORT IN 46227	19-46-24-W3-0200A.0410 2580 ESTERO BLVD #41 FORT MYERS BEACH FL 33931	ESTERO BEACH CLUB COND BLDG A OR 761 PG 849 APT A-41	*51
MAYWELL DEVELOPMENT 1503 MCNAUGHTON AVE ELKHART IN 46514	19-46-24-W3-0200A.0420 2580 ESTERO BLVD #42 FORT MYERS BEACH FL 33931	ESTERO BEACH CLUB COND BLDG A OR 761 PG 849 APT A-42	*51
SCALLY GERALD F EST 16221 SW 85TH CT MIAMI FL 33157	19-46-24-W3-0200A.0430 2580 ESTERO BLVD #43 FORT MYERS BEACH FL 33931	ESTERO BEACH CLUB COND BLDG A OR 761 PG 849 APT A-43	*51
BRODBECK VIRGINIA V 2580 ESTERO BLVD #44 FORT MYERS BEACH FL 33931	19-46-24-W3-0200A.0440 2580 ESTERO BLVD #44 FORT MYERS BEACH FL 33931	ESTERO BEACH CLUB COND BLDG A OR 761 PG 849 APT A-44	*51
ZECHINATI JAMES + 924 WESTCHESTER WAY RICHMOND KY 40475	19-46-24-W3-0200A.0450 2580 ESTERO BLVD #45 FORT MYERS BEACH FL 33931	ESTERO BEACH CLUB COND BLDG A OR 761 PG 849 APT A-45	*51
SCHRADER CHARLES H TR 2580 ESTERO BLVD #51 FORT MYERS BEACH FL 33931	19-46-24-W3-0200A.0510 2580 ESTERO BLVD #51 FORT MYERS BEACH FL 33931	ESTERO BEACH CLUB COND BLDG A OR 761 PG 849 APT A-51	*51
BROY LARRY E TR 2815 HIGHLAND RD NORTHBROOK IL 60062	19-46-24-W3-0200A.0520 2580 ESTERO BLVD #52 FORT MYERS BEACH FL 33931	ESTERO BEACH CLUB COND BLDG A OR 761 PG 849 APT A-52	*51

OWNER NAME AND ADDRESS	STRAP AND LOCATION	LEGAL DESCRIPTION	Map Index
KOOP ROBERT N + SHARON L 1137 ELMWOOD LN ELK GROVE VILLAGE IL 60007	19-46-24-W3-0200A.0530 2580 ESTERO BLVD #53 FORT MYERS BEACH FL 33931	ESTERO BEACH CLUB COND BLDG A OR 761 PB 849 APT A-53	*51
FIRESTONE RICHARD L TR + 403 HIDDEN RAVINES DR POWELL OH 43065	19-46-24-W3-0200A.0540 2580 ESTERO BLVD #54 FORT MYERS BEACH FL 33931	ESTERO BEACH CLUB COND BLDG A OR 761 PG 836 APT A-54	*51
PERELLA MARTINA R TR 2580 ESTERO BLVD #55 FORT MYERS BEACH FL 33931	19-46-24-W3-0200A.0550 2580 ESTERO BLVD #55 FORT MYERS BEACH FL 33931	ESTERO BEACH CLUB COND BLDG A OR 761 PB 849 APT A-55	*51
ISLAND HOUSE BEACH CLUB ASSOC 2560 ESTERO BLVD FORT MYERS BEACH FL 33931	19-46-24-W3-02400.00CE 2562 ESTERO BLVD FORT MYERS BEACH FL 33931	A CONDO LOCATED IN SEC 19 TWP 46 R 24 AS DESC IN OR 1250 PG 1197 COMMON ELEMENTS	52
WHITE NELSON E + ANN A 1659 LINHART AVE FORT MYERS FL 33901	19-46-24-W3-02401.00B0 2560 ESTERO BLVD #1B FORT MYERS BEACH FL 33931	ISLAND HOUSE BCH CLUB OR 1250 PG 1197 UNIT 1-B	*53
GAFFNEY JOSEPH J + MARGARET 4910 WESTCHESTER PIKE NEWTOWN SQUARE PA 19073	19-46-24-W3-02401.00C0 2560 ESTERO BLVD #1C FORT MYERS BEACH FL 33931	ISLAND HOUSE BCH CLUB OR 1250 PG 1197 UNIT 1-C	*53
DELROSE THOMAS E 10715 FINTAN CT MOKENA IL 60448	19-46-24-W3-02401.00D0 2560 ESTERO BLVD #1D FORT MYERS BEACH FL 33931	ISLAND HOUSE BCH CLUB OR 1250 PG 1197 UNIT 1-D	*53
KRETCHMER ARTHUR TR 2560 ESTERO BLVD #2A FORT MYERS BEACH FL 33931	19-46-24-W3-02402.00A0 2560 ESTERO BLVD #2A FORT MYERS BEACH FL 33931	ISLAND HOUSE BCH CLUB OR 1250 PG 1197 UNIT 2-A	*53
CHAMBERS PATRICIA C 208 ALLEN DR UNION CITY IN 47390	19-46-24-W3-02402.00B0 2560 ESTERO BLVD #2B FORT MYERS BEACH FL 33931	ISLAND HOUSE BCH CLUB OR 1250 PG 1197 UNIT 2-B	*53
TOWNSEND MARY JANE TRUST 101 S MAIN ST PARKER CITY IN 47368	19-46-24-W3-02402.00C0 2560 ESTERO BLVD #2C FORT MYERS BEACH FL 33931	ISLAND HOUSE BCH CLUB OR 1250 PG 1197 UNIT 2-C	*53
SCHNEEBERGER PAUL J TR + 2560 ESTERO BLVD #2D FORT MYERS BEACH FL 33931	19-46-24-W3-02402.00D0 2560 ESTERO BLVD #2D FORT MYERS BEACH FL 33931	ISLAND HOUSE BCH CLUB OR 1250 PG 1197 UNIT 2-D	*53
PLOCHA EDWARD M + JANICE F + 11861 NW 27TH CT PLANTATION FL 33323	19-46-24-W3-02402.00E0 2560 ESTERO BLVD #2E FORT MYERS BEACH FL 33931	ISLAND HOUSE BCH CLUB OR 1250 PG 1197 UNIT 2-E	*53
DOTY ARTHUR E + JANE E 901 HANSON DST BATAVIA IL 60510	19-46-24-W3-02403.00A0 2560 ESTERO BLVD #3A FORT MYERS BEACH FL 33931	ISLAND HOUSE BCH CLUB OR 1250 PG 1197 UNIT 3-A	*53
KROULADIS JOHN J SR + DIANA R 2560 ESTERO BLVD #3B FORT MYERS BEACH FL 33931	19-46-24-W3-02403.00B0 2560 ESTERO BLVD #3B FORT MYERS BEACH FL 33931	ISLAND HOUSE BCH CLUB OR 1250 PG 1197 UNIT 3-B	*53
NOBIS ROLAND F TR PO BOX 3111 BLOOMINGTON IN 47402	19-46-24-W3-02403.00C0 2560 ESTERO BLVD #3C FORT MYERS BEACH FL 33931	ISLAND HOUSE BCH CLUB OR 1250 PG 1197 UNIT 3-C	*53
HART HOWARD E + 1620 EAST CASS ST JOLIET IL 60432	19-46-24-W3-02403.00D0 2560 ESTERO BLVD #3D FORT MYERS BEACH FL 33931	ISLAND HOUSE BCH CLUB OR 1250 PG 1197 UNIT 3-D	*53
CARROLL ROBERT B 962 THOMAS FOX DR E NORTH TONAWANDA NY 14120	19-46-24-W3-02403.00E0 2560 ESTERO BLVD #3E FORT MYERS BEACH FL 33931	ISLAND HOUSE BCH CLUB OR 1250 PG 1197 UNIT 3-E	*53
CARLSON SONYA J TR EST TRUST DEPARTMENT PO BOX 8 CLEAR LAKE IA 50428	19-46-24-W3-02404.00A0 2560 ESTERO BLVD #4A FORT MYERS BEACH FL 33931	ISLAND HOUSE BCH CLUB OR 1250 PG 1197 UNIT 4-A	*53
DILUCIANO MARK E + 2725 PADDOCK DR AKRON OH 44333	19-46-24-W3-02404.00B0 2560 ESTERO BLVD #4B FORT MYERS BEACH FL 33931	ISLAND HOUSE BCH CLUB OR 1250 PG 1197 UNIT 4-B	*53

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RALSON JEFFREY S + 560 W FULTON ST UNIT 605 CHICAGO IL 60661	19-46-24-W3-02404.00C0 2560 ESTERO BLVD #4C FORT MYERS BEACH FL 33931	ISLAND HOUSE BCH CLUB OR 1250 PG 1197 UNIT 4-C	*53
TUBBS MARY L TR 2560 ESTERO BLVD APT #4D FORT MYERS BEACH FL 33931	19-46-24-W3-02404.00D0 2560 ESTERO BLVD #4D FORT MYERS BEACH FL 33931	ISLAND HOUSE BCH CLUB OR 1250 PG 1197 UNIT 4-D	*53
IRWIN RANDALL N + 1325 W WHITTAKER ST SALEM IL 62881	19-46-24-W3-02404.00E0 2560 ESTERO BLVD #4E FORT MYERS BEACH FL 33931	ISLAND HOUSE BCH CLUB OR 1250 PG 1197 UNIT 4-E	*53
GABOR PETER 1/2 + 709 BENNINGTON DR RALEIGH NC 27615	19-46-24-W3-02405.00A0 2560 ESTERO BLVD #5A FORT MYERS BEACH FL 33931	ISLAND HOUSE BCH CLUB OR 1250 PG 1197 UNIT 5-A	*53
MCCAFFREY W F + SHIRLEY N 7400 BELLAIRE AVE DUBLIN OH 43017	19-46-24-W3-02405.00B0 2560 ESTERO BLVD #5B FORT MYERS BEACH FL 33931	ISLAND HOUSE BCH CLUB OR 1250 PG 1197 UNIT 5-B	*53
NELSON WILLIAM M + HELAINE Q 36 KENNINGTON CT DALLAS TX 75248	19-46-24-W3-02405.00C0 2560 ESTERO BLVD #5C FORT MYERS BEACH FL 33931	ISLAND HOUSE BCH CLUB OR 1250 PG 1197 UNIT 5-C	*53
MANNING NATALIE TR 2560 ESTERO BLVD #5D FORT MYERS BEACH FL 33931	19-46-24-W3-02405.00D0 2560 ESTERO BLVD #5D FORT MYERS BEACH FL 33931	ISLAND HOUSE BCH CLUB OR 1250 PG 1197 UNIT 5-D	*53
PEKOL ROBERT J + 829 MOEN AV JOLIET IL 60436	19-46-24-W3-02405.00E0 2560 ESTERO BLVD #5E FORT MYERS BEACH FL 33931	ISLAND HOUSE BCH CLUB OR 1259 PG 1197 UNIT 5-E	*53
ZAPPONE THOMAS L 2560 ESTERO BLVD #6A FORT MYERS BEACH FL 33931	19-46-24-W3-02406.00A0 2560 ESTERO BLVD #6A FORT MYERS BEACH FL 33931	ISLAND HOUSE BCH CLUB OR 1250 PG 1197 UNIT 6-A	*53
LEVINE STEPHEN M + DIANE E 16480 RAINBOW MEADOWS CT FORT MYERS FL 33908	19-46-24-W3-02406.00E0 2560 ESTERO BLVD #6E FORT MYERS BEACH FL 33931	ISLAND HOUSE BCH CLUB OR 1250 PG 1197 UNIT 6-E	*53
PELICAN WATCH CONDO ASSOC BOBACK COMMERCIAL GROUP STE 203 10491 SIX MILE CYPRESS PKWY FORT MYERS FL 33966	19-46-24-W3-02900.00CE 2530 ESTERO BLVD FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO DESC OR BK 1532 PG 0083 COMMON ELEMENTS	54
BURGETT RUSSELL E + BETTY D TR 1270 UNION ST PLATTEVILLE WI 53818	19-46-24-W3-02900.1010 2532 ESTERO BLVD #101 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 101+ (XF-GAR#21)	*55
DODGE PHYLLIS A L/E 2532-102 ESTERO BLVD FORT MYERS BEACH FL 33931	19-46-24-W3-02900.1020 2532 ESTERO BLVD #102 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 102	*55
PETERSEN ROBERT A TR 2532 ESTERO BLVD -103 FORT MYERS BEACH FL 33931	19-46-24-W3-02900.1030 2532 ESTERO BLVD #103 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 103+ (XF-GAR#2)	*55
OWENS JAMES L + DIANNE L 189 LOWELL AV GLEN ELLYN IL 60137	19-46-24-W3-02900.1040 2532 ESTERO BLVD #104 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 104+ (XF-GAR#18)	*55
BEACHCOMBERS FROM AFAR INC TIMOTHY JOHNSTON 9430 TALL PINES WAY PIQUA OH 45356	19-46-24-W3-02900.1050 2532 ESTERO BLVD #105 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 105	*55
WEAVER JERRY L + DARLENE L 610 E FRANKLIN ST ROCKTON IL 61072	19-46-24-W3-02900.1060 2532 ESTERO BLVD #106 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 106+ (XF-GAR#15)	*55
OOYKAAS DICK E + PATRICIA T + 17026 W MANHATTAN RD ELWOOD IL 60421	19-46-24-W3-02900.1070 2532 ESTERO BLVD #107 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 107	*56
SAMFORD BARBARA B TR 2532 ESTERO BLVD #108 FORT MYERS BEACH FL 33931	19-46-24-W3-02900.1080 2532 ESTERO BLVD #108 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 108	*56

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LACAVA CORNELIUS + 22 BIRCH DR WARREN CT 06754	19-46-24-W3-02900.2010 2532 ESTERO BLVD #201 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 201+ (XF-GAR #1)	*55
STAHL JUDITH A TR 2532 ESTERO BLVD #202 FORT MYERS BEACH FL 33931	19-46-24-W3-02900.2020 2532 ESTERO BLVD #202 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 202+ (XF-GAR#20)	*55
CORLEW CAROLYN S TR 2532 ESTERO BLVD #203 FORT MYERS BEACH FL 33931	19-46-24-W3-02900.2030 2532 ESTERO BLVD #203 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 203	*55
SHIPP RUTH V TR 2532 ESTERO BLVD APT 204 FORT MYERS BEACH FL 33931	19-46-24-W3-02900.2040 2532 ESTERO BLVD #204 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 204+ (XF-GAR#19)	*55
PETER WILLIAM C + PAMELA J 8108 ENSIGN RD S BLOOMINGTON MN 55438	19-46-24-W3-02900.2050 2532 ESTERO BLVD #205 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 205+ (XF-GAR #14)	*55
NATIONAL CITY BANK NATIONAL CITY MORTGAGE CO 3232 NEWMARK DR MIAMISBURG OH 45342	19-46-24-W3-02900.2060 2532 ESTERO BLVD #206 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 206+ (XF-GAR#28)	*55
SAALSAA JEROME D L/E 2532 ESTERO BLVD #207 FORT MYERS BEACH FL 33931	19-46-24-W3-02900.2070 2532 ESTERO BLVD #207 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 207	*56
PETER WILLIAM C + PAMELA J 8108 ENSIGN RD BLOOMINGTON MN 55438	19-46-24-W3-02900.2080 2532 ESTERO BLVD #208 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 208	*56
VREDENBURG JOHN F TR 25095 490TH AVE CHARITON IA 50049	19-46-24-W3-02900.3010 2532 ESTERO BLVD #301 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 301	*55
WOLF ELIZABETH L/E PATRICIA EVANGELIST 7201 49TH AVE E BRADENTON FL 34203	19-46-24-W3-02900.3020 2532 ESTERO BLVD #302 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 302+ (XF-GAR#27)	*55
GABOR PETER 1/2 + 709 BENNINGTON DR RALEIGH NC 27615	19-46-24-W3-02900.3030 2532 ESTERO BLVD #303 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 303+ (XF-GAR #11)	*55
HARTNAGEL CONSTANCE A TR + 3317 E LAKE DR N ELKHART IN 46514	19-46-24-W3-02900.3040 2532 ESTERO BLVD #304 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 304	*55
MOODY MAVIS SUTTON 3285 N 650 E FREMONT IN 46737	19-46-24-W3-02900.3050 2532 ESTERO BLVD #305 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 305+ (XF-GAR#3)	*55
COUCH JOANN 1604 FOREST VALLEY RD GREENSBORO NC 27410	19-46-24-W3-02900.3060 2532 ESTERO BLVD #306 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 306+ (XF-GAR#29)	*55
SIE-RETREAT LLC 3374 ARLINGTON PL BEAVERCREEK OH 45434	19-46-24-W3-02900.3070 2532 ESTERO BLVD #307 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 307	*56
MEYER STEPHEN + RAYMOND C MEYER PO BOX 678 CHARITON IA 50049	19-46-24-W3-02900.3080 2532 ESTERO BLVD #308 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 308+ (XF-GAR#9)	*56
BURNSTINE HARRY M + SUSAN E 56860 SR 15 BRISTOL IN 46507	19-46-24-W3-02900.4010 2532 ESTERO BLVD #401 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 401+ (XF-GAR#23)	*55
SMITH DON SCOT 609 CASSEL HILLS CT VANDALIA OH 45377	19-46-24-W3-02900.4020 2532 ESTERO BLVD #402 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 402+ (XF-GAR#24)	*55
GREER MARY FRANCES TR DON SHOEMAKER 2532 ESTERO BLVD #403 FORT MYERS BEACH FL 33931	19-46-24-W3-02900.4030 2532 ESTERO BLVD #403 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 403+ (XF-GAR #30)	*55

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KENNEDY DANIEL L + 2930 TWIN OAKS DR JOLIET IL 60435	19-46-24-W3-02900.4040 2532 ESTERO BLVD #404 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 404	*55
BORGRA EUGENE J + MARLENE J 23233 W 135TH ST PLAINFIELD IL 60544	19-46-24-W3-02900.4050 2532 ESTERO BLVD #405 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 405	*55
HARTNAGEL CONSTANCE TR + 50685 FOX TRL GRANGER IN 46530	19-46-24-W3-02900.4060 2532 ESTERO BLVD #406 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 406+ (XF-GAR#7)	*55
MARSHALL MARYLU 2532 ESTERO BLVD #407 FORT MYERS BEACH FL 33931	19-46-24-W3-02900.4070 2532 ESTERO BLVD #407 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 407+ (XF-GAR#26)	*56
SPITZER ARDEN L + SANDRA C 555 DEER LAKE DR FINDLAY OH 45840	19-46-24-W3-02900.4080 2532 ESTERO BLVD #408 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 408	*56
PELICAN WATCH JOINT OWNERSHIP 5168 I-AH-MAYTAH RD OSHKOSH WI 54901	19-46-24-W3-02900.5010 2532 ESTERO BLVD #501 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 501+ (XF-GAR#4)	*55
OHM KENNETH D + JUDITH A TR 750 130TH ST AMERY WI 54001	19-46-24-W3-02900.5020 2532 ESTERO BLVD #502 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 502	*55
REARDON KEVIN T TR 8525 MALLARD LN WILMINGTON IL 60481	19-46-24-W3-02900.5030 2532 ESTERO BLVD #503 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 503+ (XF-GAR# 16)	*55
FAIR JOHN A 2532 ESTERO BLVD #504 FORT MYERS BEACH FL 33931	19-46-24-W3-02900.5040 2532 ESTERO BLVD #504 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 504+(XF-GAR#17)	*55
DORNFELD LEE V + DONNA 810 BEDFORDSHIRE RD LOUISVILLE KY 40222	19-46-24-W3-02900.5050 2532 ESTERO BLVD #505 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 505	*55
WELLS JEFFREY M 3668 GORDON RD ELKHART IN 46516	19-46-24-W3-02900.5060 2532 ESTERO BLVD #506 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 506+ (XF-GAR #6)	*55
HALE ROBERT WAYNE 190 LONGSHORE WAY FAYETTEVILLE GA 30215	19-46-24-W3-02900.5070 2532 ESTERO BLVD #507 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 507+ (XF-GAR#12)	*56
HICKOX LARRY + PO BOX 95 CASEY IL 62420	19-46-24-W3-02900.5080 2532 ESTERO BLVD #508 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 508	*56
JOHNSON ROGER A + KATHRYNE E 2088 ESTERO BLVD #2-B FORT MYERS BEACH FL 33931	19-46-24-W3-02900.6010 2532 ESTERO BLVD #601 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 601+ (XF-GAR #25)	*55
GALVIN FRANCIS J TR 1/2 + 1171 STANDISH CT NAPERVILLE IL 60540	19-46-24-W3-02900.6020 2532 ESTERO BLVD #602 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 602+ (XF-GAR#13)	*55
OYKAAS DICK E + PATRICIA T 17026 W MANHATTAN RD ELWOOD IL 60421	19-46-24-W3-02900.6030 2532 ESTERO BLVD #603 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 603+ (XF-GAR#10)	*55
SPITZER ARDEN L + SANDRA C 555 DEER LAKE DR FINDLAY OH 45840	19-46-24-W3-02900.6040 2532 ESTERO BLVD #604 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 604+ (XF-GAR#5)	*55
MCKEOWN PATRICK G + CAROLYN M 2532 ESTERO BLVD #605 FORT MYERS BEACH FL 33931	19-46-24-W3-02900.6050 2532 ESTERO BLVD #605 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 605+ (XF-GAR#8)	*55
TODD BAILEY + 5201 N WASHINGTON BLVD INDIANAPOLIS IN 46220	19-46-24-W3-02900.6060 2532 ESTERO BLVD #606 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 606+ (XF-GAR#22)	*55

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GROLMUS MARY JO ANN 872 FOSTER RD IOWA CITY IA 52245	19-46-24-W3-02900.6070 2532 ESTERO BLVD #607 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 607	*56
ROBSHAW RICHARD P 131 WASHINGTON AVE OAKMONT PA 15139	19-46-24-W3-02900.6080 2532 ESTERO BLVD #608 FORT MYERS BEACH FL 33931	PELICAN WATCH CONDO OR 1532 PG 83 UNIT 608	*56
TROPICAL SHORES LLC 5302 BROOKSIDE LN WASHINGTON MI 48094	19-46-24-W3-04100.0011 2550 ESTERO BLVD #11 FORT MYERS BEACH FL 33931	TROPICAL SHORES DESC IN OR 4081/2543 UNIT 11	*57
MAROTTA JAMES + LINDA 83 VAN DYKE RD HOPEWELL NJ 08525	19-46-24-W3-04100.0012 2550 ESTERO BLVD #12 FORT MYERS BEACH FL 33931	TROPICAL SHORES DESC IN OR 4081/2543 UNIT 12	*57
LALLY ADAM 13568 COUNTY ROAD 46 COMBER ON N0P 1J0 CANADA	19-46-24-W3-04100.0021 2550 ESTERO BLVD #21 FORT MYERS BEACH FL 33931	TROPICAL SHORES DESC IN OR 4081/2543 UNIT 21	*57
PALOMINO ILEANA 2550 ESTERO BLVD #22 FORT MYERS BEACH FL 33931	19-46-24-W3-04100.0022 2550 ESTERO BLVD #22 FORT MYERS BEACH FL 33931	TROPICAL SHORES DESC IN OR 4081/2543 UNIT 22	*57
TROPICAL SHORES ASSN 2550 ESTERO BLVD FORT MYERS BEACH FL 33931	19-46-24-W3-04100.00CE COMMON ELEMENT FL	TROPICAL SHORES DESC OR 4081 PG 2543 COMMON ELEMENTS	58
SEA BREEZE ESTATES CONDO ASSN 325 W LOCUST LN KENNETT SQUARE PA 19348	19-46-24-W3-04200.00CE SEA BREEZE COMMON ELEMENT FL	SEA BREEZE ESTATES CONDO DESC IN OR 4753 PG 4012 COMMON ELEMENTS	59
FICKES MICHAEL G + DAPHNE P 325 W LOCUST LN KENNETT SQUARE PA 19348	19-46-24-W3-04201.0010 2401 COTTAGE AVE FORT MYERS BEACH FL 33931	SEA BREEZE ESTATES CONDO DESC IN OR 4753 PG 4012 BLD 1 UNIT 1	60
FICKES MICHAEL G + DAPHNE P 325 W LOCUST LN KENNETT SQUARE PA 19348	19-46-24-W3-04202.0020 71 MANGO ST FORT MYERS BEACH FL 33931	SEA BREEZE ESTATES CONDO DESC IN OR 4753 PG 4012 BLD 2 UNIT 2	61

157 RECORDS PRINTED



Town of Fort Myers Beach

Larry Kiker
Mayor

Herb Acken
Vice Mayor

Tom Babcock
Councilmember

Jo List
Councilmember

Bob Raymond
Councilmember

EXHIBIT (2)

Robert D. Pritt, Esq.
Roetzel & Andress LPA
850 Park Shore Drive
Naples, FL 34103

March 8, 2010

Dear Mr. Pritt,

You have requested, on behalf of 2500 Estero Blvd LLC, a two-year extension of a development order, DOS2008-00018, which has an expiration date of July 29, 2011, and a building permit, COM08-0003, which had an expiration date of February 27, 2009, for development of property located at street address 2500 Estero Boulevard in the Town of Fort Myers Beach. Your request was received by the Town of Fort Myers Beach on December 29, 2009.

Chapter 2009-096, Laws of Florida, provided an extension of two years from the expiration date for each valid development order and building permit with an expiration date between September 1, 2008 and January 1, 2012. The Town Council of Fort Myers Beach adopted Resolution 09-30 to implement the statutory extensions on October 5, 2009. The extension does not apply to any permit or other authorization determined to be in significant noncompliance with the conditions of the permit or authorization, and any permit extended continues to be governed by the rules in effect at the time the permit was issued.

Staff has reviewed your request and concluded as follows:

(1) Development order "DOS2008-00018" has an expiration date between September 1, 2008 and January 1, 2012. **DOS2008-00018 is extended to July 29, 2013 as provided in Resolution 09-30.**

(2) Building permit "COM08-0003" had an expiration date of February 27, 2009. The requested extension of two years from February 27, 2009 **cannot be, and is not, approved**, because the permit is in significant noncompliance with the conditions of the permit, and because the rules in effect at the time the permit was issued make the permit null and void. COM08-0003 became null and void on February 23, 2009.

Following introduction to the Town Council on June 16, 2008 and a hearing before the Local Planning Agency on June 17, 2008, the Town Council held hearings on July 14,

2008, and August 18, 2008, and on August 18, 2008 adopted Ordinance 08-09, amending Land Development Code Chapter 6, Article IV, to reference a Flood Insurance Study (“FIS”) and Flood Insurance Rate Maps (“FIRMs”) with an effective date of August 28, 2008 as the basis for establishing flood regulations in the Town. The introduction of Ordinance 08-09 was advertised in the Fort Myers *News-Press* on June 10, 2008. The August 18, 2008 hearing at which Ordinance 08-09 was adopted was advertised in the *News-Press* on July 23, 2008.

Effective August 28, 2008, the property at 2500 Estero Boulevard is located in a Special Flood Hazard Area in flood zone VE, partly with base flood elevation of 14 feet NAVD 88 and partly with base flood elevation of 15 feet NAVD 88. New construction and substantial improvements must have the lowest horizontal supporting member elevated to or above the base flood elevation, with all space below the lowest horizontal supporting member open so as not to impede the flow of flood waters, and must meet other requirements pertaining to flood zone VE set forth with greater specificity in the Town’s floodplain regulations.

Rules under which the permit was issued, in effect on the date the permit was issued, August 27, 2008, provided that the “start of construction” would be deemed to be August 27, 2008 only if the “actual start of construction” occurred within 180 days after August 27, 2008. The “actual start of construction” was and is defined by LDC Section 6-405 as:

the first placement of permanent construction of a structure on the site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory structures such as garages or sheds not occupied as dwelling units or not part of the main structure.

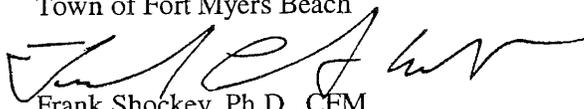
The actual start of construction did not occur within 180 days of August 27, 2008 and the permit became void and invalid on February 23, 2009. During all relevant periods of time before and after August 27, 2008, new construction was required to comply with the required base flood elevation in effect on the date of the start of construction. Current required base flood elevations took effect on August 28, 2008 as provided by Ordinance 08-09, which was adopted on August 18, 2008. New construction and substantial improvements for which the “start of construction” is on or after August 28, 2008 must comply with the standards pertaining to the Flood Insurance Rate Maps in effect on the date of the start of construction. **COM08-0003 is void and invalid for failure to comply with the requirements in effect on the date the permit was issued**, which required new construction to comply with the required base flood elevation at the start of construction. Resolution 09-30 does not reinstate a voided permit that has failed to meet conditions under which it was originally issued.

Your clients were on notice of the impending changes in base flood elevations substantially prior to August 27, 2008. The Federal Emergency Management Agency (FEMA) issued new preliminary Flood Insurance Rate Maps (FIRMs) covering the Town of Fort Myers Beach, including your clients' property, on July 31, 2006. A public notice regarding the release of these maps was published in the Fort Myers *News-Press* on October 27, 2006 and on November 3, 2006. Following an appeal process, FEMA issued revised preliminary FIRMs covering the Town of Fort Myers Beach on January 10, 2008, with an effective date of August 28, 2008 and notified the Town that adoption of these maps as the basis for floodplain regulations no later than August 28, 2008 was a mandatory condition of continued participation in the National Flood Insurance Program. Both the 2006 preliminary FIRMs and the 2008 final FIRMs would prevent the type of construction permitted by COM08-0003 because the site is entirely within flood zone VE. Your clients applied for DOS2008-00018 on January 29, 2008, after the revised preliminary FIRMs were issued and appeals of the required elevations were concluded. Your clients applied for COM08-0003 on June 23, 2008. Mr. McHarris, your clients' design professional, was well aware of the progress of these changes to the FIS and FIRMs affecting this area in general and your clients' property in particular, through many and repeated communications with Town staff beginning well before your clients applied for DOS2008-00018 or COM08-0003.

Town staff stand ready to assist you and your clients should they wish to request to amend the planned development zoning applicable to the subject property, amend DOS2008-00018, and revise construction plans as may be necessary in order to design a viable project that will comply with the base flood elevation at the start of construction. If your clients feel that the FIRMs and FIS applicable to the subject property are incorrect, they may present scientific and technical data so demonstrating to FEMA through the letter of map amendment process. Alternatively, if your clients feel that their situation can be found to meet the applicable criteria, they may apply to the Town Council for a variance from the required base flood elevation in accordance with the Town's floodplain regulations. Scientific and technical data are typically necessary to provide the Town with competent substantial evidence upon which to base the requisite findings and determinations prior to granting a variance.

Sincerely,

Department of Community Development
Town of Fort Myers Beach



Frank Shockey, Ph.D., CFM
Community Development Director



A LEGAL PROFESSIONAL ASSOCIATION

850 PARK SHORE DRIVE
TRIANON CENTRE - THIRD FLOOR
NAPLES, FL 34103
239.649.2714 DIRECT
239.649.6200 MAIN
239.261.3659 FAX
rpriitt@ralaw.com

December 23, 2010

Town of Fort Myers Beach
Attn: Walter Fluegel, Director
Department of Community Development
2523 Estero Boulevard
Fort Myers Beach, FL 3393

Via: U.S. Mail and E-mail:
Walter@FortMyersBeachFL.Gov

EXHIBIT (3)

Re: Our Client: 2500 Estero Blvd, LLC
Extension Pursuant to Section 14 SB 360, (2009) & Sections 46 & 47, SB 1752
(2010),
DOS 2008-00018; COM 08-0003

Dear Mr. Fluegel:

Thank you for taking my call today concerning this matter. It was quite coincidental and encouraging that you and Mr. Miller were reviewing last year's notice and response when I called.

NOTIFICATION

First, on behalf of my client, I am again providing the notification pursuant to SB 360, 2009 Legislature and SB 1752, 2010 Legislature, of my client's intention to avail itself of the benefit of these law(s), and request to obtain from the Town, confirmation of the two year extension of the of the following permits and any permit related thereto:

DOS 2008-00018 Development Order/Permit (previously confirmed by Town)

COM 08-0003—Building-New Construction—Amount \$725,000.00 date issued 06/23/2008).

It also includes any other permit for the above described property that has an expiration date of September 1, 2008 through January 1, 2012.

The STRAP number for the property is: (19-46-24-W3-0120A.0100). The address of the property is as follows: 2500 Estero Boulevard, Fort Myers Beach, FL 33931.

We understand that the extension will be for two years following the date of expiration or extension, or as otherwise provided by law. We would appreciate your providing information on the date of expiration according to your records so we can reconcile any differences.

The specific authorization for which the holder of the permit intends to use the extension is as follows: Development of and construction of a commercial building located upon the site in accordance with the terms of the development order and building permit.

The anticipated timeframe for acting on the authorization for extension will be within 30 days from receipt of acknowledgement of extension. (As early as February 28, 2011).

December 23, 2010

Page 2

Per our conversation, I understand that it will not be necessary to file another formal application, and I would ask that you confirm that via e mail, for our files.

HISTORY

The history is set out below and is in your current application file. I filed a letter notice on or about December 28, 2009, filled out and filed an application, and paid a \$100 application filing fee. My application was timely under SB 360.

The former Director of Development responded on or about March 8, 2010, concluding that DOS 2008-00018 is extended to July 29, 2013, but concluding that COM 08-0003 cannot be approved due to the passage of Ord. 08-09.

I timely appealed the staff conclusion (COM 08-0003 to Town Council and paid the \$1000 filing fee. To date, I have not been afforded a hearing before the Town Council. I have prepared a draft Complaint for Mandamus and other relief and then discussed the matter with your Town Attorney, Marilyn Miller.

The relevant time frames appear to be as follows:

1. COM 08-0003 issuance June 23, 2008.
2. Adoption of Ord. 08-09, effective August 28, 2008.
3. COM 08-0003, normal expiration, February 27, 2009 (per Town).
4. Adoption of SB 360, effective June 1, 2009.
5. Notification (and Application) for Extension of permits, December 28, 2009
6. Adoption of SB 1752, May 28, 2010.
7. Notification for Extension of Permits, December 23, 2010.

SUMMARY OF ANALYSIS

The issue (as I see it) is whether the permit is reinstated by the state statute(s) to the status that existed prior to the adoption of the local ordinance.

I think your predecessor confused the issue, thinking that this is a FEMA preemption issue because FEMA mandated the adoption of the new FIRM maps. However, the ordinance is nevertheless a local ordinance of the Town, regardless of the reason for adoption. Thus, the analysis is simply a state law vs. local permit analysis, rather than a federal preemption issue.

Also, it would seem that the issuance and validity of the Development Permit should control, not the building permit. Your predecessor correctly extended that permit.

I don't think the pending case invalidating some of SB 360 means anything to the analysis although the Town may need to change its Resolution to acknowledge SB 1752. I am not sure why the Town did a resolution in the first place, because the statute controls anyway and is self-executing.

December 23, 2010

Page 3

Thank you for your consideration of this matter and have a happy holiday season.

Very truly yours,

s/Robert D. Pritt

Robert D. Pritt
Board Certified City, County &
Local Government Lawyer
For the Firm

RDP/ca

cc: Scott Daiagi, Member/Manager, 2500 Estero Blvd, LLC
Marilyn Miller, Town Attorney



Town of Fort Myers Beach

Larry Kiker
Mayor

Bob Raymond
Vice Mayor

Tom Babcock
Council Member

Jo List
Council Member

Alan Mandel
Council Member

February 8, 2011

EXHIBIT (4)

Robert D. Pritt, Esq.
Roetzel & Andress LPA
850 Park Shore Drive
Naples, FL 34103

RE: Development Order DOS2008-00018 and Building Permit COM08-0003
2500 Estero Blvd., LLC

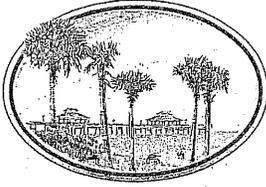
Dear Mr. Pritt:

I am in receipt of your December 23, 2010 correspondence concerning the above-referenced, wherein you state that you are providing notification of your client's intention to avail itself of the benefit of the recent state laws extending certain development orders and building permits.

The following is a revised determination letter with respect to your request, on behalf of 2500 Estero Blvd. LLC, for a two-year extension of the above-referenced development order and building permit pursuant to the provisions of Senate Bill 360, 2009 Legislature and Senate Bill 1752, 2010 Legislature. This letter replaces the letter dated March 8, 2010 sent to you by Frank Shockey, former DCD Director for the Town. The development order for your client's property has an expiration date of July 29, 2011, and the building permit had an expiration date of February 27, 2009. Your request for the two year extension for both was originally submitted to the Town on December 29, 2009.

Chapter 2009-096, Laws of Florida, and Chapter 2010-147, Laws of Florida provide an extension of two (2) years from the expiration date for each valid development order and building permit with an expiration date between September 1, 2008 and January 1, 2012. The Town Council of Fort Myers Beach adopted Resolution 09-30 to implement the statutory extensions on October 5, 2009. The extension does not apply to any permit or other authorization determined to be in significant noncompliance with the conditions of the permit or authorization, and any permit extended continues to be governed by the rules in effect at the time the permit was issued, except if it is demonstrated that the rules in effect at the time the permit was issued would create an immediate threat to public safety or health.

(1) Development order "DOS2008-00018" has an expiration date between September 1, 2008 and January 1, 2012. **DOS2008-00018 is hereby extended to July 29, 2013.**



Town of Fort Myers Beach

Larry Kiker
Mayor

Bob Raymond
Vice Mayor

Tom Babcock
Council Member

Jo List
Council Member

Alan Mandel
Council Member

(2) Building permit "COM08-0003" had an expiration date of February 27, 2009. The requested extension of two years from February 27, 2009 **is approved**, provided, however, that the rules with respect to base flood elevation that were in effect at the time the permit was issued will create an immediate threat to public safety or health. Thus, the permit, as extended, will be governed by the base flood elevation rules that were adopted on August 28, 2008. The property at 2500 Estero Boulevard is currently located in a Special Flood Hazard Area in flood zone VE, partly with base flood elevation of 14 feet NAVD 88 and partly with base flood elevation of 15 feet NAVD 88. Any construction and substantial improvements must have the lowest horizontal supporting member elevated to or above the base flood elevation, with all space below the lowest horizontal supporting member open so as not to impede the flow of flood waters, and must meet all other requirements of flood zone VE as provided in the Town's current floodplain regulations. In order to commence construction under the extended building permit, your client will be required to revise the construction plans as necessary in order to comply with the current base flood elevation regulations. If your clients are of the opinion that the Flood Insurance Rate Maps and Flood Insurance Study applicable to the subject property are incorrect, they may present scientific and technical data so demonstrating to FEMA through the map amendment process. Alternatively, if your clients feel that their property meets applicable criteria, they may make application to the Town Council for a variance from the required base flood elevation in accordance with the Town's floodplain regulations. Scientific and technical data are typically necessary to provide the Town with competent substantial evidence upon which to base the requisite findings and determinations prior to granting a variance.

I note that you previously requested to appeal Dr. Shockey's administrative determination to the Town Council and you provided the Town with a filing fee to do so. Please advise whether you desire to continue with that appeal in light of this revised determination and, if so, the appeal will be scheduled most likely for sometime in January or February. Otherwise, the appeal fee will be refunded to you.

Sincerely,

Ken Miller
Building Safety Services Coordinator
Department of Community Development
Town of Fort Myers Beach

EXHIBIT (5)

ROETZEL & ADDRESS

A LEGAL PROFESSIONAL ASSOCIATION

FACSIMILE TRANSMISSION COVER SHEET

850 PARK SHORE DRIVE
TRIANON CENTRE - THIRD FLOOR
NAPLES, FL 34103
239.213.3865 DIRECT
239.649.6200 MAIN
239.261.3659 FAX
cdonovan@ralaw.com
www.ralaw.com

DATE: 3/7/2011 PAGES (INCLUDING COVER PAGE): 6

TO: Walter Fluegel FAX: (239) 765-0591

FROM: Christopher D. Donovan CLIENT MATTER: _____

THE ORIGINAL OF THIS DOCUMENT WILL BE SENT BY:

- REGULAR MAIL
- OVERNIGHT MAIL
- THIS IS THE ONLY FORM OF DELIVERY

COMMENTS

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850 PARK SHORE DRIVE
 TRIANON CENTRE - THIRD FLOOR
 NAPLES, FL 34103
 239.213.3865 DIRECT
 239.649.6200 MAIN
 239.261.3659 FAX
 cdonovan@ralaw.com
 www.ralaw.com

March 7, 2011

VIA FEDERAL EXPRESS
VIA FACSIMILE

Walter Fluegel
 Director of Development
 Town of Fort Myers Beach
 2523 Estero Blvd.
 Fort Myers Beach, FL 33931

Re: Appeal of administrative action for 2500 Estero Blvd., LLC

Dear Walter:

As you may recall, this firm represents 2500 Estero Blvd., LLC ("Permit Holder") in extending Development Order "DOS 2008-00018" and Building Permit "COM08-0003" pursuant to Senate Bill 360 (2009 Legislation) and Senate Bill 1752 (2010 Legislation). We are in receipt of Mr. Miller's February 8 letter, which replaces and modifies the former DCD Director's letter. The February 8 letter advised my client that the extension for Development Order "DOS 2008-00018" was granted and extended to July 29, 2013. That letter also advised my client that the extension for Building Permit "COM08-0003" was also granted, but with conditions. Finally, that letter explained that if the Permit Holder still wished to pursue an appeal to the Town Council under Section 34-86 of the LDC, then we should advise Mr. Miller of this, and he would apply the Permit Holder's original appellate filing fee to a new appeal and place it on the Town Council's agenda.

On February 28, 2011, I advised you over the telephone that the Permit Holder would like to continue pursuing an appeal to the Town Council of the administrative action taken in the February 8 letter as to Building Permit "COM08-0003." While the Permit Holder appreciates the extension as to Development Order "DOS2008-00018," we must respectfully disagree with the conditions imposed on the extension for Building Permit "COM08-0003" and the Town's reasons for those conditions. During our telephone conversation, you requested that I send you this in a letter that summarizes the procedural history of the case to date, explains the basis of the appeal, describes the relief we are seeking. Thereafter, you indicated that you would schedule our appeal for a hearing before the Town Council.

Walter Fluegel
March 7, 2011
Page 2

Procedural History

On August 27, 2008, the Town originally granted Building Permit "COM08-0003" to the Permit Holder. On December 28, 2009, this office notified the Town in a letter that the Permit Holder was availing itself of the two-year extension and renewal under Section 14(1) & (3) of Senate Bill 360 for Development Order "DOS2008-00018" and Building Permit "COM08-0003." The Town notified this office that the Permit Holder needed to comply with the additional requirements of the Town's Resolution 09-30, which included using specific Town-approved forms for requesting the extensions and various "administrative processing fees." The Permit Holder complied with these additional requirements.

On March 8, 2010, the former Town Planning Director, Dr. Frank Shockey, sent a letter granting an extension as to Development Order "DOS2008-00018," but not to Building Permit "COM08-0003." Pursuant to Section 34-86 of the Town's LDC, the Permit Holder timely filed an appeal of this March 8 administrative action on another approved Town form, paid another filing fee of \$1,000.00, and requested a hearing before the Town Council. No hearing was forthcoming.

After the Permit Holder provided a courtesy copy of a draft complaint for mandamus and other relief, the Town revised its March 8, 2010, decision. In its February 8, 2011, letter, the Town granted the extension to Development Order "DOS2008-00018" without conditions, but granted an extension to Building Permit "COM08-0003" with conditions. With respects to those conditions, the Town explained in the letter:

[T]he rules with respect to base flood elevation that were in effect at the time the permit was issued will create an immediate threat to public safety or health. Thus, the permit, as extended, will be governed by the base flood elevation rules that were adopted on August 28, 2008. The property at 2500 Estero Boulevard is currently located in a Special Flood Hazard Area in flood zone VE, partly with base flood elevation of 14 feet NAVD 88 and partly with base flood elevation of 15 feet NAVD 88. Any construction and substantial improvements must have the lowest horizontal supporting member elevated to or above the base flood elevation, with all space below the lowest horizontal supporting member open so as not to impede the flow of flood waters, and must meet all other requirements of flood zone VE as provided in the Town's current floodplain regulations. In order to commence construction under the extended building permit, your client will be required to revise the construction plans as necessary in order to comply with the current base flood elevation regulations. If your clients are of the opinion that the Flood Insurance Rate Maps and Flood

Walter Fluegel
March 7, 2011
Page 3

Insurance Study applicable to the subject property are incorrect, they may present scientific and technical data so demonstrating to FEMA through the map amendment process. Alternatively, if your clients feel that their property meets applicable criteria, they may make application of the Town Council for a variance from the required base flood elevation in accordance with the Town's floodplain regulations. Scientific and technical data are typically necessary to provide the Town with competent substantial evidence upon which to base the requisite findings and determinations prior to granting a variance.

The Permit Holder does not contest the extension as to Development Order "DOS2008-00018." But the Permit Holder does wish to appeal the conditional extensions of Building Permit "COM08-0003" to the Town Council. The Permit Holder requests that the Town Council reverse these conditions and simply grant an extension without conditions as contemplated by Senate Bill 360 (2009 Legislation) and Senate Bill 1752 (2010 Legislation).

Basis for the Appeal

Senate Bills 360 and 1752's two-year extension must be granted without conditions unless one of the following apply: 1) An untimely request for extension of time filed after December 31, 2009; 2) A permit or other authorization under any programmatic or regional general permit issued by the Army Corps of Engineers; 3) A permit or other authorization held by an owner or operator determined to be in significant noncompliance with the conditions of the permit or authorization as established through the issuance of a warning letter or notice of violation, the initiation of formal enforcement, or other equivalent action by the authorizing agency; or 4) A permit or other authorization, if granted an extension, that would delay or prevent compliance with a court order. See Senate Bill 360(14)(4) (2009 Legislation); Senate Bill 1752(46)(4) (2010 Legislation). None of these apply to Building Permit "COM08-0003." Therefore, its two-year extension should be granted.

Senate Bills 360 and 1752 do not allow a local government to issue "conditional extensions" as the Town is attempting to do in the February 8, 2011, letter. If a permit holder qualifies under the statute and none of the four scenarios above apply, then the local government must grant the extension. This is a ministerial duty that affords no discretion. According to subsection 5 of Senate Bill 360 and Senate Bill 1752, extended permits are then governed by the rules in effect at the time the permit was issued. For Building Permit "COM08-0003," this would be those rules in effect on or before August 27, 2008.

The very limited exception to this is when the local government can show "that the rules in effect at the time the permit was issued would create an immediate threat to public safety or health." See Senate Bill 360(14)(5) (2009 Legislation); Senate Bill 1752(46)(5) (2010

Walter Fluegel
March 7, 2011
Page 4

Legislation). The Town is attempting to rely on this limited exception by requiring the Permit Holder to comply with the base-flood elevation rules in effect on August 28, 2008 as a condition precedent to the permit's extension. This exception does not apply for a number of reasons:

First, the statute expressly requires the Town to "demonstrate[] that the rules in effect at the time the permit was issued would create an immediate threat to public safety or health." Beyond parodying this statutory requirement, the Town's February 8 letter makes no such showing. Nor could it. If the original base-flood elevation rules would have been a threat to public safety or harm, then the original permit would have been issued on August 28, 2008, which is when the new rules became effective, rather than being issued under the old rules on August 27, 2008. Now, the Town is estopped to claim otherwise.

Moreover, the Town certainly cannot show any "immediate threat." "Immediate" means "[o]ccurring without delay."¹ In other words, this term requires an imminent and identifiable threat, rather than some vague and uncertain threat.² There are no immediate threats to the public safety or health. If the Town truly believed that an immediate threat of harm existed, then it would not have invited the Permit Holder to seek a variance in the conclusion of the February 8 letter.

Finally, the Town cannot deny or conditionally grant Senate Bill 360 and 1752 extensions under the guise of the Town's general police powers. To permit this would eviscerate Senate Bill 360 and 1752's clear intent and purpose.³ Accordingly, the Town Council should vacate these conditions.⁴

Relief Requested

The Permit Holder requests that the Town Council vacate the conditions on the extension for Building Permit "COM08-0003" that Ken Miller imposed. Rather, the Town Council should

¹ *Black's Law Dictionary* 751 (West 7th ed.).

² *Cf. Lanier v. Overstreet*, 175 So. 2d 521, 524 (Fla. 1965) (interpreting another statute's phrase "expected to put [to use] in the immediate future" as requiring the use to be "expected *immediately*, not at some vague uncertain time in the future") (emphasis original).

³ *Cf. Metropolitan Dade County v. Pierce*, 236 So. 2d 202, 203 (Fla. 3d DCA 1970) ("Similarly, the constitutional right of the owner of property to make legitimate use of his lands may not be curtailed by unreasonable restrictions under the guise of the police power. The land owner will not be required to sacrifice his rights absent a substantial need for restriction in the interest of the public health, morals, safety or welfare.").

⁴ The Permit Holder reserves its rights to raise further factual and legal arguments against the Town's unreasonable conditions to extending Building Permit "COM08-0003" at a hearing.

Walter Fluegel
March 7, 2011
Page 5

grant a two-year extension for Building Permit "COM08-0003" and permit construction based on the rules in effect at the time Building Permit "COM08-0003" was issued on August 27, 2008, including based on the base-flood elevation rules in effect on August 27, 2008.

Please let us know when our hearing is to be scheduled. If you have any other questions or concerns, or if you require further information, please do not hesitate to contact me or Robert D. Pritt.

Very truly yours,

ROETZEL & ANDRESS, LPA



Christopher D. Donovan

CDD/dfb
cc: Client
647620 v_01 \ 000000.0972



Marilyn W. Miller
Direct Dial: 239-985-4807
marilyn.miller@fowlerwhite.com

March 20, 2012

Pam Bondi
Attorney General
Department of Legal Affairs
The Capitol PL01
Tallahassee, FL 32399-1050

Re: Request for Attorney General Opinion

Dear Ms. Bondi:

As the Town Attorney for the Town of Fort Myers Beach, I am requesting an attorney general opinion as follows:

QUESTION: Do the provisions of Chapter 2011-139 Laws of Florida extending certain expired building permits operate to prohibit the Town of Fort Myers Beach from enforcing its local Flood Mitigation Ordinance where adoption of that ordinance has been mandated by FEMA as a condition for participation in the National Flood Insurance Program?

FACTUAL BACKGROUND

In 2009, the Florida Legislature, in response to Florida real estate market conditions, enacted legislation that extends certain building permits issued by local governments with expiration dates that fall within a defined period of time. Similar legislation was enacted in the years 2010 and 2011 and the expiration of those permits was further extended. The current legislation is contained in Chapter 2011-139 Laws of Florida. Section 73 of that Chapter reads, in pertinent part:

(1) Any permit or any other authorization that was extended under section 14 of chapter 2009-96, Laws of Florida, as reauthorized by section 47 of chapter 2010-147, Laws of Florida, is extended and renewed for an additional period of 2 years after its previously scheduled expiration date. This extension is in addition to the 2-year permit extension provided under section 14 of chapter 2009-96, Laws of Florida, as reauthorized by section 47 of chapter 2010-147, Laws of Florida. This section does not prohibit conversion from the construction phase to the operation phase upon completion of construction.

FOWLER WHITE BOGGS P.A.

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...

(3) The holder of a valid permit or other authorization that is eligible for the 2-year extension shall notify the authorizing agency in writing no later than December 31, 2011, identifying the specific authorization for which the holder intends to use the extension and anticipated timeframe for acting on the authorization.

...

(5) Permits extended under this section shall continue to be governed by the rules in effect at the time the permit was issued, except if it is demonstrated that the rules in effect at the time the permit was issued would create an immediate threat to public safety or health. This provision applies to any modification of the plans, terms, and conditions of the permit that lessens the environmental impact, except that any such modification may not extend the time limit beyond 2 additional years.

The Town of Fort Myers Beach participates in the National Flood Insurance Program (NFIP) administered by the Federal Emergency Management Agency (FEMA). As a condition of membership in the NFIP, the Town is required to adopt and enforce a Flood Mitigation Ordinance. The ordinance requirements are dictated by FEMA and the Town must adopt and enforce that ordinance in order for the Town to be able to participate in the NFIP. One of the provisions of the Town's Flood Mitigation Ordinance requires that the first floor of buildings in flood-prone areas be elevated a certain number of feet (base flood elevation). On August 8, 2008, the Town, as required by FEMA, adopted amendments to its Flood Mitigation Ordinance that dramatically increased the base flood elevation requirements.

A property owner in the Town applied for a building permit to construct a commercial structure just prior to the time the new base flood elevation requirements went into effect on August 8, 2008. That property owner did not commence construction within the six month period required under the Florida Building Code and that building permit therefore expired. Since that building permit was issued during the window of time specified in Chapter 2009-96, Laws of Florida, that permit was and still is eligible for the time extensions granted by Chapter 2009-96 and the subsequent legislation enacted during the 2010, 2011 and 2012 legislative sessions. The Town, however, has taken the position that, since FEMA mandates adoption and enforcement of local Flood Mitigation Ordinances, the Town cannot ignore that ordinance and allow the property owner to build under the extended permit at a base flood elevation that is in violation of the current Town Flood Mitigation Ordinance. The Town, and I as their attorney, are of the opinion that allowing the property owner to violate the current Town Flood Mitigation Ordinance could put the Town's participation in the NFIP in jeopardy. The Town therefore issued the property owner an extension of the expired building permit, as required by state law, but relied upon the following language of Chapter 2009-96 to require the owner to comply with the Town's current Flood Mitigation Ordinance requirements:

(5) Permits extended under this section shall continue to be governed by the rules in effect at the time the permit was issued, except if it is demonstrated that the rules in effect at the time the permit was issued would create an immediate threat to public safety or health. This provision applies to any modification of the plans, terms, and conditions of the permit that lessens the environmental impact, except that any such modification may not extend the time limit beyond 2 additional years.

The property owner disagrees with the Town's interpretation of Chapter 2009-96 and its progeny and the Town Council directed that an opinion be sought from the Attorney General.

MEMORANDUM OF LAW

There do not appear to be any reported court decisions that are on point. There is, however, a somewhat similar issue that recently occurred involving the state and local governments in Mississippi that is instructive.

In 2006, the state of Mississippi enacted a state statute that prohibits counties and cities from enforcing any building codes against "duly qualified" hunting and fishing camps. This would include any flood mitigation ordinances that local governments in Mississippi are required to adopt as a condition of participation in the NFIP. In August, 2011, an attorney representing Coahoma County, Mississippi, requested an opinion from the Mississippi Attorney General concerning whether Mississippi state law prohibits Coahoma County from enforcing the County's Flood Mitigation Ordinance against qualified hunting and fishing camps. The Mississippi Attorney General opined that Mississippi state law does prohibit Coahoma County from enforcing its Flood Mitigation Ordinance against qualified hunting and fishing camps. The Attorney General, however, declined to opine on whether and to what extent the prohibition would impact the County's participation in the NFIP because that is a matter that should be addressed by FEMA. A copy of that attorney general opinion is attached.

Approximately one month after the Mississippi Attorney General Opinion was issued, the Mississippi Attorney General wrote to FEMA requesting a waiver for the state law exception of hunting and fishing camps from the various Flood Mitigation Ordinances in effect around the state for the Mississippi. In November, 2011, FEMA responded to the Attorney General's waiver request and stated that the requirement that a community adopt adequate floodplain management regulations is a statutory condition of joining the NFIP and is a condition of continued eligibility that cannot be waived. FEMA further stated that since the Mississippi statute at issue prohibits communities in Mississippi from enforcing flood damage prevention ordinances, that statute jeopardizes the ability of communities in the state to participate in the NFIP, and will subject those communities to suspension from the NFIP unless and until that state statute is repealed. The FEMA response concludes by advising the Attorney General that if the state of Mississippi wants to continue participation in the NFIP, the state statute at issue must be amended before the end of the 2012 Mississippi State Legislative Session. If that does not occur,

Pam Bondi
March 20, 2012
Page 4

the letter advises, Mississippi communities will be suspended from the NFIP effective May 5, 2012. A copy of the Attorney General's waiver request and FEMA's response is attached.

In the instant case, if Chapter 2009-96, Laws of Florida and its progeny is similarly interpreted as absolutely prohibiting the Town of Fort Myers Beach from enforcing its current Flood Mitigation Ordinance against property owners who obtained building permit extensions under that state law, then it would appear that such interpretation would have the same effect as in Mississippi. As a result, the State of Florida could be placed in the position of being forced by FEMA to choose between amending or clarifying Chapter 2009-96, Laws of Florida and its progeny to remove or modify the building permit extension language, or having the entire State disqualified from participation in the NFIP.

Unlike the Mississippi state statute, however, Chapter 2009-96 and its progeny includes an exception to the "grandfathering" of extended building permits where the "...rules in effect at the time the permit was issued would create an immediate threat to public safety or health." Since allowing the property owner to build under the provisions of Flood Mitigation Ordinance that was in effect when the building permit was issued will put the Town's, and perhaps even the State of Florida's, participation in the NFIP immediately at risk, it seems clear that this exception is applicable to the facts in the instant case. As the Town Attorney for the Town of Fort Myers Beach, I am therefore of the opinion that the provisions of Chapter 2009-96, Laws of Florida, and subsequent similar legislation does not operate to prohibit the Town from requiring compliance with the Town's current Flood Mitigation Ordinance for all permits that have been extended pursuant to that legislation.

If you have any questions or need any further information concerning this request, please do not hesitate to contact me.

Sincerely,

FOWLER WHITE BOGGS P.A.



Marilyn W. Miller

Enclosures

Cc: Town Council
Terry Stewart, Town Manager
Walter Fluegel, Community Development Director
Robert D. Pritt, Esq.

FOWLER WHITE BOGGS P.A.

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Tom T. Ross, Jr.
2011 WL 4383412
August 17, 2011

Term

2011 WL 4383412 (Miss.A.G.)

Office of the Attorney General
State of Mississippi
Opinion No. ←2011→-00273

August 17, ←2011→

Re: *Applicability of Section 17-2-9 to county flood plain ordinances and local building codes*

←Tom T→, ←Ross→, Jr.
Board Attorney, Coahoma County
P.O. Box 579
Clarksdale, Mississippi 38614

Dear Mr. Ross,

Attorney General Jim Hood has received your opinion request and has assigned it to me for research and reply.

You have asked this office to assist the Board of Supervisors of Coahoma County (the "Board") in addressing issues that have arisen in connection with the County's efforts to enforce compliance with the county's Flood Mitigation Ordinance adopted in compliance with the National Flood Insurance Program, as well as the County's own building code adopted pursuant to Section 19-5-9.

INQUIRIES [FN2] AND RESPONSE

1. Does 17-1-3 give the Board of Supervisors jurisdiction to regulate the elevation of buildings? If not, is there another code section that does give that authority?

Yes.

2. Does the County's adoption of the International Building Codes comply with the requirements of Mississippi Code Section 17-2-5, which requires that counties adopt the building code promulgated by the Mississippi Building Codes Council, since the Council appears to be defunct?

See our response to Question 3.

3. Is the Board of Supervisors prohibited from enforcing the building code adopted pursuant to Section 19-5-9 against "hunting camps" and "fishing camps" where those camps have filed appropriate affidavits pursuant to 17-2-9(3), and the Board makes a finding, consistent with the facts, that the structure is a "hunting" or "fishing" camp within the meaning of this code section?

Yes.

4. Is the Board of Supervisors prohibited from enforcing the Flood Mitigation Ordinance adopted by the County, as required by the NFIP, against 'hunting camps' and 'fishing camps' where those camps have filed appropriate affidavits pursuant to 17-2-9(3), and the Board makes a finding, consistent with the facts, that the structure is a 'hunting' or 'fishing' camp within the meaning of this code section? [Added via e-mail to this office]

Yes, under state law. However, we do not opine as to whether or to what extent this practice will impact the county's participation in the National Flood Insurance Program, and such is a matter to be addressed by FEMA and MEMA.

BACKGROUND

In summary, the issues herein revolve around whether Coahoma County should enforce its Flood Mitigation Ordinance, which requires a certain elevation of buildings, against local hunting and fishing camps on the west side of the levee in the county. Also at issue is whether the County should enforce its own building codes adopted under 19-5-9 against those same hunting and fishing camps. The issue arises because hunting and fishing camps are exempted from application of certain building codes.

The Flood Mitigation Ordinance (Ordinance) was adopted by the County (and other counties as well) as a condition of membership in the National Flood Insurance Program (NFIP). The Ordinance was prepared by NFIP and submitted to counties for adoption. One of the provisions of the Ordinance requires the first floor of certain buildings in certain flood-prone areas to be elevated over the base flood elevation. You state that for continued participation in the NFIP, the County is required to both adopt and enforce the Ordinance.

Owners of the hunting and fishing camps object to enforcement of the Ordinance against them, and cite Mississippi Code Section 17-2-9 as the basis for excepting them from the Ordinance. Section 17-2-9 is part of a group of statutes (entitled "Building Codes") adopted post-Katrina which address building codes and related issues, primarily in the coast counties, but some of the provisions apply to all counties and municipalities. Section 17-2-9 does contain a provision expressly prohibiting the enforcement of any building codes "established or imposed" under 17-2-1 through 17-2-5 against hunting or fishing camps, so long as those hunting or fishing camps submit the proper documentation.

Thus, the issue becomes whether the exemption in 17-2-9 exempts hunting and fishing camps from enforcement of the Flood Mitigation Ordinance.

In addition to the Flood Mitigation Ordinance, in May ~~2011~~ the County also adopted the International Building Code (IBC) as its county building code, pursuant to its general authority under Mississippi Code Section 19-5-9. This statute authorizes counties to adopt building codes which do not exceed the construction codes of nationally recognized code groups, to-wit:

Any county within the State of Mississippi, in the discretion of the board of supervisors, may adopt building codes, plumbing codes, electrical codes, sanitary codes, or other related codes dealing with general public health, safety or welfare, or a combination of the same, within but not exceeding the provisions of the construction codes published by nationally recognized code groups, by order or resolution in the manner prescribed in this section, but those codes so adopted shall apply only to the unincorporated areas of the county.

The statute also clearly states that its provisions "shall be in addition and supplemental to any existing laws authorizing the adoption, amendment or revision of any county orders, resolutions or codes." You ask whether the County's own building code (i.e., the IBC) adopted under authority of 19-5-9 is enforceable against the hunting and fishing camps.

ANALYSIS

Section 17-2-9 provides in pertinent part:

(3) The governing authority of any county or municipality shall not enforce any portion of any building codes established and/or imposed under Sections 17-2-1 through 17-2-5 which regulates the construction or improvement of a private unattached outdoor recreational structure, such as a hunting or fishing camp. In order for a structure to qualify as a "hunting camp" or "fishing camp" under the provisions of this subsection, the owner must file with the board of supervisors of the county in which the structure is located his signed affidavit stating under oath that the structure is a hunting camp or fishing camp, as the case may be, that he is the owner or an owner of the camp and that the camp is located in an unincorporated area of the county within, near or in close proximity to land upon which hunting or fishing activities legally may take place

We thus look at Sections 17-2-1 through 17-2-5. 17-2-5 expressly requires any county or municipality which adopts building codes after July 1, 2008 to adopt as minimum codes any codes established and promulgated by the Mississippi Building Codes Council.

Section 17-2-3 creates the Mississippi Building Codes Council ("MBCC") and provides for its membership.

We point out that the statute does not *require adoption* of a building code, nor does it provide *authority* for adoption of a building code - it merely requires that any building code that *is* adopted must be one promulgated by the MBCC. It is your understanding that the MBCC met only once, never adopted a code, and is now, for all intents and purposes, defunct. (See the attached article dated November 13, 2009 in the Mississippi Business Journal addressing same.)

RESPONSES

Question 1

Does 17-1-3 give the Board of Supervisors jurisdiction to regulate the elevation of buildings? If not, is there another code section that does give that authority?

Mississippi Code Section 17-1-3 provides in relevant part as follows:

(1) ... [F]or the purpose of promoting health, safety, morals, or the general welfare of the community, ..., with respect to the unincorporated part of any county, the governing authority of any county, in its discretion, are empowered to regulate the height, number of stories and size of building and other structures, the percentage of lot that may be

occupied, the size of the yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes, but no permits shall be required with reference to land used for agricultural purposes, including forestry activities as defined in Section 95-3-29(2)(c), or for the erection, maintenance, repair or extension of farm buildings or farm structures, including forestry buildings and structures, outside the corporate limits of municipalities....

Miss. Code Section 17-1-3. [Emphasis added]

In addition, Section 19-5-9 contains an identical provision, to-wit:

For the purpose of promoting health, safety, morals or the general welfare of the community, the governing authority of any municipality, and, with respect to the unincorporated part of any county, the governing authority of any county, in its discretion, is empowered to regulate the height, number of stories and size of building and other structures, the percentage of lot that may be occupied, the size of the yards, courts and other open spaces, the density or population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes ...

Miss. Code Section 19-5-9. [Emphasis added]

It is the opinion of this office that both of these provisions would include the authority to regulate the elevation of buildings. While the statutes specifically authorize regulation of the "height," as opposed to the "elevation," of buildings, we opine that they are broad enough to encompass elevation. Clearly, the intent is to give local governing bodies regulatory authority over buildings and structures for the purpose of promoting health and safety. The provisions specifically list the authority to regulate such matters as height, number of stories, size, percentage of lot occupancy, yard size and use; however, we do not believe this list was intended to be exclusive. Certainly the elevation of a building, i.e., the height from the ground to the first floor, is integrally tied to the height and number of stories and it would be illogical for the county to have the authority to regulate all of the other listed matters related to buildings without also having the authority, if it so chooses, to regulate the elevation of a building.

Question 2

Does the County's adoption of the International Building Codes comply with the requirements of Section 17-2-5?

As explained above, Section 17-2-5 requires that building code adopted after July 1, 2008 must comply with the building code promulgated by the Building Code Council, but the Building Code Council never promulgated a code. We believe whether adoption of the IBC renders the County in compliance with 17-2-5 is irrelevant to your inquiry. See our response to your Question 3.

Question 3

Is the Board of Supervisors prohibited from enforcing the building code adopted pursuant to 19-5-9 (the International Building Code) against "hunting camps" and "fishing camps" where those camps have filed appropriate affidavits pursuant to 17-2-9(3), and the Board makes a finding, consistent with the facts, that the structure is a "hunting" or "fishing" camp within the meaning of this code section?

Section 19-5-9 provides in part as follows:

Any county within the State of Mississippi, in the discretion of the board of supervisors, may adopt building codes, plumbing codes, electrical codes, sanitary codes, or other related codes dealing with general public health, safety or welfare, or a combination of the same, within but not exceeding the provisions of the construction codes published by nationally recognized code groups, by order or resolution in the manner prescribed in this section, but those codes so adopted shall apply only to the unincorporated areas of the county.

The exemption in 17-2-9 for hunting/fishing camps only applies to building codes "established or imposed under" Sections 17-2-1 through 17-2-5. We believe the wording of this provision to be somewhat misleading, as building codes are not actually "established or imposed under" those code sections; rather, the actual authority for adoption of building codes is found in Section 19-5-9, above. Sections 17-2-1 through 17-2-5, adopted after Katrina, merely provide (or purport to provide) a minimum standard with which any duly adopted building codes must comply, i.e., that any such county building code must have as a minimum "any codes established and promulgated by the Mississippi Building Codes Council." As it turns out, however, the MBCC never promulgated a code. (See the attached article dated November 13, 2009 in the Mississippi Business Journal.)

Instead, the county adopted as its building code the International Building Code (IBC) in May **←2011→**, pursuant to its authority to do so in 19-5-9.

The statutorily created exemption for hunting/fishing camps in 17-2-9 indicates a clear legislative intent to exempt hunting and fishing camps from locally adopted building codes. Otherwise, counties could get around the exemption by merely taking the position that their building code was not established "under 17-2-1 through 17-2-5."

Therefore, pursuant to 17-2-9, hunting and fishing camps are expressly exempt from application of a county's building codes.

Question 4

Is the Board of Supervisors prohibited from enforcing the Flood Mitigation Ordinance adopted by the County, as required by the NFIP, against 'hunting camps' and 'fishing camps' where those camps have filed appropriate affidavits pursuant to 17-2-9(3), and the Board makes a finding, consistent with the facts, that the structure is a 'hunting' or 'fishing' camp within the meaning of this code section?

The Flood Mitigation Ordinance was clearly adopted as a condition of membership in the NFIP. The Ordinance was prepared by NFIP and submitted to counties for adoption. Even though the federal government requires adoption of the ordinance as a condition of participation in the NFIP, the authority of the county to adopt it is the same as discussed above for the county's own ordinance, i.e., 19-5-9. Thus, using the same legal analysis, hunting and fishing camps would likewise be exempt from application of the Flood Mitigation Ordinance under state law. Whether doing so would impact the county's participation in the NFIP is a matter between the federal government, FEMA, MEMA and the county.

CONCLUSION

Counties have the authority to regulate the elevation of buildings, pursuant to Sections 17-1-3 and 19-5-9. Furthermore, 17-2-9 exempts hunting and fishing camps from application of any duly adopted county building codes.

If this office may be of further assistance to you, please let us know.
Sincerely,

Jim Hood
Attorney General

By: Ellen O'Neal
Special Assistant Attorney General

[FN2]. We would point out that after submitting your request letter, you altered your specific inquiries slightly in an e-mail, and those are reflected here.

2011 WL 4383412 (Miss.A.G.)

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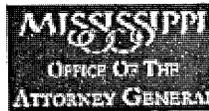
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STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

September 15, 2011

W. Craig Fugate
Administrator, Federal Emergency Management Agency
500 C Street S.W.
Washington, D.C. 20472

Re: Request for Waiver for State Law Exception of
Hunting and Fishing Camps from Flood Mitigation Ordinance

Dear Mr. Fugate:

I respectfully request a waiver from your office allowing Mississippi counties to follow an exception in state law which exempts hunting and fishing camp owners from having to comply with county Flood Mitigation Ordinances. If these type waivers are not routinely given to states with similar statutes, I request a meeting with your counsel to determine how we can resolve an apparent conflict between state law and federal regulations. I have enclosed a copy of a recent official opinion written by our office which outlines the law.

Mississippi counties do not want to risk losing continued participation in the National Flood Insurance Program; however, they are bound to follow state law. As you are aware, as a condition of participation in the National Flood Insurance Program ("NFIP"), local communities were required by FEMA to adopt the Flood Mitigation Ordinance (the "Ordinance") prepared and presented to them by FEMA. One of the provisions of the Ordinance requires the first floor of certain buildings in certain flood-prone areas be elevated over the base flood elevation.

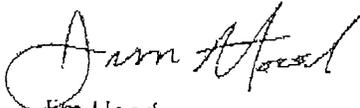
I have been made aware from certain counties affected by the spring floods that FEMA is requiring the local governing authorities to enforce the Ordinance against all structures in the affected areas, including hunting and fishing camps that are not flood-insured and whose owners do not wish them to be so. These camps are inside the Mississippi River levee. In 2006, our state legislature adopted section 17-2-9 of the Mississippi Code of 1972, as amended, which prohibits counties and cities from enforcing building codes against duly qualified hunting and fishing camps, Miss Code Ann § 17-2-9 (Supp. 2006).

The local authorities have been told by persons from both MEMA and FEMA that if they exempt these hunting and fishing camps from the Ordinance, the counties, and possibly the entire state, could be prohibited from participating in the NFIP. While we certainly do not wish to jeopardize our continued participation in NFIP, I see no valid rationale for requiring hunting and fishing camps near the river which are not flood insured to comply with flood-related elevation and other requirements.

As I understand it, section 1316 of the National Flood Insurance Act, and certain provisions of the applicable regulations, contain provisions for denying federal flood insurance to any structure which has been declared to be out of compliance with the Ordinance. It would seem that this matter could be resolved by merely establishing, via administrative letter, court order or otherwise, that these hunting and fishing camps and other structures cannot and will never be able to receive flood insurance. To do so would not have a detrimental impact on the program.

I respectfully request that FEMA consider allowing the local authorities, pursuant to section 17-2-9 of the Mississippi Code of 1972, as amended, to exempt certain duly qualified hunting and fishing camps from application of the Flood Mitigation Ordinance. I would be happy to meet with you or other persons from FEMA and MEMA to discuss this and work out a resolution. Please do not hesitate to contact me to discuss this matter further.

Sincerely yours,



Jim Hood
Attorney General
State of Mississippi

cc: Edward Connor, Acting Administrator
Federal Insurance and Mitigation Administrator

Major Phillip May, Regional Administrator
Region IV

Brad Loar, Director
Region IV, Mitigation Division

Congressman Bennie Thompson
Ranking Member, House Homeland Security Committee

Mike Wornack
Executive Director, Mississippi Emergency Management Agency

U.S. Department of Homeland Security
500 C Street, SW
Washington, DC 20477



FEMA

November 28, 2011

Mr. Jim Hood
Attorney General for the State of Mississippi
Walter Sillers Building
Post Office Box 220
Jackson, Mississippi 39205-0220

Dear Mr. Hood:

This is in response to your letter dated September 15, 2011, to Mr. Craig Fugate, Administrator of the Federal Emergency Management Agency (FEMA) in the Department of Homeland Security, requesting that FEMA grant a waiver that would allow Mississippi counties participating in the National Flood Insurance Program (NFIP) to exempt hunting and fishing camps from their local flood damage prevention ordinance. You also suggested resolving the NFIP eligibility issue by using Section 1316 of the National Flood Insurance Act, 42 U.S.C. § 4023, to make noncompliant hunting and fishing camps ineligible to purchase Federal flood insurance. As noted in your letter, the Mississippi Code Section 17-2-9 prohibits counties and cities from enforcing building codes, including local floodplain management ordinances, against duly qualified hunting and fishing camps. However, the National Flood Insurance Act does not allow FEMA to grant this type of waiver and Section 1316 cannot be used to address defective floodplain management ordinances.

FEMA is the Federal Agency responsible for administering the NFIP, as authorized by the National Flood Insurance Act, 42 U.S.C. §§ 4001 *et seq.* Participation in the NFIP is voluntary, and the Federal government makes affordable flood insurance available to property owners in exchange for community adoption and enforcement of local floodplain management ordinances that are consistent with FEMA's criteria for land management and use. *See* 42 U.S.C. §§ 4012, 4102. The local land use and control measures must be legally enforceable and uniformly applied in flood prone areas in a community. *See* 42 U.S.C. §§ 4012 (c), 4022; 44 C.F.R. §§ 60.1, 60.2. FEMA is prohibited from making flood insurance available in a community unless that community adopts minimum NFIP requirements. *See* 42 U.S.C §§ 4012 (c) and 4022. The minimum NFIP requirements established in 44 C.F.R. § 60.3 are designed to minimize the risk of flood and ensure that new and substantially improved buildings are constructed to minimize flood damages.

Mississippi Code Section 17-2-9 prevents a community's enforcement of local floodplain management ordinances on structures and other development in hunting and fish camps located in special flood hazard areas (SFHAs). As such, it is contrary to the floodplain management requirements of the NFIP. The requirement that a community adopt adequate floodplain management regulations is a statutory condition of joining the NFIP and is a condition of continued eligibility that cannot be waived. *See* 44 C.F.R. § 60.6(b)(1). If a community lacks the ability to legally enforce its floodplain management ordinance uniformly, then it is not in compliance with the NFIP.

Jim Hood
November 28, 2011

Moreover, FEMA knows through post disaster assessments and analysis of our loss experience with structures built after a community's initial FIRM and its adoption of floodplain management ordinances that the NFIP floodplain management requirements greatly minimize the Nation's losses due to flood. New construction, substantial improvements of existing structures, and other development that does not comply with the community's floodplain management ordinance can increase the burden of response and recovery in the community and nearby communities and thereby increase the costs to others through taxpayer supported disaster assistance payments.

As noted, as a condition of participation in the NFIP and for the availability of Federal flood insurance, a community must adopt local floodplain management ordinances that comply with FEMA's minimum requirements. Continued eligibility of the 320 Mississippi communities (with 87,882 flood insurance policies in force and just over \$18 billion in flood coverage) is threatened by Mississippi Code Section 17-2-9.

The NFIP's minimum floodplain management requirements apply to all development in a participating community, including hunting and fishing camps.¹ To minimize flood risk, communities must review permit applications to determine whether proposed building sites will be reasonably safe from flooding. If the proposed building site is in a floodprone area, all new construction and substantial improvements of residential structures must be elevated to or above the Base Flood Elevation (BFE). In addition, the building must be designed (and modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the building including the effects of buoyancy. Buildings that are not properly anchored may float off their foundation, float or break-up, and may clog bridges and damage other buildings. Additional methods must be used to minimize damages, including using flood resistant materials below the BFE and constructing or protecting all utilities and equipment to or above the BFE. These requirements are in the NFIP regulations at 44 C.F.R. § 60.3.

Furthermore, development in an area identified as the floodway on a community's Flood Insurance Rate Map (FIRM) is limited. A community must prohibit encroachment, including fill, new construction, substantial improvements, and other development unless it has been demonstrated through accepted hydrologic and hydraulic analyses that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge. See 44 C.F.R. § 60.3(d)(3). FEMA's regulations limit development in the floodway because such development can result in increased flooding not only on the structures constructed in the floodway, but also on buildings and other development located upstream.

¹ "Development" is defined in the NFIP regulations as "any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations or storage of equipment or materials." 44 CFR § 59.1

Jim Hood

NOV 28 2011

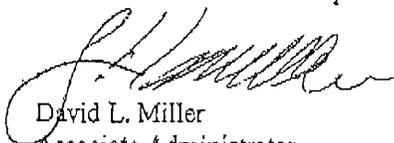
In your letter, you suggested using Section 1316 of the National Flood Insurance Act of 1968, 42 U.S.C. § 4023, to deny flood insurance for the hunting and fishing camps. Section 1316 provides for the denial of flood insurance coverage for any property that the FEMA Administrator finds has been declared by a duly constituted State or local authority to be in violation of State or local floodplain management regulations. This provision cannot be used to cure defective floodplain management ordinances.

In summary, because Section 17-2-9 of the Mississippi Code prohibits communities in Mississippi from enforcing flood damage prevention ordinances, the Code jeopardizes the ability of communities in the State to participate in the NFIP. As a result, the communities will be subject to suspension from the NFIP if this provision of the statute is not repealed. Suspension will result in the loss of NFIP flood insurance coverage for Mississippi communities. Furthermore, by statute federal agencies are prohibited from making grants, loans, or guarantees for the acquisition or construction of structures located in the SFHA in suspended communities. See 42 U.S.C. § 4106. This restriction applies to assistance from the Federal Housing Administration, Veterans Administration, and the Small Business Administration among others. Lending institutions insured or regulated by a federal agency may, however, continue to make conventional loans in these areas at their discretion. See 42 U.S.C. 4012a(b). If a flood disaster occurs in a suspended community, most types of federal disaster assistance for the acquisition, construction, or repair of insurable structures within the SFHA, including federal assistance to individuals and households for housing and personal property, is not available. See 42 U.S.C. § 4106.

Should the State want to continue participation in the NFIP, Section 17-2-9 of the Mississippi Code must be remedied before the end of the 2012 Mississippi State Legislative Session. Should action not occur, Mississippi communities would be suspended from the NFIP effective May 5, 2012.

If you or your staff should have any questions or need additional information or assistance, please contact Brad G. Loar, Director, Mitigation Division, FEMA Region IV at (770) 220 5416.

Sincerely,



David L. Miller
Associate Administrator
Federal Insurance and Mitigation Administration

cc: Major Phillip May, Regional Administrator, FEMA Region IV
Stacey Ricks, State NFIP Coordinator, Mississippi Emergency Management Agency
Mike Womack, Executive Director, Mississippi Emergency Management Agency
The Honorable Haley Barbour, Governor of the State of Mississippi



OFFICE OF THE ATTORNEY GENERAL
Opinions Division

STATE OF FLORIDA

PAM BONDI
ATTORNEY GENERAL

PL 01 The Capitol
Tallahassee, Florida 32399-1050
Telephone (850) 245-0158
Fax (850) 922-3969

July 25, 2012

Ms. Marilyn W. Miller
Fowler White Boggs P.A.
Post Office Box 1567
Fort Myers, Florida 33902

Dear Ms. Miller:

On March 20, 2012, you wrote to this office requesting an Attorney General Opinion discussing whether Chapter 2011-139, Laws of Florida, would operate to prohibit the Town of Fort Myers Beach from enforcing its local flood mitigation ordinance. The ordinance was mandated by the Federal Emergency Management Administration (FEMA) as a condition for participation in the National Flood Insurance Program.

You and I have spoken on this issue and this office has also reached out to Mr. Robert Pritt and Mr. Timothy Stanfield to discuss these issues and attempt to provide some guidance. Unfortunately, it does not appear that this is a matter upon which this office may comment at this time. Because of the speculative nature of the question involved, that is, whether compliance with the special act which would require noncompliance with the ordinance could result in action by FEMA affecting the town's participation in the federal flood insurance program, this office will not render an opinion on this issue.

I regret that we could not be of more direct assistance to you in this matter, but we feel that a binding judicial resolution may be more appropriate under the circumstances.

Ms. Marilyn W. Miller
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Thank you again for contacting this office for assistance. I hope this office will have an opportunity to work with you again in the future.

Sincerely,

A handwritten signature in cursive script that reads "Gerry Hammond". The signature is written in black ink and is positioned above the printed name.

Gerry Hammond
Senior Assistant Attorney General

GH/tsh

cc: Robert Pritt, Esq.
Timothy Stanfield, Esq.