

TOWN OF BAY HARBOR ISLANDS

September 9, 2021

AGENDA

STATEMENT OF DECORUM

All comments must be addressed to the Council as a body and not to individuals. Any person making a racial or slanderous remark or who becomes boisterous while addressing the Town Council, staff, etc. shall be barred from the audience by the presiding officer. No profanity, shouting, heckling, verbal outbursts or disruptive behavior in support of or opposition to a speaker or his/her remarks is permitted. Please mute or turn off your cell phone or other electronic devices at the start of the meeting. Failure to do so may result on being barred from the meeting. Persons exiting the Chambers shall do so quietly.

SPECIAL NOTICE – HYBRID MEETING

The Town of Bay Harbor Islands Regular Council Meeting will take place in a Hybrid format where a quorum of the Town Council will be physically present at the Town Hall Council Chambers. Members of the public are welcome to participate in person or virtually via the Zoom platform.

Zoom Link: <https://us06web.zoom.us/j/82440074006>

Meeting ID: 824 4007 4006

To request to speak during Zoom Public Comment, please utilize the “raise your hand” Zoom feature on your electronic device. You will be recognized at the direction of the Zoom Meeting Host.

Members of the Public may also be admitted to the Council Chambers in person, for Public Comment, subject to social distancing and facial covering.

In addition, any member of the public who does not wish, or is unable to participate through the Zoom video conferencing platform, but would still like to participate can do so by listening to the meeting as it happens by dialing the Toll-free number below:

US Toll Free Number: 877 853 5247 or 888 788 0099

For higher quality, dial a number based on your current location.

US: 1 646 558 8656 or 1 301 715 8592 or 1 312 626 6799

Meeting ID: 824 4007 4006

Participant ID: Press the # key

To request to speak: Dial *9 on your telephone device to activate the “Raise your Hand” feature on the zoom platform.

Members of the Public can also submit their request to speak and/or comments via e-mail to the Office of the Town Clerk at achang@bayharborislands-fl.gov

CALL TO ORDER: 7:00 p.m.

REQUESTS FOR WITHDRAWALS, DEFERMENTS AND FUTURE AGENDA ITEMS:

ROLL CALL:

TOWN MANAGER'S REPORT:

COUNCIL REPORTS: Each Council Member will be afforded two (2) minutes to make their reports.

PUBLIC COMMENT:

*There is a three (3) minute time limit for each speaker during public comment and a two (2) minute time limit for each speaker during all other agenda items. Your cooperation is appreciated in observing the three (3) minute rule. If you have a matter you would like to discuss which requires more than three (3) minutes, please arrange a meeting with the Town Manager or appropriate administrative official. **A request form is available from staff; please fill it in and return it to the Town Clerk prior to the start of the meeting if you would like to speak during public comment.** Please come forward to the podium, give your name and address, and the name and address of the organization you are representing if any.*

COMMITTEE REPORTS:

CONSENT AGENDA: *(Consent agenda items are those which are routine, do not require discussion or explanation prior to Town Council action, or have already been discussed and/or explained and do not require further discussion or explanation. Items can be removed from the consent agenda by the request of an individual Council member for independent consideration provided such request is made prior to the vote on the consent agenda.)*

1. **Consideration and Approval** of the following Meeting Minutes:
 - a. March 10, 2021 - Regular Council Meeting
 - b. March 22, 2021 - Special Council Meeting
 - c. April 14, 2021 - Organizational Meeting
 - d. April 14, 2021 - Public Hearing
 - e. April 14, 2021 - Regular Council Meeting
 - f. April 20, 2021 - Regular Council Meeting
 - g. May 12, 2021 - Regular Council Meeting
 - h. May 26, 2021 - Special Council Meeting
 - i. June 9, 2021 - Special Council Meeting
 - j. June 23, 2021 - Special Council Meeting
 - k. June 23, 2021 - Budget Workshop
 - l. July 30, 2021 - Special Council Meeting
2. **Approval and Ratification** of Memoranda of Understanding with the School Board of Miami-Dade County and with Surfside and Bal Harbor for funding of a Town of Bay Harbor Islands appointed School Based Law Enforcement Officer for Ruth K. Broad / Bay Harbor K-8 Center. Enclosed is a copy of the proposed Memorandums of Understanding.
3. **Consideration and Approval** of the annual contract with the health, life, disability, and dental, vision insurance providers for the 2021 / 2022 fiscal year. Enclosed is a Memorandum with detailed information from Human Resources Manager, Shaun Gelvez.
4. **Consideration and Approval** of the annual renewal of insurance (general, professional, automobile, property, and workers' compensation) from the Florida Municipal Insurance Trust (Florida League of Cities) for the 2021 / 2022 fiscal year and authorizing staff to make expenditures at an amount not to exceed the budget request of \$379,350.

5. **Consideration and Approval** of Change Order #1 by Jones-Benitez Engineering for BC - 156 Repair of Snapped Tendons in a Concrete U-Channel under the Indian Creek Bridge (Project approved by Town Council on May 12, 2021) in the amount of \$79,051.00 to mobilize and work at night to avoid traffic congestion. Attached please find supporting documentation.

STAFF RECOMMENDATION: Approval

POLL VOTE

ORDINANCES ON SECOND READING:

6. **Consideration and approval** of an ordinance on second reading amending Chapter 7 of the Town Code to require Knox Boxes at all new and existing residential buildings. Enclosed is a copy of the proposed ordinance.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA AMENDING CHAPTER 7 OF THE TOWN'S ADOPTED CODE OF ORDINANCES ENTITLED "FIRE PROTECTION AND PREVENTION"; AND SPECIFICALLY ADDING SECTION 7-33 TO REQUIRE KNOX BOXES AT NEW AND EXISTING RESIDENTIAL BUILDINGS; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR CONFLICT AND REPEALER; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

STAFF RECOMMENDATION: Council Discretion

POLL VOTE

ORDINANCES ON FIRST READING:

7. **Consideration and Approval** of an ordinance on first reading requested by Council Member Yaffe amending Section 5-19.3 of the Town Code regarding the emergency power generators. Enclosed is a copy of the proposed ordinance.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING THE TOWN'S CODE OF ORDINANCES AS RELATED TO EMERGENCY POWER GENERATOR (EPG) LOCATIONS AND SCREENING; AMENDING CHAPTER 5 ENTITLED BUILDING AND CONSTRUCTION; AMENDING SECTION 5-19.3 OF ARTICLE 1 ENTITLED EMERGENCY POWER GENERATORS; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR CONFLICT AND REPEALER; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

STAFF RECOMMENDATION: Council Discretion

POLL VOTE

DEFERRED ITEMS:

TOWN MANAGER ITEMS: *(Town business items requiring Council approval)*

DISCUSSION ITEMS:

8. **Discussion and Possible Action** requested by Mayor Fuller regarding the Planning and Zoning Board's scope and review process. Enclosed is a copy of Section 5-23.1 of the Town Code.

9. **Discussion** requested by Council Member Salver regarding the Town's policy on charitable donations and contributions. Enclosed is a copy of Resolution No. 981 as it relates to this matter.
10. **Discussion** and **possible action** requested by Council Member Leonard regarding the Town's After School Sports / Activities Program. Enclosed is a list of the After School / Activities Program.
11. **Discussion** and direction regarding the Town's policy on Water and Sewer deposits for condominiums. Enclosed is a copy of Chapter 20 of the Town Code and other supporting documents.

ADJOURNMENT: Set for 11:00 p.m. *(Any items not addressed by 11:00 PM, will be continued to the following day at 7:00 PM)*

Pursuant to Florida Statutes 286.0105, the Town hereby advises the public that should any person decide to appeal any decision of the Town Council with respect to any matter to be considered at this meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

AGENDA ITEM REPORT

September 9, 2021

ITEM NUMBER: 1.

ITEM:

Consideration and Approval of the following Meeting Minutes:

- a. March 10, 2021 - Regular Council Meeting
- b. March 22, 2021 - Special Council Meeting
- c. April 14, 2021 - Organizational Meeting
- d. April 14, 2021 - Public Hearing
- e. April 14, 2021 - Regular Council Meeting
- f. April 20, 2021 - Regular Council Meeting
- g. May 12, 2021 - Regular Council Meeting
- h. May 26, 2021 - Special Council Meeting
- i. June 9, 2021 - Special Council Meeting
- j. June 23, 2021 - Special Council Meeting
- k. June 23, 2021 - Budget Workshop
- l. July 30, 2021 - Special Council Meeting

DESCRIPTION:

Consideration and Approval of the following Meeting Minutes:

- a. March 10, 2021 - Regular Council Meeting
- b. March 22, 2021 - Special Council Meeting
- c. April 14, 2021 - Organizational Meeting
- d. April 14, 2021 - Public Hearing
- e. April 14, 2021 - Regular Council Meeting
- f. April 20, 2021 - Regular Council Meeting
- g. May 12 2021 - Regular Council Meeting
- h. May 26, 2021 - Special Council Meeting
- i. June 9, 2021 - Special Council Meeting
- j. June 23, 2021 - Special Council Meeting
- k. June 23, 2021 - Budget Workshop
- l. July 30, 2021 - Special Council Meeting

Enclosed are copies of the Draft Meeting Minutes.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba L. Chang, Town Clerk

ATTACHMENTS

1. 03.10.2021 Regular Council Meeting
2. 03.22.20 Special Council Meeting
3. 04.14.2021 Organizational Meeting
4. 04.14.2021 Public Hearing
5. 04.14.2021 Regular Council Meeting
6. 04.20.2021 Regular Council Meeting
7. 05.12.2021 Regular Council Meeting
8. 05.26.2021 Special Council Meeting
9. 06.09.2021 Regular Council Meeting
10. 06.23.2021 Special Council Meeting
11. 06.23.2021 Budget Workshop
12. 07.29.2021 Special Council Meeting

**TOWN OF BAY HARBOR ISLANDS
MINUTES OF A REGULAR COUNCIL MEETING**

A Virtual Meeting of the Town Council was held on Wednesday, March 10th, 2021, at 7:13 p.m. through the ZOOM Platform. Upon roll call the following members responded:

Mayor Stephanie Bruder	
Vice Mayor Joshua Fuller	Council Member Jordan Leonard
Council Member Kelly Reid	Council Member Elizabeth Tricoche
Council Member Isaac Salver	Council Member Robert Yaffe

REQUESTS FOR WITHDRAWALS, DEFERMENTS AND FUTURE AGENDA

Council Member Leonard pulled Item 5 from the Consent Agenda for discussion.

COUNCIL REPORTS: Each Council Member will be afforded two (2) minutes to make their reports.

Mayor Bruder announced that staff at the Community Center will assist residents with obtaining COVID19 vaccine information online, Wednesdays from 1:00-3:00 P.M. and Fridays from 10:00 A.M. to Noon. She also reported on a meeting with the school, where discussions were held about fixing the flooding problem on the basketball court, installation of “No Dog on Field” signs, submittal of a letter to the School Board to fix the basketball court; and plans to paint the main building.

Vice Mayor Fuller reported on communications with lobbyists on the best way to approach the FAA matter; a meeting scheduled for Friday with lobbyists and the FAA; circulation of a letter to U.S. Secretary of Transportation Buttigieg; and the conversations held with Mayors of Miami Gardens, North Miami, and City of Miami Beach, with a possibility of them joining in the effort.

Council Member Leonard asked if helicopters were being addressed in the FAA plan. Vice Mayor Fuller responded that helicopters, as well as anything flying out of MIA were being addressed.

Council Member Yaffe reported on his attendance at the Miami-Dade League of Cities Meeting where discussions were held on proposed legislation regarding pre-emption on vacation rentals; taking home businesses out of the control of municipalities; and the potential lifting of the midnight curfew, when COVID positivity rate fell from 6.15% to approximately 5%.

Town Attorney Simone clarified that the legislative matter pertains to pre-empting municipalities from regulating “working at home”, not to home-Based Businesses.

Council Member Reid announced that tonight’s meeting would be her last official one as a Council Member after eight (8) years of service with the Town; and she thanked all the voters for their support. The council members thanked Council Member Reid for her service to the Town.

SPECIAL PRESENTATION:

1. Report of the Town investment performance for the quarter ending December 31, 2020. Presentation will be provided by Gerardo Rodriguez of BNY Mellon Wealth Management. Enclosed is a copy of the presentation.

Mr. Rodriguez, 1450 Brickell Avenue, Suite 7300, Miami, Fl. 33131, reported on the Town's performance portfolio as follows: The collective market value of the portfolio was \$1,17,853 with an annual estimate income of \$140,179 for the three accounts. The average yield for the overall portfolio was 1.99%; the Fourth Quarter return for the Contingency Account for 2020 was .39%; Year to Date return was 6.44%; and annualized return since inception was 4.36%. For the General Fund, the fourth quarter return was 4.0%; the Year-to-Date return was 6.47%; and the annualized return since inception was 4.39%. For the Water Fund, the Fourth Quarter return for 2020 was 4. %; the Year-to-Date return was 6.47%, and annualized return since inception was 4.39%. The Water Fund had return of 4.0% for the Fourth Quarter of 2020 and the annualized return since inception was 4.44%.

ITEMS: TOWN MANAGER'S REPORT:

Town Manager Lasday reported that FEMA maps are being changed, and Miami-Dade County will hold meetings to inform the public of the changes.

PUBLIC COMMENT:

*There is a three (3) minute time limit for each speaker during public comment and a two (2) minute time limit for each speaker during all other agenda items. Your cooperation is appreciated in observing the three (3) minute rule. If you have a matter you would like to discuss which requires more than three (3) minutes, please arrange a meeting with the Town Manager or appropriate administrative official. **A request form is available from staff; please fill it in and return it to the Town Clerk prior to the start of the meeting if you would like to speak during public comment.** Please come forward to the podium, give your name and address, and the name and address of the organization you are representing if any.*

Kathleen Kennedy, 9180 West Bay Harbor Drive, wished Council Member Reid good luck. She thanked the Town Council for opening the park for COVID19 vaccines; and she commended the Police Department and the Town Manager for doing a good job.

Frances Neuhut, 9920 West Broadview Drive, inquired about election notices; spoke of liability with the previous Town Attorney, and cautioned the Council about hiring attorneys who work for adjoining towns, to avoid conflicts.

COMMITTEE REPORTS:

2. Report from the Parks & Recreation Committee. Ms. Kennedy, Parks & Recreation Chair will provide an update.

Chair Kathleen Kennedy, presented the following items to the Council at the recommendation of the Committee:

- Naming 92nd Street Park after Doris Manno
- Renovation of 92nd Street Doggie Park.
- Exploring ADA compliant equipment for Town parks.

Discussion ensued about extending the dog park into the parking lot to make an area for small dogs; adding the cost to next year's budget; funding to rehabilitate 92nd Street Park; changing grass in the parks to artificial turf; reaching out to local colleges for ideas on naming Town facilities; obtaining information from other municipalities on their park policies; utilizing FIU representatives; and implementing a system by developing policies and procedures for naming Town facilities.

The Town Council reached a consensus for staff to provide the Council Meeting Minutes where the policy for renaming Town parks was previously discussed, and to place an item regarding "Guidelines for Renaming of Town Parks" on the next Council Meeting Agenda.

5. **Consideration and Approval** of a resolution establishing the Town Clerk's annual compensation. Enclosed is a copy of the proposed resolution and other supporting documents.

There was discussion regarding the amount of compensation for Town Clerk Alba Chang.

PUBLIC COMMENT

Kathleen Kennedy, of 9180 Kane Concourse, spoke in support of the Town Clerk.

PUBLIC COMMENT CLOSED

ACTION: Council Member Salver made a motion to approve the Resolution. Council Member Yaffe seconded the motion and it passed by a 5-2 poll vote with Council Member Leonard and Council Member Tricoche opposed.

CONSENT AGENDA: *(Consent agenda items are those which are routine, do not require discussion or explanation prior to Town Council action, or have already been discussed and/or explained and do not require further discussion or explanation. Items can be removed from the consent agenda by the request of an individual Council member for independent consideration provided such request is made prior to the vote on the consent agenda.)*

3. **Approval** of the following Meeting Minutes:
- August 10, 2020 - Regular Council Meeting
 - August 26, 2020 - Special Council Meeting
 - September 8, 2020 - Special Council Meeting

- September 8, 2020 - 1st Budget Public Hearing
- September 8, 2020 - Special Council Meeting
- September 14, 2020 - 2nd Budget Public Hearing

4. **Consideration** and **Approval** of a resolution approving a Public Transportation Grant Agreement in substantial conformance in the amount of \$150,000 to provide for the Department's Participation in FDOT State Service Development Program funds for the Town of Bay Harbor Islands' On-Demand Service Connection. Enclosed is a copy of the proposed resolution and grant agreement.
6. **Consideration** and **Approval** of a resolution authorizing deposits and withdrawals of the Town Funds in certain accounts pursuant to the authority given under Chapter 655.043, Florida Statutes. Enclosed is a copy of the proposed resolution.
7. **Consideration** and **approval** for renewal of a Mutual Aid Agreement between the Bal Harbour Village Police Department and the Town of Bay Harbor Islands Police Department. Enclosed is a copy of the proposed agreement and Joint Declaration.

ACTION: Council Member Yaffe made a motion to approve the Consent Agenda. Council member Bruder seconded the motion, and it passed by a unanimous vote.

ORDINANCES ON SECOND READING:

8. **Consideration** and **Approval** of an ordinance on **second** reading requested by Council Member Leonard amending Chapter 24 of the Town Code relating to Florida friendly fertilizer use within the Town. Enclosed is a copy of the proposed ordinance.

**AN ORDINANCE OF THE COUNCIL OF THE TOWN OF
BAY HARBOR ISLANDS, FLORIDA, AMENDING
CHAPTER 24 OF THE TOWN OF BAY HARBOR
ISLANDS CODE, ENTITLED "PROPERTY
MAINTENANCE STANDARDS" TO CREATE SECTION
24-16.1 THEREOF, TO BE ENTITLED "USE OF
FERTILIZER," RELATING TO FLORIDA-FRIENDLY
FERTILIZER USE WITHIN THE TOWN OF BAY
HARBOR ISLANDS; PROVIDING FOR SEVERABILITY,
PROVIDING FOR CODIFICATION, AND PROVIDING AN
EFFECTIVE DATE.**

ACTION: Council Member Leonard made a motion to approve the Resolution. Mayor Bruder seconded the motion and it passed by a unanimous poll vote.

9. **Consideration** and **Approval** of an ordinance on **second** reading approving Budget Amendment No. 1 for the 2020/2021 Fiscal Year. Enclosed is a copy of the proposed ordinance and other supporting documents.

**AN ORDINANCE OF THE TOWN COUNCIL OF THE
TOWN OF BAY HARBOR ISLANDS, FLORIDA,
APPROVING BUDGET AMENDMENT NO. 1 FOR THE
FISCAL YEAR 2020/2021 BUDGET; PROVIDING FOR
IMPLEMENTATION; AND PROVIDING FOR AN
EFFECTIVE DATE.**

PUBLIC COMMENT

Frances Neuhut, of 9920 Broadview Terrace, referred to the matter of the salary previously approved for the Town Clerk. She suggested that funds be approved for lighting and ADA compliance.

Kathleen Kennedy, 9180 West Bay Harbor Drive, questioned the salary increase referenced in the budget amendment.

Ken Eskin, of 1013 93rd Street, spoke favorably about Bridget Morin.

PUBLIC COMMENT CLOSED

ACTION: Council Member Tricoche made a motion to approve the Ordinance on Second Reading. Mayor Bruder seconded the motion and it passed by a unanimous poll vote.

ORDINANCES ON FIRST READING:

10. **Consideration and approval** of an ordinance on **first** reading amending Section 23-21(e) of the Town Code to modify the Kane Concourse setback requirements for ground level restaurants and certain weatherization. Enclosed is a copy of the proposed ordinance and staff report provided by Town Planner Michael Miller.

**AN ORDINANCE OF THE TOWN COUNCIL OF THE
TOWN OF BAY HARBOR ISLANDS, FLORIDA,
AMENDING THE TOWN'S ZONING AND PLANNING
CODE TO MODIFY THE GATEWAY (G) ZONING
DISTRICT, AMENDING SECTION 23-21(e) OF THE
CODE OF ORDINANCES TO MODIFY THE KANE
CONCOURSE SETBACK REQUIREMENTS FOR
GROUND LEVEL RESTAURANTS AND CERTAIN
WEATHERIZATION, PROVIDING FOR SEVERABILITY;
PROVIDING FOR INCLUSION IN THE TOWN CODE;
AND PROVIDING AN EFFECTIVE DATE.**

Council Member Yaffe asked Town Planner Miller to explain his reasoning for recommending some of the requested modifications, and not a particular one, according to his Staff Report.

Town Planner Miller described the Gateway Zoning District with four properties, including #1 Kane Concourse, and the Town's regulations for these properties to have a 20-foot corridor for a pedestrian plaza. He explained that as a result of a request by #1 Kane Concourse to consider some modifications to the property to accommodate a restaurant on the site, followed by direction from the Town Council, an ordinance was drafted to address the requests. While most of the modifications could be handled administratively, an amendment to the Town Code was required for the setback reduction from Kane Concourse to the building. The approved Site Plan for the #1 Kane concourse project has the required pedestrian promenade, and the applicant requested permission to move the wall for the ground floor restaurant out closer to Kane Concourse, half of the distance, to 10 feet. He felt that it would be a mistake to cut the plaza in half, when the other two commercial properties have already built it. He suggested other options to open the door and have outdoor covering with weatherization. He recommended against the setback reduction and preferred for the Council to move forward with the ordinance for the clarity. He mentioned that the Code has to be written to address all the properties in the Gateway area, and other properties could make a similar request to move their wall out 10 feet with the code amendment.

Mayor Bruder asked Mr. Miller if the section pertaining to the setback reduction should be removed.

Mr. Miller responded that he would remove that section or modify it to be the weatherization option; and would not allow the main wall to move out that far. He stated that the Code must be written generically to cover all the Gateway sites, because the hotels could make a similar request.

Vice Mayor Fuller clarified that the Code amendment does not apply to the Grand Beach Hotel, because the language of the proposed ordinance states that "a ground level restaurant may extend..."; and the Grand Beach cannot have a restaurant. He explained that this provision runs with the land as part of the agreement for them to have the number of units they wanted.

Mr. Miller agreed.

Vice Mayor Fuller further stated that his main concern was indemnification to address liability close to the bridge, because of the additional 10 feet. He added that the ordinance as written seems to accommodate his request and provides the applicant for the restaurant with what they have requested, as well as allow for all properties in the Gateway to do what they need to do, if they fit the same category.

Council Member Reid stated that she did not have a problem with the information provided at the last meeting, because of the nature of the width of the waterway, and the fact that there are no additional residential units across the water. She suggested the

Code amendment be confined to East Bay Harbor properties, because she was concerned about too much outdoor activities and density being on West Bay Harbor.

Mr. Miller stated that he tried to draft the ordinance to the specific site because he thought it was unique with its commercial land use designation. And while the hotels in the Gateway are commercial, they have an underlying residential land use. However, he was cautioned by the Town Attorney to write the ordinance generically to cover all properties within the zoning district, to avoid spot zoning.

Council Member Reid explained her thought process to have different regulations for East Bay Harbor and West Bay Harbor, like the 75-foot height limit on East Bay Harbor versus the 65 feet on West Bay Harbor, which is not considered spot zoning.

Mayor Bruder concurred with comments by Council Member Reid; and spoke about the uniqueness of the property at #1 Kane Concourse.

Town Attorney Simone opined that the Council may want to consider giving all commercial establishments the same rights.

PUBLIC COMMENT:

Attorney Joseph S. Geller, Greenspoon Marder, LLP, 200 E. Broward Boulevard, Suite 1800 Fort Lauderdale, FL 33301, counsel for #1 Kane Concourse, stated that they did not have any objection, if the language in the ordinance was amended under Part E, Buildings Setbacks, Building Height to include “in a commercially zoned area”. He stated that the ordinance as written addressed the concern for an Indemnification and Hold Harmless letter to be furnished in a form acceptable to the Town Attorney, which they are happy to provide. He spoke about his understanding of the general width of the concrete for the promenade to be 8 feet, and of 10 feet still remaining on the property, with installation of some additional landscaping. He explained that this one property meets the underlying commercial requirements because of the prior nature of the property; and the others are residential. He believed that the ordinance as presented was appropriate; could be done in a way that doesn’t indicate other properties having the same right to do the same with the small amendment to the language that says, “only if it is in underlying commercial district, if desired,” would be helpful. He stated that the other properties don’t have restaurants and are not allowed to have them, even without the amendment.

Council Member Reid clarified her comments referring to the difference of the locations and proximity of the West Bay Harbor Drive properties that have different height zoning regulations. She added that the East Bay Harbor Drive properties are next to the bridge with no residences across the water in proximity; she would like to see an exclusion to care for the residents in that area should things change; and did not want to make zoning decisions based on exclusivity of restaurants.

Council Member Yaffe concurred with comments about not deciding based on the exclusivity of a restaurant. He stated that there was no guarantee of the success of the restaurant, and the Code was being changed to accommodate a restaurant that may or may not be successful. He expressed concern that the Code was being changed to accommodate one business. He stated that while he wanted to assist the business district with having a nice restaurant in town-attracting people to the town; he felt there was a negative connotation to the issue.

PUBLIC COMMENT

Kathleen Kennedy, 9180 West Bay Harbor Drive, agreed with having a Kosher hotel in town and expressed concern with issues of parking and underground flooding from developments.

Frances Neuhut, of 9920 West Broadview Drive, spoke about one property being left in the Gateway for development; the two that are already built out having flooding problems; limited parking; limitations on the Gateway properties; developments too hard on people and detrimental to the community; the Council not considering parking and flooding issues; and the need for the bridge to be replaced or widened.

Linda Zilber, 1235 95th Street, spoke in favor of the proposed ordinance.

PUBLIC COMMENT CLOSED

Council Member Leonard asked if Mr. Geller's comments regarding the slight amendment to the proposed ordinance was amenable to everyone.

Vice Mayor Fuller talked about the potential for spot zoning with reference to the four properties in the Gateway. He explained that one of the properties is owned by the Town; one is not allowed to make a similar request; and the one property that may create an issue has already been constructed, and he doesn't see it as a threat.

Council Member Reid stated that she did not have a problem with such projects being on East Bay Harbor Drive.

Council Member Bruder asked if there are any restrictions on the TRYP Hotel.

Vice Mayor Fuller explained that the TRYP Hotel cannot open a restaurant to the outside that would create a problem for residents, with noise and people speaking with the sound carrying across that short area of the water.

Council Member Salver stated that he was not comfortable with giving away 10 feet of right-of-way. He pointed out that the Town Planner recommended against passing provisions in the proposed ordinance. He believed spot zoning was an issue and was not in favor of voting on the ordinance with changes that the Town Planner recommended against. He noted that he did not support all the changes.

Vice Mayor Fuller stated that the ordinance as written, specifically addressed “expansion of a restaurant”. And since the Grand Beach cannot have a restaurant, it doesn’t affect them. The TRYP Hotel is the only one that would potentially have an issue, but they would only be allowed to do it internally; since they would not be able to create any additional noise for residents, because they are not permitted to open outside.

Council Member Salver requested a “true to scale image” of what the corridor is going to look like based on the changes that will be made. He thought a building next to the bridge, within 10 feet, that is going to be there forever would look bad and would have a tremendous impact.

Vice Mayor Fuller suggested the diagram be provided when the ordinance is presented for second reading.

Mr. Geller stated that the property belonged to his client, and the Town was not giving up 10 feet of property. He stated that the issue of the setback is important. However, the setback would only be seen from the bridge, and the ground floor is not terribly visible from the bridge, because the bridge is elevated.

Council Member Yaffe responded that the property is subject to the regulations of the Town’s Zoning Code.

Mr. Geller stated that they are amenable to providing the study that was requested by Council Member Salver before second reading on the ordinance. He stated that they are amenable to further amendments based on proximity to the bridge or concerning the east side property, as well. He believed that the ordinance amendment is not considered spot zoning.

Council Member Yaffe requested that the rendering for the project shows the east and west bound area, as to how the project will be situated on the property.

Council Member Salver asked that the rendering show both sides of the streets including the Grand Beach. He felt it would reveal disparity of how the Grand Beach site is developed versus what will be on the Tauber’s site, as the building will appear much closer to the bridge.

Council Member Tricoche asked if residents within 100 feet of the code change could be notified to obtain their feedback.

ACTION: Vice Mayor Fuller made a motion to approve the Ordinance on First Reading with the condition that the language be revised and renderings showing how the Grand Beach is situated on the property, East Bound and West Bound, including both sides of the streets be provided. Council Member Yaffe seconded the motion and it passed by a 6-1 poll vote, with Council Member Salver opposed.

DEFERRED ITEMS

TOWN MANAGER ITEMS: *(Town business items requiring Council approval)*

11. **Approval and Ratification** of an agreement with Karen Villalba Design in the amount of \$22,800 for the graphic designs and art direction for the Town's branding. Enclosed is a copy of the proposal provided by Ms. Villalba.

Discussion ensued regarding moving forward with the project that commenced in 2020; changing the font so BHI is clearer; concerns that the Council had no participation in the process; the font being too close to Bal Harbor's; dislike of the font used; input from Council and public with three choices to choose from; dislike of the choice of focus; inclusion of mixtures of different pictures of Bay Harbor with families that reflect the Town's scene; removing redundancy of language; and including pictures of minorities.

Kathleen Kennedy, 9180 West Bay Harbor Drive, spoke about the branding of Bay Harbor Island (BHI) as being wonderful for developers and hotels. She spoke about the lack of marketing the Town and mentioned that there is no spotlight in front of the small "Welcome to Bay Harbor Island" sign.

Ms. Villalba will review the comments and concerns and bring the matter back before the Town Council. Ms. Villalba will be provided with the Minutes from the Town Council Retreat.

Council Member Salver made a motion to ratify the contract. Council Member Yaffe seconded the motion, and it passed by a unanimous poll vote.

12. **Approval and ratification** of an agreement with OpenGov in the amount of \$45,875 to provide integrated solutions for Budgeting and Planning, Operational Performance, and Citizen Engagement. Enclosed is a copy of the previous agreement and most recent quote.

ACTION: Council Member Yaffe made a motion to approve the agreement with OpenGov for \$45,875. Mayor Bruder seconded the motion, and it passed by a unanimous poll vote.

13. **Consideration and approval** of an agreement from TransCore in the amount of \$296,180.85 to update the hardware and software for the Broad Causeway Toll System. Enclosed is a copy of the proposed agreement and cost estimate for the upgrades.

Kathleen Kennedy, 9180 Kennedy Causeway, spoke about the bridge being one of the 10 worst in the United States and of continuous spending on a broken-down bridge, where residents are involved in traffic daily.

Town Manager Lasday explained issues with the bridge that are being worked on. She noted that some projects are in the planning stages to rectify some of those issues; and the bridge is being looked at to ensure problems do not continue.

Vice Mayor Fuller clarified that the \$296,180.85 expenditure is for the toll system, and not for the bridge itself. He explained that if the system fails and is not repaired, the Town will lose the revenue from it, meaning a loss of significant revenue for the Town, which would create a bigger problem.

Council Member Tricoche stated that a significant amount of money is being put aside each year to replace the bridge; and monies were budgeted for a study on the actual lifetime of the bridge, to adequately prepare for its replacement.

Mayor Bruder added that the Town Manager is seeking funding that might be available, in preparation for a new bridge.

ACTION: Mayor Bruder made a motion to approve the agreement with TransCore for \$296,180.85. Council Member Yaffe seconded the motion, and it passed by a unanimous poll vote.

14. **Consideration and approval** of an agreement from CivicPlus in the amount of \$25,898 to provide the CivicOptimize "Productivity" software package. The added module is an integrated solution for producing and publishing custom online forms and accepting payment that will seamlessly integrate with our website and financial software to provide a better user experience for our residents. Enclosed is a copy of the proposal from CivicPlus.

ACTION: Council Member Yaffe made a motion to approve the agreement with OpenGov for \$45,875. Vice Mayor Tricoche seconded the motion, and it passed by a unanimous poll vote.

15. **Consideration and Approval** of the 2021/2022 Budget Preparation Calendar. Enclosed is the proposed schedule provided by Finance Director Peter Kajokas.

Council Member Salver commended the Finance Director for providing the budget preparation calendar, which was not previously done.

All voted in favor of the 2021/2022 Budget Preparation Calendar.

DISCUSSION ITEMS:

- 16. Discussion and possible action** requested by Mayor Bruder to consider a 2% Cost of Living Adjustment (COLA) for all Town non-sworn employees and to establish a discretionary fund for the Town Manager.

Mayor Bruder presented a proposal for a Cost-of-Living Increase for the Town's non-sworn employees and a discretionary fund for the Town Manager. There was discussion as to the appropriateness of the Mayor putting forth such a request, rather than the Town Manager; purpose of discretionary fund to pay increase for Crossing Guards in an effort to retain and attract quality personnel; the Town Manager's authority to expend funds that are allocated in the budget without the Council's permission; recommendation for a 3% increase for general employees; the Town Manager's discretion to spend funds according to what's budgeted to retain employees; preparation of budget amendment as there were instructions from the Council not to issue raises to employees; explanation that Council was not issuing raises during COVID due to the uncertainty.

PUBLIC COMMENT

Kathleen Kennedy, 9180 West Bay Harbor drive, expressed support for a higher increase for Town employees, particularly the traffic guards and the public works employees.

PUBLIC COMMENT CLOSED

ACTION: Mayor Bruder made a motion to reverse the Council's direction at the beginning of COVID to freeze raises, and for the Town Manager to act as needed regarding raises. Council Member Salver seconded the motion, and it passed by a unanimous vote.

- 17. Discussion and possible action** requested by Council Member Leonard regarding a proposed Stop the Gun Violence Awareness Program for the Ruth K. Broad K-8 Center. Enclosed is the proposed draft plan and Powerpoint presented by Chief of Police Raul Diaz.

Council Member Leonard discussed his proposal for a gun safety program at the school and plans to have a class geared towards eight graders for one day at the end of this school year commencing in June. He noted that the Pilot Program is supported by Officer Lopez and the Town's Police Chief Diaz; as well as Miami-Dade County School District; at no cost to the Town and to the School Board.

Council Member Salver expressed his full support for the program; and he suggested Council Member Leonard reach out to the Children's Trust for grant funding through their Youth Prevention Program.

Council Member Reid thought the program was a wonderful idea; and she suggested that Gun Locks and Gun Safes with handprint access be part of the program to safeguard guns.

ACTION: Council Member Tricoche made a motion to approve the Pilot Program. Council Member Leonard seconded the motion, and it passed by a unanimous vote.

- 18. Discussion and possible action** with regards to a Business Tax Receipt issued to Smart Park, LLC to administer commercial parking operations in the B-1 Business District. The business owner ("Smart Park, LLC") specifically manages eleven (11) parking spaces located in the rear of the building located at 1035-1055 Kane Concourse. Enclosed is a copy of the Business Tax Receipt submittal and other documents.

Concerns were expressed about the operation of the parking program and its continuance. Issues were discussed such as insufficient signage on the property; failure to provide certain type of signage; revocation of the Business Tax Receipt (BTR); issuance of tickets to customers of tenants who parked on the lot; requirement not to boot vehicles; numerous complaints from tenants on the ground floor; suggestion for 30-day parking waiver and grace period with no charge, the concept of this type of parking system not working for the residents of the Town; and implications for revoking the BTR now.

Town Attorney Simone opined that the BTR could be revoked, among other things, based upon the Council's lack of having an informed decision because the contract provided by Smart Park was so heavily redacted.

ACTION: Council Member Yaffe made a motion to revoke the Business Tax Receipt to Smart Park, LLC. Council Member Tricoche seconded the motion, and it passed by a unanimous poll vote.

Brandon Little and Teddy Schule, counsel and owners of Smart Park, Inc, argued that the company complied with the regulations that were required by the Town.

PUBLIC COMMENT

Frances Neuhut, 9180 West Bay Harbor Drive, asked if the Town has plans to build a parking garage in the area, to resolve the parking issues.

PUBLIC COMMENT CLOSED

ADJOURNMENT

There being no further business to address the meeting was adjourned at 10:30 P.M.

MAYOR

ATTEST

TOWN CLERK

DRAFT

TOWN OF BAY HARBOR ISLANDS
MINUTES OF A VIRTUAL SPECIAL COUNCIL MEETING

A Virtual Special Meeting of the Town Council was held on Monday, March 22nd, 2021 at 6:04 p.m. using video telephone communication through the zoom platform. Upon roll call the following members responded:

Mayor Stephanie Bruder
Vice Mayor Joshua Fuller Council Member Jordan Leonard
Council Member Kelly Reid Council Member Isaac Salver
Council Member Elizabeth Tricoche Council Member Robert Yaffe

Item 1. Discussion and possible action of the proposals received in response to the Request for Proposals (RFP) for professional Legal Services. Enclosed are copies of the proposals submitted on the recent RFP for professional legal services with the firms' presentations, including public questions.

The Council heard presentations from each of the below mentioned firms.

Council Member Reid posed questions to all the firms about their willingness to negotiate a lesser price and whether they had any conflict.

Mr. John J. Quick

Weiss Serota Helfman Cole & Bierman, P.L.
2525 Ponce De Leon Blvd., Suite 700
Coral Gables, FL 33134

Mr. Quick responded that there was no conflict of interest, which would cause the firm to refrain from representing the Town. He stated that they would assist the clients in retaining the best outside counsel, if there were any conflicts.

Gary Carman

GrayRobinson, P.A.
301 East Pine Street, Suite 1400
Orlando, FL 32801

Mr. Carman stated that he would be willing to negotiate a lower price, if chosen; and that he was not aware of any conflicts with municipalities in Miami-Dade County.

Council Member Yaffe asked Mr. Carman if he would be the designated Town Attorney. He answered yes; and stated that Julia Mandell would be his backup.

Council Member Reid asked about the firm's representation of a developer in Bay Harbor Islands.

Mr. Berman responded that their Conflict Committee had determined the RFP was not employment of the firm at this point. And if he became the Town Attorney, he would not take on any private matters that would come before the Town.

Vice Mayor Fuller expressed concern about the cost to the Town for the selected firm to update itself on the FAA matter, as appeals have already been filed in the 11th Circuit Court.

Mr. Carman stated that the firm has proposed a reduction of fees to the Town, with respect to normal rates; and representation for education and getting up to date on litigation would be at the firm's own cost.

Frank C. Simone, Esq.
701 Brickell Avenue, Suite 1550
Miami, Florida 33131

Mr. Simone stated that he represents no other municipalities; and there are no conflicts. He reminded the Town Council that his cost to the Town for last year was \$100,000 underbudget, which will continue as such.

Council Member Reid questioned Mr. Simone about not providing outside counsel for this meeting, since he was an applicant and had also submitted his letter of resignation as Town Attorney.

Mr. Simone explained that he had requested a decision on the Town Attorney RFP matter (that was put out in May) from the Town Council at several meetings, because he and Mr. Cunnill have other things they can do. And as much as he would have loved to continue to be the Town Attorney, he could not be in abeyance forever. Therefore, he submitted his letter of resignation because he needed direction. He further stated that he was still the Town Attorney and could advise the Town as such.

Gretchen R. H. ("Becky") Vose, Esq.
Vose Law Firm LLP
324 W. Morse Boulevard
Winter Park, Florida 32789

Mrs. Vose mentioned the firm's involvement in FAA matters and of their qualification to represent the Town in that matter. She stated that their proposed flat fee included litigation cost. She added that there were no conflicts; and the firm did not currently represent any local governments in Miami-Dade County.

Council Member Reid asked Mrs. Vose about the firm's lack of familiarity with local government and with the different features of Miami-Dade County. Mrs. Vose responded that attorneys from the firm are located all over Florida.

Joseph S. Geller, Esq.
Greenspoon Marder
200 East Broward Boulevard, Suite 1800
Ft. Lauderdale, FL 33301

Regarding conflict of interest, Joseph Geller stated that if chosen as the Town Attorney, the firm would withdraw from representing the Town in the matter of One Kane Concourse, whom he now represents. They would obtain outside counsel at their own cost; and would not take on any other matter with that client.

Vice Mayor Fuller referred to the proposed fees and asked about the cost to catch up on the FAA litigation matter.

Mr. Geller responded that coming up to speed, representation to read briefs, and to look at everything pertaining to the FAA matter will not be at the Town's expense. He thought it best for the Town to have a lobbying approach for the FAA matter with a specialist in FAA and its guidelines, and share the cost with other municipalities, who are affected by the FAA pattern.

Council Member Reid asked Mr. Geller about representation of his Bay Harbor Islands client, in his stepping back and representing the Town.

Mr. Geller stated that he would recuse himself from representing the Town, as he could not be called to represent the Town who had been his client fairly and partially. He stated that a substitute council would be obtained at his expense.

Robert L. Switkes, P.A.
Switkes & Zappala, P.A.
407 Lincoln Road
Penthouse Southeast
Miami Beach, FL 33139

Mr. Switkes responded that he did not have conflicts between municipalities. He stated that he had read and researched FAA cases; would be more than willing to get involved; and would not charge for getting up to speed on the matter.

PUBLIC COMMENT

Frances Neuhut, 9920 W. Broadview Drive, spoke about the importance of having a Certified Lawyer.

PUBLIC COMMENT CLOSED

Council Member Reid suggested that the list be narrowed to three (3) out of seven (7) candidates.

It was the consensus of the Town Council to narrow the list of Town Attorney candidates to the three (3) top ranked firms.

Council Member Reid asked the other council members about their thoughts on narrowing the seven (7) firms to five (5).

Council Member Salver stated that he was humbled by firms' quality of attorneys and of their presentations that have exceeded his expectation. He believed that any of the firms could handle any type of problem or litigation that may come up.

Vice Mayor Fuller asked for clarification as to whether Council Member Reid meant to narrow the firms down to three (3) and still have three (3) at the end of the night.

Council Member Leonard suggested that the appointment of a Town Attorney should be at the next Council Meeting since election is so close and will result in one new Council Member.

Vice Mayor Fuller stated that it was time to decide for a new Town Attorney to start next month, since the current Town Attorney will be leaving at the end of March.

Council Member Reid commented that election candidates could have logged into the meeting and share their ideas. She felt it inappropriate to postpone the decision in her term, making her unable to vote for the Town Attorney.

Vice Mayor Fuller pointed out that one of the candidates was participating in the meeting.

Council Member Salver stated his preference for a decision to be made now with experienced and dedicated Council Members.

Council Member Yaffe stated that Council Member Reid is within term and voting for three (3) candidates and ranking them should proceed.

Council Member Leonard stated for the record that after consulting with the Miami-Dade County Ethics Commission, he received an opinion in February that he did not have a conflict of interest in voting on this matter, because of his relationship with one of the firms, and of his candidacy for the Florida House of Representatives.

It was the consensus of the Town Council to pick three (3) firms and ranked them.

The votes were as follow:

Mayor Bruder – Greenspoon Marder, Frank Simone, Weiss Serota

Vice Mayor Fuller – Frank Simone, Greenspoon Marder, Gray Robinson

Council Member Leonard – Greenspoon Marder, Frank Simone, Weiss Serota

Council Member Reid – Switkes & Zappala, Weiss Serota, Vose Law Firm

Council Member Salver – Gray Robinson, Weiss Serota, Greenspoon Marder
Council Member Tricoche – Vose Law Firm, Weiss Serota, Gray Robinson
Council Member Yaffe – Frank Simone, Greenspoon Marder, Weiss Serota

Vice Mayor Fuller stated that Weiss Serota is an excellent firm with wonderful attorneys; however, he did not believe there is a waiver of conflict; as there will always be a conflict due to representation of too many neighboring cities. He believed they will have a conflict, if selected.

Counsel for Weiss Serota, Brett Schneider stated that the firm has never had a conflict.

Vice Mayor Fuller stated that he was less comfortable with general matters, but the FAA matter will affect one town more than the other; and would have a conflict.

It was the consensus of the Council to pick the top two (2) candidates. The results were as follow:

Mayor Bruder– Frank Simone, Greenspoon Marder
Vice Mayor Fuller – Frank Simone, Greenspoon Marder
Council Member Leonard – Frank Simone, Greenspoon Marder
Council Member Reid – Weiss Serota
Council Member Salver – Weiss Serota, Greenspoon Marder
Council Member Tricoche – Weiss Serota
Council Member Yaffe – Frank Simone, Greenspoon Marder

It was the consensus of the Council to pick the number one firm. The results were as follow:

Mayor Bruder – Greenspoon Marder
Vice Mayor Fuller – Frank Simone
Council Member Leonard – Greenspoon Marder
Council Member Reid – Greenspoon Marder
Council Member Salver – Greenspoon Marder
Council Member Tricoche – Frank Simone
Council Member Yaffe – Greenspoon Marder

ACTION: Vice Mayor Fuller made a motion to appoint Joseph Geller of Greenspoon Marder, LLC as the Town Attorney. Council Member Salver seconded the motion, and it passed by a unanimous vote.

Discussion regarding Block 11:

- The need for a Special Council Meeting to discuss the Block 11 matter.
- Dr. Wittels advice that he will not allow access to the parking lot after March 31st.

- Consequences of not having leases resulting in property owners trying to lease the spaces on their own; others trying to extract something from the Town because the alley is on the property that belongs to the property owners.
- Options to keep the alleyway open according to Town Attorney: entering back into the lease agreements so that the Town can traverse the alley; seek a determination by the court that the other property owners have the right; or by eminent domain.
- Request a two-week extension, beyond March 31st, from Dr. Wittels until the Town Council can meet.
- Mr. Wittels alleged concern with liability from people traversing his property.
- Council's decision to address the Block 11 issue rather than the Block 11 Committee, because the matter greatly affects the Town.
- The Shermans' request to continue until the next Council Meeting, at which time they will provide a solution.
- Whether there is now a different option than previously stated to not continue with the lease agreements, which could result in the potential outcome of closing the alleyway for several different reasons.
- The possibility of using a prescriptive easement. Difficulty in arguing for a prescriptive easement considering the Town has entered into leases with certain persons for decades. A more successful argument would be concerning the access for all various property owners.

Council Member Salver reminded the Council that the matter was not on the agenda, and that the issue at hand was whether the Council wanted to have a meeting to address the Block 11 issue. He asked if the Block 11 committee could handle the matter.

It was the consensus of the Town Council for Town Manager Lasday to meet with Dr. Wittels to obtain a two-week extension and for the Town Clerk to poll the Council Members for a Special Meeting prior to the Regular Council Meeting to address the Block 11 matter.

Vice Mayor Fuller asked if Mr. Wittels had been approached about the possibility of extending the agreement for two weeks, beyond March 31st, until the Town Council meet.

At this time, the Town Clerk inquired about the venue for holding future Council Meetings. It was the consensus of the Council Members to continue with the meetings at the park.

There being no further business to discuss the meeting was adjourned at 7:10 p.m.

MAYOR

ATTEST

TOWN CLERK

TOWN OF BAY HARBOR ISLANDS
MINUTES OF A VIRTUAL SPECIAL COUNCIL MEETING

A Virtual Meeting of the Town Council was held on Wednesday, April 14th, 2021 at 6:00 p.m. using video telephone communication through the zoom platform. Upon roll call the following members responded:

Mayor Stephanie Bruder

Vice Mayor Joshua Fuller

Council Member Jordan Leonard

Council Member Kelly Reid

Council Member Isaac Salver

Council Member Elizabeth Tricoche

Council Member Robert Yaffe

1. **Acceptance of the Certification of Elections presented by the Town Clerk as Supervisor of Elections and Canvassing Board Member.**

Town Clerk Chang explained that Stephanie Bruder and Molly Winter Diallo were elected to the two vacant Council Offices unopposed, due to the withdrawal of candidate Alan Bechik.

ACTION: Council Member Leonard made a motion to accept the results of the April 6, 2021, election of Stephanie Bruder and Molly Winters Diallo as Council Members. Council Member Yaffe seconded the motion, and it passed by a unanimous vote.

2. **Administration of Oath of Office to the newly elected Council Members. The Oath of Office will be administered by Town Clerk, Alba L. Chang.**

Town Clerk Chang administered the Oaths of Office to Council Members Stephanie Bruder and Molly Winters Diallo.

3. **Distribution of Annual Salaries to the Town Council.**

The Council reached a consensus to donate their annual salaries to the Ruth K. Broad K-8 Center Parent Teacher Association (PTA).

4. **Selection of a Mayor by the Town Council. Selection of a Vice Mayor by the Town Council.**

ACTION: Council Member Leonard made a motion to select Joshua Fuller as Mayor. Council Member Yaffe seconded the motion, and it passed by a unanimous vote.

ACTION: Council Member Bruder made a motion to select Elizabeth Tricoche as Vice Mayor. Council Member Leonard seconded the motion, and it passed by a unanimous vote.

5. **Administration of Oaths of Office to the Mayor and Vice Mayor. These oaths will be administered by Town Clerk, Alba L. Chang.**

Town Clerk Chang administered the Oaths of Office to Mayor Joshua Fuller and Vice Mayor Elizabeth Tricoche.

6. **Consideration and Approval of a Resolution re-appointing the Town Clerk and appointing a Deputy Town Clerk. Enclosed is a copy of the proposed resolution.**

ACTION: Council Member Bruder made a motion to approve the Resolution. Mayor Joshua Fuller seconded the motion, and it passed by a unanimous vote.

7. **Consideration and Approval of a Resolution appointing the Town Attorney and Assistant Town Attorneys. Enclosed is a copy of the proposed resolution.**

Miami Shores Village Attorney Richard Serafin served as Special Counsel on this matter, as Joseph Geller recused himself. There was a revision to the Resolution to replace “one year period” with “for that period, unless terminated sooner according to law”.

ACTION: Council Member Yaffe made a motion to approve the Resolution as revised. Council Member Salver seconded the motion, and it passed by a unanimous vote.

8. **Administration of oaths of office to the Town Clerk, Deputy Town Clerk, Town Attorney and Assistant Town Attorneys. These oaths will be administered by the Town Mayor.**

Town Attorney Geller informed the Council that Assistant Town Attorney James Rauh had a conflict with the date and was unable to attend tonight’s meeting.

Mayor Joshua Fuller administered the Oaths of Office to Town Clerk Alba L. Chang and Town Attorney Joseph S. Geller.

ADJOURNMENT:

There being no further business to discuss , the meeting was adjourned at 6:20 p.m.

MAYOR

ATTEST

TOWN CLERK

**TOWN OF BAY HARBOR ISLANDS
MINUTES OF A VIRTUAL PUBLIC HEARING**

A Virtual Public Hearing of the Town Council was held on Wednesday, April 14th, 2021 at 6:04 p.m. using video telephone communication through the zoom platform. Upon roll call the following members responded:

Mayor Joshua Fuller

Vice Mayor Elizabeth Tricoche

Council Member Kelly Reid

Council Member Molly Diallo

Council Member Jordan Leonard

Council Member Isaac Salver

Council Member Robert Yaffe

1. **Discussion for the purpose of hearing any public comment with respect to a request from CBS Realty Holding, LLC for designation of the property located at 1000 Kane Concourse, Bay Harbor Islands, Florida 33154 as Brownfield Area, pursuant to Section 376.80(2)(c), Florida Statutes. Enclosed is a copy of the applicant's request and staff report provided by Town Planner Michael Miller.**
2. **Consideration and Approval of a resolution designating a Brownfield Area for the property located 1000 Kane Concourse, Bay Harbor Islands, Florida 33154, pursuant to Section 376.80(2)(c), Florida Statutes. Enclosed is a copy of the proposed resolution.**

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA; PROVIDING FINDINGS; DESIGNATING A BROWNFIELD AREA WITHIN THE TOWN FOR REAL PROPERTY LOCATED AT 1000 KANE CONCOURSE, BAY HARBOR ISLANDS, FLORIDA, AS DEPICTED ON EXHIBIT "A" AND LEGALLY DESCRIBED ON EXHIBIT "B", FOR THE PURPOSES OF ENVIRONMENTAL REHABILITATION, JOB CREATION, AND ECONOMIC DEVELOPMENT; AUTHORIZING THE TOWN MANAGER TO IMPLEMENT THIS RESOLUTION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Brett Brumund, Goldstein Environmental Law Firm, 2100 Ponce de Leon, Coral Gables, FL 33134, was present on behalf of the applicant CBS Realty Holding, LLC. He stated that he had provided a revised eligibility statement to more accurately state the scope of the economic productivity to be generated in the construction phase of the project and had submitted information on the owner entity and its corporate structure, based on questions raised at the March 10th Council Meeting by Mayor Fuller and Council Member Salver.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, addressed the Council during the Public Hearing.

PUBLIC COMMENT CLOSED

ACTION: Council Member Leonard made a motion to approve the Resolution. Council Member Bruder seconded the motion, and it passed by a unanimous poll vote.

There being no further business to discuss the meeting was adjourned at 6:32 p.m.

MAYOR

ATTEST

TOWN CLERK

TOWN OF BAY HARBOR ISLANDS
MINUTES OF A VIRTUAL REGULAR COUNCIL MEETING

A Virtual Meeting of the Town Council was held on Wednesday, April 14th, 2021, at 6:30 p.m. using video telephone communication through the zoom platform. Upon roll call the following members responded:

Mayor Joshua Fuller	
Vice Mayor Elizabeth Tricoche	Council Member Elizabeth Bruder
Council Member Molly Diallo	Council Member Jordan Leonard
Council Member Isaac Silver	Council Member Robert Yaffe

SPECIAL PRESENTATION:

REQUESTS FOR WITHDRAWALS, DEFERMENTS AND FUTURE AGENDA ITEMS:

Mayor Fuller pulled Item 5 from the Consent Agenda because it did not appear reasonable for the Town to lease the vehicle, based on the financing numbers. Staff will explore the feasibility of financing versus purchasing the vehicle and bring back the item at the next meeting.

TOWN MANAGER'S REPORT:

- The Town will receive \$2,434,347 from the American Rescue Plan COVID-19 Relief Funds, with the first payment expected by the middle of May.
- Officers Paul Rogers and Jasmine Vasquez joined the Police Department.
- A Town Engineer has been hired and will commence employment on April 26th.

Mayor Fuller commended the Town Manager for her work, and suggested she be allowed to work remotely on Fridays, as long as the Assistant Town Manager covered Town Hall. The other members of the Council concurred.

Council Member Bruder thanked her fellow council members for allowing her to serve as Mayor for the past three (3) years. She thanked staff for their work and congratulated newly appointed Mayor Fuller and Vice Mayor Tricoche. She mentioned the Summer Camp to be held at the school. She urged people to drive carefully with the kids being out of school. Council Member Bruder further requested that speed bumps be tested on a couple of streets, including East Broadview Drive.

Vice Mayor Tricoche suggested that the speed bumps be tested around 98th and 92nd Streets Parks and/or near the school, where there is a concentration of people. She also requested that the green striping down 98th Street or around the parks be extended as an additional safety component.

Council Member Diallo thanked the Council for welcoming her; mentioned that it is an honor to serve the community; and stated that she was looking forward to working with other Council Members and staff. She congratulated the new Mayor and Vice Mayor.

Council Member Leonard congratulated Mayor Joshua Fuller, Vice Mayor Tricoche, and Council Member Diallo. He further thanked Council Member Bruder for her services as Mayor, especially during a very difficult time.

Council Member Tricoche thanked former Mayor Bruder and Vice Mayor Fuller for their efforts during an extremely difficult few years. She thanked Council Member Bruder for stepping into the very challenging role of Mayor, which she handled with a level of grace. She spoke about the dynamic changes that occurred in the Town. She also thanked staff for their time and energy.

Council Member Yaffe congratulated and welcomed Council Member Diallo as a new member of the Town Council. He thanked Council Member Bruder for her services as Mayor; congratulated Fuller and Tricoche as Mayor and Vice Mayor respectively. He commended staff for receiving 100% of the CARES Act funding, which was recognized at the Miami-Dade County League of Cities, as one of the few cities that did. He also welcomed the new Town Attorney, Joseph Geller.

Council Member Salver Congratulated Council Member Diallo on her election and Council Member Bruder on her re-election. He further congratulated newly appointed Mayor Fuller and Vice Mayor Tricoche. He welcomed new Town Attorney Joseph Geller.

At this time, Mayor Fuller announced that the meeting will be continued to a different date since the meeting was not published. He explained that the link on the website was correct; however, the ID that was published for the Zoom Meeting was incorrect, which resulted in people not being able to sign in manually to enter the Zoom Meeting.

ADJOURNMENT

The meeting adjourned at 7:15 P.M.

COUNCIL REPORTS: Each Council Member will be afforded two (2) minutes to make their reports.

PUBLIC COMMENT:

*There is a three (3) minute time limit for each speaker during public comment and a two (2) minute time limit for each speaker during all other agenda items. Your cooperation is appreciated in observing the three (3) minute rule. If you have a matter you would like to discuss which requires more than three (3) minutes, please arrange a meeting with the Town Manager or appropriate administrative official. **A request form is available from staff; please fill it in and return it to the Town Clerk prior to the start of the meeting if you would like to speak during public comment.** Please come forward to the podium, give your name and address, and the name and address of the organization you are representing if any.*

COMMITTEE REPORTS:

CONSENT AGENDA: *(Consent agenda items are those which are routine, do not require discussion or explanation prior to Town Council action, or have already been discussed and/or explained and do not require further discussion or explanation. Items can be removed from the consent agenda by the request of an individual Council member for independent consideration provided such request is made prior to the vote on the consent agenda.)*

1. **Approval** of the following Meeting Minutes:
 - a. September 14, 2020 - Public Hearing
 - b. September 14, 2020 - Regular Council Meeting
 - c. October 13, 2020 - Regular Council Meeting
 - d. January 13, 2021 - Regular Council Meeting
 - e. January 25, 2021 - Special Council Meeting
2. **Consideration** and **Approval** of a resolution requested by Council Member Leonard recognizing and commending Hatzalah of Miami Dade County for providing outstanding public service within the Town and Miami Dade County via its volunteer response services. Enclosed is a copy of the proposed resolution.
3. **Consideration** and **approval** to piggyback off a rental contract with United Rentals through Sourcewell in the amount of \$27,000 to provide on-site back-up Emergency generator for Town Hall electrical system in preparation of the upcoming Hurricane Season, pursuant to Section 2-1.2(6) of the Town Code. Enclosed is a copy of the contract and other supporting documents.
4. **Consideration** and **Approval** to piggyback off the Miami Parking Authority contract with Pay-by-Phone for the wireless application and payment processing for all metered parking and other parking facilities owned by the Town, pursuant to Section 2-1.2(6) of the Town Code. Enclosed is a copy of the agreement with Miami Parking Authority and other supporting documents.
5. **Consideration** and **approval** to piggyback off a contract with Sourcewell for a five-year lease agreement with Enterprise Fleet Management in the amount of \$950.31 per month or \$11,403.72 per year, pursuant to Section 2-1.2(6) of the Town Code. Please find attached the Open-end (Equity) Lease Quote and the original executed contract agreement with Enterprise.
6. **Consideration** and **approval** to re-appropriate a \$258,000.00 carryforward from FY 2019-2020, to FY 2020-2021 to cover cost of CIPP T-Liner work performed in this fiscal year. Additional information attached.

ORDINANCES ON SECOND READING:

7. **Consideration** and **approval** of an ordinance on second reading amending Section 23-21(e) of the Town Code to modify the Kane Concourse setback requirements for ground level restaurants and certain weatherization. Enclosed is a copy of the proposed ordinance and staff report provided by Town Planner Michael Miller.

**AN ORDINANCE OF THE TOWN COUNCIL OF THE
TOWN OF BAY HARBOR ISLANDS, FLORIDA,
AMENDING THE TOWN'S ZONING AND PLANNING
CODE TO MODIFY THE GATEWAY (G) ZONING
DISTRICT, AMENDING SECTION 23-21(e) OF THE CODE
OF ORDINANCES TO MODIFY THE KANE CONCOURSE
SETBACK REQUIREMENTS FOR GROUND LEVEL
RESTAURANTS AND CERTAIN WEATHERIZATION,
PROVIDING FOR SEVERABILITY; PROVIDING FOR
INCLUSION IN THE TOWN CODE; AND PROVIDING AN
EFFECTIVE DATE.**

ORDINANCES ON FIRST READING:

8. **Consideration** and **Approval** of an ordinance on **first** reading amending Chapter 9 of the Town Code updating the solid waste schedule of fees. Enclosed is a copy of the proposed ordinance.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 9 OF THE TOWN'S ADOPTED CODE OF ORDINANCES ENTITLED SOLID WASTE COLLECTION, BY AMMENDING SECTION 9-38 ENTITLED SCHEDULE OF FEES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

DEFERRED ITEMS:

9. **Consideration** and **Approval** of the 2020-2023 Collective Bargaining Agreement between the Town and the Dade County Police Benevolent Association, Inc. (PBA). Enclosed is a copy of the Collective Bargaining Agreement.

TOWN MANAGER ITEMS: *(Town business items requiring Council approval)*

10. **Consideration** and **Approval** of a request by Miami Dade County League of Cities to designate a Director and an alternate Director to serve on the Board of Directors for a period of one year. Enclosed is a copy of the request by Miami Dade County League of Cities.

STAFF RECOMMENDATION: Council Discretion

11. **Consideration** and **appointment** of one (1) Council Member to the Board of Trustees/Retirement Board.

STAFF RECOMMENDATION: Council Discretion

12. **Consideration** and **Approval** of the Town's Fiscal Year 2021-2022 Strategic Plan. Enclosed is a copy of the proposed Strategic Plan.

STAFF RECOMMENDATION: Approval

13. **Consideration** and **Approval** to piggyback off a General Services Administration contract with Samsara to purchase an Automatic Vehicle Locating Service (AVL) in the amount of \$27,270.14 to service fifty (50) Town owned vehicles pursuant to Section 2-1.2(6) of the Town Code. Enclosed is a Memorandum provided by Chief Raul Diaz and other supporting documents.

14. **Consideration** and **Approval** of a public Transfer of Development Rights (TDR) transaction for fifteen (15) dwelling units from the Town to Island Club Towers, LLC (9161 & 9201 East Bay Harbor Drive). Enclosed find a copy of the application, contract, site plans, and supporting documents.

STAFF RECOMMENDATION: Approval

DISCUSSION ITEMS:

15. **Discussion** requested by Mayor Bruder regarding the preliminary changes to the flood elevation requirements provided by the Federal Emergency Management Agency (FEMA). Enclosed are the proposed flood maps and other supporting documents.
16. **Discussion** and **possible action** requested by Mayor Bruder regarding the 2021 Meetings Calendar and deadlines. Enclosed are the Meeting Dates and Deadlines for 2021.

17. **Discussion** requested by Council Member Leonard on the feasibility of converting the overhead electrical distribution system within the Town to an underground system. Enclosed is a copy of the preliminary estimate provided by Florida Power & Light (FP&L).
18. **Discussion** requested by Council Member Yaffe regarding the hours of operation for the Town parks. Enclosed is a copy of the Ordinance No. 1048 as it relates to the park hours.
19. **Discussion** and **possible action** concerning Block 11, including but not limited to parking leases, private parking, and possible easement to traverse the alley. Enclosed is a detailed map of the Block 11 parking area and other supporting documents.
 - A. **Discussion** and **possible action** of a request from Bay Harbor Executives Office, Inc. regarding the Smart Park, LLC Business Tax Receipt revocation for management of the parking spaces, specifically located behind the property at 1025-1045 Kane Concourse.
 - B. **Discussion** and **possible action** of a request from Smart Park, LLC for a Business Tax Receipt to administer commercial parking operation in the B-1 Business District, more specifically located in Block 11. The applicant specifically requests approval to manage fifteen (15) parking spaces for Hippo Land, Inc. for the property located at 1067-1085 Kane Concourse. Enclosed is a copy of the Business Tax Receipt Application and other documents.

MAYOR

ATTEST

TOWN CLERK

**TOWN OF BAY HARBOR ISLANDS
MINUTES OF A REGULAR COUNCIL MEETING**

A Virtual Meeting of the Town Council was held on Tuesday, April 20th, 2021 at 7:00 P.M. via the Zoom Platform. Upon roll call the following members responded:

Mayor Joshua D. Fuller	
Vice Mayor Elizabeth Tricoche	Council Member Bruder
Council Member Molly Diallo	Council Member Jordan Leonard
Council Member Isaac Salver	Council Member Robert Yaffe

SPECIAL PRESENTATION:

Consideration and re-approval of the following Items:

(Due to technical errors related to public zoom participation experienced at the April 14th Council Meetings where the following items were considered and approved, they are being re-noticed for ratification to ensure full public participation.)

- * Acceptance of the Certification of Elections presented by the Town Clerk as Supervisor of Elections and Canvassing Board Member.
- * Selection of the Town Mayor - Mayor Joshua Fuller
- * Selection of the Town Vice Mayor - Vice Mayor Elizabeth Tricoche
- * Approval of a resolution appointing Alba L. Chang as the Town Clerk and Yvonne Hamilton as the Deputy Town Clerk.
- * Approval of a resolution designating a Brownfield Area for the property located 1000 Kane Concourse, Bay Harbor Islands, Florida 33154, pursuant to Section 376.80(2)(c), Florida Statutes.

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA; PROVIDING FINDINGS; DESIGNATING A BROWNFIELD AREA WITHIN THE TOWN FOR REAL PROPERTY LOCATED AT 1000 KANE CONCOURSE, BAY HARBOR ISLANDS, FLORIDA, AS DEPICTED ON EXHIBIT “A” AND LEGALLY DESCRIBED ON EXHIBIT “B”, FOR THE PURPOSES OF ENVIRONMENTAL REHABILITATION, JOB CREATION, AND ECONOMIC DEVELOPMENT; AUTHORIZING THE TOWN MANAGER TO IMPLEMENT THIS RESOLUTION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Council Member Leonard pulled the Resolution appointing Alba L. Chang as the Town Clerk; and Council Member Bruder pulled the Resolution designating a Brownfield Area at 1000 Kane Concourse, for discussion.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, commented on the Brownfield designation; economic productivity from the development; impact on taxes to the Town; soil testing the area; and non-enforcement of the Town’s Comprehensive Plan regarding Church by the Sea.

Kathleen Kennedy, 9180 West Bay Harbor Drive, questioned the removal of the item concerning the Town Clerk from the agenda.

Former Mayor Linda Zilber, 1231 – 95th Street, welcomed new Town Attorney Joseph Geller; congratulated Council Members Bruder and Diallo on their elections; and Mayor Fuller and Vice Mayor Tricoche on their appointments.

Milton Reijman, 1135 Kane Concourse, informed the Council of The Continuum Group's intention to submit a request at next month's Council Meeting to build a sales and design center at the corner ground floor space at 1111 Kane Concourse, for two luxury waterfront projects to be developed at 9161/9201 and 9431/9461/9481 East Bay Harbor Drive; and he requested the Council's feelings on the matter. May Fuller advised Mr. Reijman of the process for the Council to review the item when it comes before them.

PUBLIC COMMENT CLOSED

- * Acceptance of the Certification of Elections presented by the Town Clerk as Supervisor of Elections and Canvassing Board Member.
- * Selection of the Town Mayor - Mayor Joshua Fuller
- * Selection of the Town Vice Mayor - Vice Mayor Elizabeth Tricoche
- * Approval of a resolution appointing Joseph Geller, Esq, as the Town Attorney and James Rauh, Esq. as the Assistant Town Attorney.

ACTION: Council Member Salver made a motion to approve the above items. Council Member Leonard seconded the motion, and it passed by a unanimous poll vote.

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA; PROVIDING FINDINGS; DESIGNATING A BROWNFIELD AREA WITHIN THE TOWN FOR REAL PROPERTY LOCATED AT 1000 KANE CONCOURSE, BAY HARBOR ISLANDS, FLORIDA, AS DEPICTED ON EXHIBIT "A" AND LEGALLY DESCRIBED ON EXHIBIT "B", FOR THE PURPOSES OF ENVIRONMENTAL REHABILITATION, JOB CREATION, AND ECONOMIC DEVELOPMENT; AUTHORIZING THE TOWN MANAGER TO IMPLEMENT THIS RESOLUTION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Fuller asked the Town Attorney if it was proper to discuss the items at this time, considering they were before the Council for re-ratification, or if they would need to be re-noticed for the next Council Meeting. Town Attorney Geller advised that the Town Council had the discretion to discuss, defer, or reconsider the items.

Council Member Bruder explained that she pulled the Brownfield Area Designation item for discussion, because of information received that a governmental agency was scheduled to check the soil; and she felt it necessary to bring the matter to the Council's attention. She suggested that the matter be deferred in order to talk with the governmental agency and to direct staff to see if oil was being seeped into the water.

Mayor Fuller asked the Town Attorney if the Council had the ability to revoke the items and defer them to the next meeting; since there were no technical issues at the first two meetings where the items were heard and approved. Town Attorney Geller responded that a “Motion to Reconsider” would be appropriate.

Council Member Bruder made a motion to reconsider the Brownfield, and there was no second to the motion.

Council Member Yaffe expressed concern that only selected members of the Council had knowledge about a governmental agency inspecting the Brownfield site. Council Member Bruder clarified that she received the information from residents, not from staff.

Council Member Yaffe stated that the applicant had represented to the Town Council at the last meeting, that the property had been fully remediated; and he asked the applicant to address the matter.

Council Member Salver expressed his discomfort with the situation, and felt it was unfair for the Council’s action to be retracted at a public hearing, after the request was approved in a meeting that was appropriately noticed, where public comments were made, and where votes were taken. He was also uncomfortable with the notion of reconsidering the vote on the Town Clerk.

Mayor Fuller stated that, he too, was uncomfortable with items being pulled. He explained the original intention to ratify the Council’s earlier actions out of an abundance of caution to avoid future challenges if there were questions later. He agreed that items previously voted on should not be changed; but understood the Council Members had a right to pull items or put forth a “Motion to Reconsider”.

Town Attorney Geller reminded the Council that they acted on the matters, and if no further action were taken, the vote would stand. However, if the action was ratified, it will be ratified; but any member of the Council can bring a motion for reconsideration.

Brett Brumund, Goldstein Environmental Law Firm, 2100 Ponce de Leon Boulevard, FL 33134 explained that the property was contaminated, and remediation was done under the oversight of Miami-Dade County DERM, and will continue to, if the designation was ratified. He stated that, based on last week’s approval, they had already begun the process of preparing the Brownfield Site Rehabilitation Agreement that will entered into with Miami-Dade County, which would cement Miami-Dade’s oversight moving forward. He mentioned that he was not aware of regulatory agencies coming to inspect the site, aside from the current oversight. He added that the property is currently undergoing ground water monitoring program, following removal of all petroleum contaminated soil from the property; and post act remediation program has one more quota, during which Miami-Dade County will confirm that ground water impact no longer exists. And Miami-Dade will require any remaining contaminants that are likely to occur to be addressed; as they will not allow the property to close out regulatorily, unless Miami-Dade County DERM was satisfied that all the requirements under Rule 62784 FLA. Administrative Code were met.

PUBLIC COMMENT

Kathleen Kennedy, 9180 West Bay Harbor Drive, disclosed that she had contacted the EPA because of an odor that was coming from the property. She stated that Jose Blanco was expected to visit the site today and provide a report.

Frances Neuhut, 1060 Kane Concourse, spoke about water with odor over the property, on March 25th for 10 days, that was being dumped into the storm water drain.

PUBLIC COMMENT CLOSED

Council Member Yaffe reminded the Town Council that the published agenda addressed ratification of items and not discussion. He spoke about putting properly noticed items back on the agenda; and see whether they pass or fail.

ACTION: Council Member Leonard made a motion to re-ratify the approval of the Brownfield Designation Area. Council Member Salver seconded the motion, and it passed unanimously.

Approval of a resolution appointing Alba L. Chang as the Town Clerk and Yvonne Hamilton as the Deputy Town Clerk.

Council Member Leonard made a motion to amend the Resolution to appoint Deputy Town Clerk Yvonne Hamilton as the Interim Town Clerk and remove Town Clerk Alba L. Chang.

Council Member Yaffe stated that the technical error that occurred at last week's meeting was not a basis to reconsider the action of the Town Council that occurred last week in appointing the Town Clerk and the Deputy Town Clerk.

Mayor Fuller reminded Council Member Leonard that action of the Council tonight was to ratify a vote that previously occurred.

Council Member Bruder seconded the motion to revise the Resolution as made by Council Member Leonard.

Mayor Fuller requested guidance from the Town Attorney on how to proceed as the meeting was to ratify the previous actions of the Town Council and was noticed as such.

Town Attorney Geller opined that when action is taken, it is proper for a member of the Council to move for reconsideration.

Mayor Fuller stated that he would accept a vote to ratify the item, which could then be followed by a vote to reconsider to allow for the proper procedure.

ACTION: Council Member Leonard made a motion to ratify the Resolution. Council Member Bruder seconded the motion, and it passed by a unanimous vote.

PUBLIC COMMENT

Kathleen Kennedy, 9180 West Bay Harbor Drive, questioned the loyalty of the Council Members who wanted to remove the Town Clerk.

PUBLIC COMMENT CLOSED

ACTION: Council Member Leonard moved to reconsider approval of the Resolution appointing Alba L. Chang as Town Clerk. Council Member Bruder seconded the motion for discussion purposes.

Council Member Yaffe believed that it was morally wrong to take such action. He stated that there was no merit in seeking to dismiss one of the Town's officials because of an error.

Council Member Leonard explained that his decision to remove the Town Clerk was not due to issues with the meetings. He stated that he had noticed many other issues; and he did not have faith that she can do the job of the Town Clerk. He stated that he did not vote "No" at the last meeting, but the error with the Zoom Meeting raised some serious issues. He stated that while everyone makes mistakes, there were some noticing issues with another meetings, coupled with the fact that the Town Clerk took the week off on vacation and didn't inform the Town Council. He clarified that his intent was not for Ms. Hamilton to be the permanent Town Clerk but referred to her because she is the Deputy Town Clerk. He mentioned putting out a search for a Town Clerk.

Vice Mayor Tricoche acknowledged how uncomfortable it was to discuss the matter in public, as the Council is required to do with certain matters. She stated her preference to open the application process and encourage internal staff to apply, in the best interest of the Town and of individuals, to ensure the Town hires the right person for the job.

Council Member Yaffe stated that there was a unanimous appointment of the Town Clerk one week ago; and he felt that the notice for last week's meeting pertaining to this item was not wrong, thought the matter of removing the Town Clerk was inappropriate.

Council Member Bruder stated that the issue was not the mistake, but failure to apologize for the mistake and reach out to those people who were affected. She suggested that Ms. Chang be given the opportunity for the Council Members to state their concerns to her in private.

Council Member Leonard withdrew his motion; and stated that he will express his concerns to the Town Clerk. Council Member Bruder withdrew her second to the motion.

Town Clerk Chang stated that she took full responsibility for what occurred and had apologized to four members of the council after the April 14th meeting ended. She explained that the vacation was planned five (5) months in advance, and that she was working on the meeting agenda from the hotel, while on vacation.

**REQUESTS FOR WITHDRAWALS, DEFERMENTS AND FUTURE AGENDA ITEMS:
TOWN MANAGER’S REPORT:**

Mayor Fuller announced that Item #7 was removed from the agenda to be re-noticed for second reading, because there was not adequate time to advertise for this meeting.

Council Member Leonard requested a discussion item for the next Council Meeting to “Outsource the Building Department”. He mentioned the resignation of the Building Official, resulting in the Town Manager’s appointment of an inspector as Interim Building Official.

Mayor Fuller also pulled Item #5 from the agenda.

TOWN MANAGER’S REPORT

- Concert in the Town this Sunday at 7:00 P.M., Warren Hill and Jim Berry
- Hiring of a Building Official in transition.

COUNCIL REPORTS: *Each Council Member will be afforded two (2) minutes to make their reports.*

Council Member Salver reported on his attendance at yesterday’s Children’s Trust Meeting. He stated that the Children’s Trust made emergency expenditures of approximately \$5 Million in critical parts of the community to ensure that underserved members of the community were given provisions and other items that were scarce during COVID.

Mayor Fuller thanked his fellow council members for the honor and trust in selecting him as Mayor. He commended former Mayor Bruder on a wonderful job, especially with her leadership during COVID19.

PUBLIC COMMENT

Linda Zilber, of 1235 – 95th Street, thanked the Town Clerk for her help.

Frances Neu hut, of 9920 West Broadview Drive, spoke about a police report filed against her after the April 14th Council Meeting.

Kathleen Kennedy, 9180 West Bay Harbor Drive, reminded the Town Council to obtain monies to improve the Town’s infrastructure from the infrastructure funds to be passed by President Biden. She commented on the poor condition of the fire station and on lights not working in the parking garage.

Town Manager Lasday advised the Council that the new Town Engineer will start work this coming Monday; and he will prepare the RFP’s for the lighting.

Milton Reijman, 1135 Kane Concourse, asked the Town Council for their opinion regarding temporary use of the 1111 Kane Concourse ground floor space as a sales and design center for two new condominium projects on the island.

PUBLIC COMMENT CLOSED

COMMITTEE REPORTS:

CONSENT AGENDA: *(Consent agenda items are those which are routine, do not require discussion or explanation prior to Town Council action, or have already been discussed and/or explained and do not require further discussion or explanation. Items can be removed from the consent agenda by the request of an individual Council member for independent consideration provided such request is made prior to the vote on the consent agenda.)*

1. **Approval** of the following Meeting Minutes:
 - a. September 14, 2020 - Public Hearing
 - b. September 14, 2020 - Regular Council Meeting
 - c. October 13, 2020 - Regular Council Meeting
 - d. January 13, 2021 - Regular Council Meeting
 - e. January 25, 2021 - Special Council Meeting
2. **Consideration** and **Approval** of a resolution requested by Council Member Leonard recognizing and commending Hatzalah of Miami Dade County for providing outstanding public service within the Town and Miami Dade County via its volunteer response services. Enclosed is a copy of the proposed resolution.
3. **Consideration** and **approval** to piggyback off a rental contract with United Rentals through Sourcewell in the amount of \$27,000 to provide on-site back-up Emergency generator for Town Hall electrical system in preparation of the upcoming Hurricane Season, pursuant to Section 2-1.2(6) of the Town Code. Enclosed is a copy of the contract and other supporting documents.
4. **Consideration** and **Approval** to piggyback off the Miami Parking Authority contract with Pay-by- Phone for the wireless application and payment processing for all metered parking and other parking facilities owned by the Town, pursuant to Section 2-1.2(6) of the Town Code. Enclosed is a copy of the agreement with Miami Parking Authority and other supporting documents.
5. ~~**Consideration** and **approval** to piggyback off a contract with Sourcewell for a five-year lease agreement with Enterprise Fleet Management in the amount of \$950.31 per month or \$11,403.72 per year, pursuant to Section 2-1.2(6) of the Town Code. Please find attached the Open End (Equity) Lease Quote and the original executed contract agreement with Enterprise.~~
6. **Consideration** and **approval** to re-appropriate a \$258,000.00 carryforward from FY 20192020 to FY 2020-2021 to cover cost of CIPP T-Liner work performed in this fiscal year. Additional information attached.

ACTION: Council Member Bruder made a motion to approve the Consent Agenda. Council Member Leonard seconded the motion, and it passed on a unanimous poll vote.

ORDINANCES ON SECOND READING:

7. ~~**Consideration** and **approval** of an ordinance on second reading amending Section 23-21(e) of the Town Code to modify the Kane Concourse setback requirements for ground level restaurants and certain weatherization.~~

~~AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING THE TOWN'S ZONING AND PLANNING CODE TO MODIFY THE GATEWAY (G) ZONING DISTRICT, AMENDING SECTION 23-21(e) OF THE CODE OF ORDINANCES TO MODIFY THE KANE CONCOURSE SETBACK REQUIREMENTS FOR GROUND LEVEL RESTAURANTS AND CERTAIN WEATHERIZATION, PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE TOWN CODE; AND PROVIDING AN EFFECTIVE DATE.~~

ORDINANCES ON FIRST READING:

8. **Consideration** and **Approval** of an ordinance on **first** reading amending Chapter 9 of the Town Code updating the solid waste schedule of fees.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 9 OF THE TOWN'S ADOPTED CODE OF ORDINANCES ENTITLED SOLID WASTE COLLECTION, BY AMENDING SECTION 9-38 ENTITLED SCHEDULE OF FEES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

ACTION: Council Member Bruder made a motion to approve the Ordinance on first reading. Council Member Leonard seconded the motion, and it passed by a unanimous poll vote.

DEFERRED ITEMS:

9. **Consideration** and **Approval** of the 2020-2023 Collective Bargaining Agreement between the Town and the Dade County Police Benevolent Association, Inc. (PBA).

ACTION: Council Member Bruder made a motion to approve the PBA agreement on first reading. Council Member Leonard seconded the motion, and it passed by a unanimous poll vote.

TOWN MANAGER ITEMS: *(Town business items requiring Council approval)*

10. **Consideration and Approval** of a request by Miami-Dade County League of Cities to designate a Director and an alternate Director to serve on the Board of Directors for a period of one year.

ACTION: Council Member Salver nominated Robert Yaffe as the Director and Molly Diallo as the alternate Director to the Miami-Dade County League of Cities Board of Directors, without objection.

11. **Consideration and appointment** of one (1) Council Member to the Board of Trustees/ Retirement Board.

Council Member Salver nominated Council Member Bruder for appointment to the Board of Trustees for the Retirement Board. Council Member Leonard seconded the motion; and there was no objection.

12. **Consideration and Approval** of the Town's Fiscal Year 2021-2022 Strategic Plan. Enclosed is a copy of the proposed Strategic Plan.

ACTION: Council Member Bruder made a motion to approve the Town's Fiscal Year 2021-2022 Strategic Plan as submitted. Council Member Leonard seconded the motion, and it passed by a unanimous vote.

Council Member Tricoche commended staff for doing a good job on the Strategic Plan.

13. **Consideration and Approval to piggyback off a General Services Administration contract with Samsara to purchase an Automatic Vehicle Locating Service (AVL) in the amount of \$27,270.14 to service fifty (50) Town owned vehicles pursuant to Section 2-1.2(6) of the Town Code.**

PUBLIC COMMENT

Kathleen Kennedy, 9180 West Bay Harbor Drive, asked if the Town had found the car that was sitting in the salesroom.

PUBLIC COMMENT CLOSED

Council Member Bruder responded that the Town had gotten back the car.

Council Member Tricoche thanked the Police Chief and staff for the AVL item.

ACTION: Council Member Tricoche made a motion to approve the piggyback purchase for an Automatic Vehicle Locating Service for \$27,270.14. Council Member Leonard seconded the motion, and it passed on a unanimous vote poll vote.

14. **Consideration and Approval** of a public Transfer of Development Rights (TDR) transaction for fifteen (13) dwelling units from the Town to Island Club Towers, LLC (9161 & 9201 East Bay Harbor Drive).

Town Attorney Joseph Geller recused himself from involvement in this matter due to his past representation of the Tauber's (applicant). Alfredo Gonzalez, Esq, of Genovese Joblove & Battista, served as Special Counsel on the matter.

Mr. Gonzalez noted that the contract had been modified to reflect 13 units, as opposed to the initial 86.

Council Member Salver remembered the Council passing a resolution limiting the number of TDR units to less than 50%.

Town Planner Michael Miller stated that the Town passed a Code amendment requiring the maximum TDR units that may be requested to be no more than 50%. He stated that there is also a provision for the Council to make alteration under different circumstances. In this case, the applicant is asking for 13 units, which is not near the 50%. He explained that they need 54, and they have already acquired 27 private TDR's, with only 13 that are public; so, they would need 11 more private TDR's to build an 86-unit complex.

Council Member Salver asked if the project has already been approved. Town Planner Miller responded that the project was originally approved in 2013. There were some minor revisions, and it had been kept alive via the governor's orders to keep Development Orders moving forward based on emergencies. He added that the current order will expire in June 2022. He stated that they have Building Permits under review; a sale is pending; and there is building ready to move forward.

Council Member Salver recommended that the amount in the agreement be left blank, until an appraisal can be done on TDR's. It was the consensus of the Council not to change the amount for this project, but for staff to obtain an appraisal on TDR's.

Council Member Bruder pointed out an error in the Escrow Agreement, where former Town Attorney Simone was still listed as the agent.

PUBLIC COMMENT

Frances Neuhut suggested that the request be revisited by the Planning & Zoning Board, since it was approved in 2013; and she spoke about failure of developers to provide for utility undergrounding.

Council Member Salver suggested revisiting the valuation of TDR fees biannually.

The Council reached a consensus to approve the transfer of these 13 TDR's; and for staff to conduct an appraisal before future TDR's are issued.

ACTION: Council Member Bruder made a motion to approve the transfer of the 13 dwelling units and to designate Alfredo Gonzalez, Esq, of Genovese Joblove & Battista, Special Counsel, as the Escrow Agent. Council Member Yaffe seconded the motion, and it passed unanimously.

DISCUSSION ITEMS:

15. **Discussion** requested by Mayor Bruder regarding the preliminary changes to the flood elevation requirements provided by the Federal Emergency Management Agency (FEMA). Enclosed are the proposed flood maps and other supporting documents.

Council Member Bruder mentioned that the new FEMA elevation requirements were already in effect, based on conversations with the Town Planner and the Building Official.

Council Member Tricoche stated that the Town is taking a proactive approach on ways to counter act flooding and environmental issues; as well as addressing issues with the pump system and improving roadways.

Town Manager Lasday informed the Town Council that the Stormwater Master Plan was almost completed, and a sustainability meeting will be held in May or June when the document is received. She stated that the American Rescue Plan funds can be used to implement some of the items recommended in the plan; as well as seeking grant funding.

Town Planner Michael Miller explained the 10-year FEMA updates to the Flood Map, which requires an Elevation Zone of seven (7) feet for the entire community, versus the previous 8-, 9-, and 10-foot elevations. He suggested that the Town acts on two (2) of the new changes to the map. He referred to the dark line on the map along Biscayne Bay, which shows a velocity zone on some of the single-family homes that may have some implications on what people can build or use their properties for. He suggested that the Council writes a letter or pass a Resolution suggesting the line be placed on the seawall, so that property owners are not negatively affected. He explained that the Florida Building Code was amended two and a half years ago to require one additional foot of free board, which the Town does not recognize; and new houses and other developments are being penalized one foot of interior usable space. He suggested a Zoning Code amendment to adjust for the one foot of free board, so new developments are not penalized.

Mayor Fuller requested a report on the issues discussed by the Town Planner for the Council to have a better understanding.

16. **Discussion** and **possible action** requested by Mayor Bruder regarding the 2021 Meetings Calendar and deadlines.

Council Member Bruder put forth the idea of having Council Meetings on Mondays instead of Wednesdays, as well as discussing the time for closing the agenda to accommodate staff.

PUBLIC COMMENT

Kathleen Kennedy, 9180 West Bay Harbor Drive, suggested the meetings be held on Mondays.

Linda Zilber, 1231 – 95th Street, suggested the meetings be held on Wednesdays.

PUBLIC COMMENT CLOSED

Following discussion, it was the consensus of the Town Council to have Regular Council Meetings on Wednesdays. And the Town Manager, the Town Attorney, and the Town Clerk will review the deadline regulations and provide their written recommendation to the Council.

17. **Discussion** requested by Council Member Leonard on the feasibility of converting the overhead electrical distribution system within the Town to an underground system.

PUBLIC COMMENT

Kathleen Kennedy, of 9180 West Bay Harbor Drive, spoke about developers being in favor of undergrounding electrical lines, use of TDR funds for infrastructure; unsightly electrical wires in front of Town Hall; the Planning & Zoning Board in support of undergrounding the electrical lines; and the Council not wanting the undergrounding.

Linda Zilber, 1231 – 95th Street, referred to laws during her time as a council member, which required undergrounding when work on houses exceeded 50% of the value and undergrounding of wires for all new developments.

PUBLIC COMMENT CLOSED

Following discussion, it was the consensus of the Council for staff to explore financing options, cost for financing, information on the easements, and locate old blueprints and estimates regarding the cost that was previously provided by FPL. Council Member Salver recommended using the Florida Municipal Loan Council as a financing option.

18. **Discussion** requested by Council Member Yaffe regarding the hours of operation for the Town parks.

Council Member Yaffe explained that the Park Regulation Ordinance currently allows for park opening hours from Sunrise to Sunset or 8:00 p.m., whichever is later. He stated that he had received complaints that people were in the park with kids, when it was dark; and he requested that the ordinance be amended to require that the park be locked when it is dark; and for people not to be at the park, in the interim.

Council Member Bruder pointed out that the lights on the basketball courts should remain on.

PUBLIC COMMENT

Kathleen Kennedy, 9180 West Bay Harbor Drive, asked that lights be installed so family and children can enjoy themselves.

PUBLIC COMMENT CLOSED

19. **Discussion and possible action** concerning Block 11, including but not limited to parking leases, private parking, and possible easement to traverse the alley.

Town Attorney Geller reported that counsel for Dr Wittels had agreed to extend their lease for six (6) weeks until the end of May; Attorney Neil Sklar informed him that they sent information to the town in 2019 and never received a response; and Finvarb was looking to purchase the land and the hotel. He advised the council against having unnecessary litigation and requested that they allow him and the Town Manager to continue to work with the various parties on a solution. He welcomed input from the Council Members and stated that he would exhaust all possible options before litigation.

Council Member Bruder asked what would happen if the Town did not take any action; and she stated her opposition to privatized parking.

Town Attorney Geller stated that while he was not certain, there could be the possibility of losing access to the Town's parking, as some people may decide to erect fencing or barriers, except if people entered the lot at 97th Street.

Council Member Leonard expressed support for the Town Attorney and the Town Manager exploring options to resolve the matter.

Council Member Salver stated that he was not certain if it applied to all of the buildings on Kane Concourse in Block 11, but he recalled reading Minutes pertaining to one of the developments, where it was discussed that the property owners would make certain concessions to the Town, in exchange for constructing a building without parking; and some type of exchange was made where the Town took control of the area behind the building and permitted the building to be built with zero setback; which was memorialized with easements that have been in place for over 60 years. He felt that if the Town owes money based on the easements or lease agreements, it should pay what

it was obligated to pay. He also stated that he would be open to allowing certain type of commercial parking arrangement for them to lease the open alley.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, stated that it was the Town's responsibility to have a parking garage.

Former Mayor Zilber, 1231 – 95th Street, stated that she did not want Dr. Wittels to close off the parking garage, because the area is needed for public parking during meetings at Town Hall.

The Council reached a consensus for the Town Manager and the Town Attorney to meet with the property owners to discussion a solution to the matter.

- A. **Discussion and possible action** of a request from Bay Harbor Executives Office, Inc. regarding the Smart Park, LLC Business Tax Receipt revocation for management of the parking spaces, specifically located behind the property at 1025-1045 Kane Concourse.

Jeff Sherman, 1045 Kane Concourse, addressed the Council on behalf of Ophelia Sherman. He spoke about contracting with Smart Park about six (6) months ago, and of the Town approving signage of the contract. He stated that he learned the Council revoked the license to Smart Park and asked that the matter be reconsidered, and their license be reinstated. He stated that he would like to continue to do business with Smart Park, who is open to negotiate with the Town and to change signage.

- B. **Discussion and possible action** of a request from Smart Park, LLC for a Business Tax Receipt to administer commercial parking operation in the B-1 Business District, more specifically located in Block 11. The applicant specifically requests approval to manage fifteen (15) parking spaces for Hippo Land, Inc. for the property located at 1067-1085 Kane Concourse. Enclosed is a copy of the Business Tax Receipt Application and other documents.

Council Member Salver suggested that the Town Manager and the Town Attorney negotiate with Smart Park for a chance to reboot with better rules and regulations.

Council Member Bruder expressed opposition to privatized parking.

Mayor Fuller stated that each individual property has to be looked at as to the number of spaces for each individual building. He was cautious about leasing out spaces that are already required for the building, which might not comply. He was in favor of the Town Attorney and the Town Manager discussing the issue with the property owners to reach a resolution.

Council Member Yaffe concurred with the mayor's comments.

Council Member Salver and Council Member Diallo stated their favor for the Town Attorney and the Town Manager to discuss the issue with the property owners.

ADJOURNMENT

There being no further business to address the meeting was adjourned at 9:45 p.m.

MAYOR

ATTEST

TOWN CLERK

TOWN OF BAY HARBOR ISLANDS
MINUTES OF A REGULAR COUNCIL MEETING

A Virtual Meeting of the Town Council was held on Tuesday, May 12th, 2021 at 7:06 P.M. via the Zoom Platform. Upon roll call the following members responded:

Mayor Joshua D. Fuller

Vice Mayor Elizabeth Tricoche

Council Member Stephanie Bruder

Council Member Molly Diallo

Council Member Jordan Leonard

Council Member Isaac Salver

Council Member Robert Yaffe

SPECIAL PRESENTATION

1. Join us in welcoming Officer Jasmin Vazquez and Officer Paul Rogers to the Town of Bay Harbor Islands Police Department. These two officers were officially sworn in on April 21, 2021, and are looking forward to serving the residents and visitors of the Town of Bay Harbor Islands.

Captain Noel introduced new Police Officers Jasmin Vazquez and Paul Rogers to the Town Council.

2. Presentation of the Town's Comprehensive Annual Financial Report for the year ended September 30, 2020 by Mr. Michael Futterman of Marcum LLP.

Mr. Futterman reported that the Town's financial statement had received a "clean opinion". He explained the changes from FY 2020 – 2019 as outlined on Pages 4-16. As reported in Page 90, he pointed out findings in the audit report where bank reconciliations were not being prepared and there were significant deficiencies in internal processes, which were discussed with Town Manager Lasday and Finance Director Kajokas. The audit report outlined a Remediation Action Plan based on these two findings as listed on Page 104.

Mr. Futterman further reported that there were no findings relative to the Federal Single Audit from the Florida Department of Transportation Funds; and there were no significant difficulties in preparing the audits.

Council Member Salver asked Mr. Futterman if the audit program included a more robust review of all the cash contracts amended when it was realized that the bank reconciliations had not been done since January 2020. Mr. Futterman responded that the Town Manager was informed, and the audit was increased throughout the entire process, not just on that issue; but based on what was occurring in the Town.

Council Member Tricoche asked Mr. Futterman if the corrective actions that were put into place regarding the auditor's findings of deficiency were sufficient. Mr. Futterman said yes.

Council Member Leonard asked if there was anything the Council could do to avoid a similar occurrence; possibly having quarterly or six-month overviews, in addition to the audit.

Mr. Futterman mentioned that some cities were posting their financial transactions on their website for transparency.

Town Manager Lasday stated that the quarterly and monthly financial report updates provided to the Town Council, could be submitted to the auditors, who could report anything of concern.

Council Member Yaffe pointed out that a general ledger with expenditures is published on the website, as far as transparency.

Town Manager Lasday reported that the Open Gov Software with financial reports will be uploaded to the website to provide transparency, when the program, which is a priority as part of the budget cycle, is implemented.

21. **Discussion and report** for the proposed amendments to the Town Comprehensive Plan. Enclosed is a copy of the full report and staff report.

Town Manager Lasday suggested that Item 22, Discussion regarding the Comprehensive Plan (Plan), be addressed at a Town Council Workshop. Council Member Salver requested that there be community involvement; Town Attorney Geller suggested obtaining public input in writing and for the Council to direct their questions to the Town Planner in advance of the workshop; Mayor Fuller requested that the Comprehensive Plan be made available to the public for review with an extra copy available at Town Hall for access. There was discussion about creating a link on the website for residents to provide feedback on the Comprehensive Plan.

Vice Mayor Tricoche requested information on vacant land on the east side of the island that has not received project approval; a list of pending plans; and the status of development projects with timeline; as well as an update on the Sophie. The Vice Mayor also requested information on construction hours for ongoing projects.

Council Member Bruder discussed her request for the Town Planner to amend the generator ordinance to address separate regulations for homes and multi-family requirements; landscaping around generators; and testing period and hours. She also requested that the parking lifts regulations be revisited regarding distance and how they are utilized.

Discussion followed on generator regulations allowing for testing period, specifying use for emergency purpose, having different standards for residences, number of units, and restriction for buildings that do not have a Business Tax Receipt.

3. Proclamation for "No place for Hate Day" presented to the Anti-Defamation League

Mayor Fuller read a proclamation proclaiming May 14th as “No place for Hate Day”. Mr. Eric Ross accepted the proclamation virtually, on behalf of the Anti-Defamation League.

REQUESTS FOR WITHDRAWALS, DEFERMENTS AND FUTURE AGENDA ITEMS:

Council Member Leonard suggested that Items 15 and 16 below be addressed when the Block 11 issue was resolved.

TOWN MANAGER’S REPORT

Town Manager Lasday requested the Council’s authorization to execute the Assignment and Assumption of TDR contract. It as noted that the agreement for purchase and sale of the related TDR’s was previously approved. Discussion followed regarding prior approval of the purchase and sale of the TDR’s; Council’s responsibility to authorize the Town Manager to sign the transfer agreement; the appropriateness of hearing the item because it was not on the agenda; allowing public input; and concern regarding a provision in the document not to withhold the transfer; and not allowing installment payments for purchased of TDR’s,

Council Member Salver questioned why the Assistant Town Counsel was not present, since Town Attorney Geller recused himself on the matter being discussed. Mr. Geller advised that Alfredo Gonzalez with Genevose, Battista, was present as special counsel on the matter.

TOWN MANAGER’S REPORT

- Approval of RFP for On-Demand Shuttle Services RFP for Council’s for issuance on May 26th.
- Budget workshop scheduled June 9th, create survey soliciting public input to be included in Newsletter.
- Anticipating receiving \$1.2 Million American Recovery Funding.
- Road improvements plans.

TOWN ATTORNEY’S REPORT

Town Attorney Geller reported that he was seeking a resolution of the Block 11 matter that would make sense financially, work to benefit the citizens of the Town in terms of their accessibility to Town Hall and having available open access to parking.

4. **Consideration and Approval** of an expenditure not to exceed \$10,000 to select and hire an independentoutside legal counsel to investigate the grievance recently filed by Town Clerk Alba L. Chang.

Town Attorney Geller introduced the item and explained the purpose of the funds to hire outside legal counsel to investigate and report to the Council, as the procedure is different for a Charter employee.

ACTION: Council Member Leonard made a motion to approve the \$10,000 expenditure. Council Member Bruder seconded the motion, and it passed unanimously.

PUBLIC COMMENT

Kathleen Kennedy, 9180 East Bay Harbor Drive, expressed her opposition to the treatment of the Town Clerk at the last Council Meeting and to \$10,000 expenditure for investigation.

PUBLIC COMMENT CLOSED

COUNCIL REPORTS: Each Council Member will be afforded two (2) minutes to make their reports.

Council Member Leonard welcomed everyone back; stated that he was looking forward to his last few meetings as a Council Member; and welcomed the two new Police Officers and Town Attorney Geller.

Council Member Bruder welcomed Council Member Diallo; urged residents to drive cautiously with kids out of school for the Summer; and encouraged residents to prepare for the hurricane season.

Council Member Salver reminded everyone of the tax filing deadline on May 17th. He reported on today's Retirement Board Meeting where there was discussion on the DROP Program and Council Member Bruder's attendance at her first meeting as a Retirement Board Trustee. He further mentioned his attendance at the Children's Trust Finance Committee Meeting where information was received that the Town's tax rolls fared well during COVID, with no expected detrimental effect to income from tax valuation.

Council Member Yaffe welcomed the new Police Officers, Town Attorney Geller, Council Member Molly Diallo, and the new Finance Director, Assistant Town Manager, and HR Manager. He announced the Miami-Dade League of Cities (League) Installation Meeting scheduled for May 13th at 11:00 A.M. He spoke of discussion at the League's meetings regarding financial issues, weekly reports on COVID cases and hospitalization, and the possibility of resuming in-person meetings. He announced COVID testing in the Town on Wednesdays and urged everyone to get vaccinated.

Council Member Tricoche reported that the Miami Shores facilities were not available to the residents of the Town, and staff was in the process of trying to resolve the issue. She spoke about resources for students learning at home and urged parents to reach out for assistance.

Council Member Bruder suggested that information be provided in the Town's newsletter regarding resources that are available for parents and kids remediation and camp through Parks and Recreation.

Council Member Salver reported that he received phone calls about tennis court operator Pedro Caniza doing a great job, but that there needs to be some changes.

Town Manager Lasday stated that RFP's for maintenance of the tennis courts are due to the Town tomorrow.

Council Member Yaffe reported that rental assistance is available through Miami-Dade County and suggested that staff obtain information about the programs for publication in the newsletter. He also suggested contacting Representative Sally Hayman's office regarding other available assistance.

Mayor Fuller welcomed Council Member Diallo, Town Attorney Geller, Police Officers, and staff. He reported that he will continue to work on the FAA matter and will continue to provide follow up. He reported on attacks on Home Rule as it relates to municipalities during the legislative session.

It was the consensus of the Town Council for Council Member Leonard to represent the Town at a Miami Shores Meeting to express the Town's interest in continuing with the aquatic program for the Town's residents.

Council Member Salver spoke about the increase in double parking on Kane Concourse.

PUBLIC COMMENT CLOSED

There is a three (3) minute time limit for each speaker during public comment and a two (2) minute time limit for each speaker during all other agenda items. Your cooperation is appreciated in observing the three (3) minute rule. If you have a matter you would like to discuss which requires more than three (3) minutes, please arrange a meeting with the Town Manager or appropriate administrative official. A request form is available from staff; please fill it in and return it to the Town Clerk prior to the start of the meeting if you would like to speak during public comment. Please come forward to the podium, give your name and address, and the name and address of the organization you are representing if any.

Frances Neuhut, 1060 Kane Concourse, spoke about parking spaces in the Town's Business District.

Kathleen Kennedy, 9180 West Bay Harbor Drive, asked the Council to consider retaining Pedro Caniza's services. She expressed support in providing mental health assistance and concurred with comments about double parking on Kane Concourse.

Former Mayor Linda Zilberg, 1231 – 95th Street, suggested that there be swimming lessons for the children.

COMMITTEE REPORTS:

CONSENT AGENDA: *(Consent agenda items are those which are routine, do not require discussion or explanation prior to Town Council action, or have already been discussed and/or explained and do not require further discussion or explanation. Items can be removed from the consent agenda by the request of an individual Council member for independent consideration provided such request is made prior to the vote on the consent agenda.*

5. **Consideration and Approval** of the following Meeting Minutes:
 - a. February 10, 2021, Public Hearing
 - b. October 28, 2020, Regular Council Meeting
 - c. October 19, 2020, Special Council Meeting
 - d. July 7, 2020, Special Council Meeting - Revised
 - e. March 9, 2020, Regular Council Meeting - Revised
6. **Consideration and Approval** of a resolution requested by Council Member Bruder amending the rules and procedures for the distribution and posting of Council Meeting Agendas. Enclosed is a copy of the proposed resolution.
7. **Consideration and Approval** of a resolution authorizing deposits and withdrawals of Town Bank accounts. Enclosed is a copy of the resolution
8. **Consideration and approval** of a resolution revising Section 9-38 of Town Code adjusting monthlySolid Waste Fees. Enclosed is a copy of Resolution.
9. **Consideration and Approval** to piggyback off the National Association of State Procurement Officials (NASPO) contract with Toshiba American Business Solutions, Inc. for copiers and printing services, pursuant to Section 2-1.2(6) of the Town Code. Enclosed is a copy of the proposal provided by Toshibaand other supporting documents.
10. **Consideration and Approval** of Amendment No. 4 to the Memorandum of Understanding to implement the Nurse Enhancement Initiative for the 2021/2022 school year. Enclosed is a copy of the agreement and summary report.
11. **Consideration and Approval** for a Request for Proposals (RFP) for Servers Relocation Wiring Project. Enclosed is a copy of the proposal package material.
12. **Consideration and Approval** for a Request for Qualifications (RFQ) for Insurance Broker Services. Enclosed is a copy of the proposal package material.

ACTION: Council Member Jordan made a motion to approve the Consent Agenda. Council Member Bruder seconded the motion, and it passed on a unanimous poll vote.

ORDINANCES ON SECOND READING:

13. **Consideration** and **Approval** of an ordinance on second reading amending Chapter 9 of the TownCode updating the solid waste schedule of fees.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 9 OF THE TOWN'S ADOPTED CODE OF ORDINANCES ENTITLED SOLID WASTE COLLECTION, BY AMMENDING SECTION 9-38 ENTITLED SCHEDULE OF FEES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

ACTION: Council Member Bruder made a motion to approve the ordinance on second reading. Council Member Tricoche seconded the motion, and it passed on a unanimous poll vote.

ORDINANCES ON FIRST READING:

14. **Consideration** and **Approval** of an ordinance on first reading authorizing the use of CommunicationMedia Technology (CMT) during periods when the Town's Mayor or the Governor declares a Local Public Health Emergency or local State of Emergency.

AN ORDINANCE OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA AUTHORIZING THE USE OF COMMUNICATION MEDIA TECHNOLOGY AND FOR ATTENDANCE BY USE OF SUCH TECHNOLOGY BY ELECTED AND APPOINTED OFFICIALS AND MEMBERS OF THE PUBLIC UNDER SUCH CIRCUMSTANCES AS IS APPROPRIATE AND AUTHORIZED BY LAW, INCLUDING DURING PERIODS WHEN THE TOWN MAYOR OR GOVERNOR DETERMINES AND DECLARES A LOCAL PUBLIC HEALTH EMERGENCY OR STATE OF EMERGENCY AND FURTHER DETERMINES AND DECLARES THAT IT IS NECESSARY TO PROTECT THE HEALTH AND SAFETY OF TOWN OFFICIALS, TOWN STAFF, AND THE PUBLIC; PROVIDING FOR CONFLICT AND REPEALER; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR INCORPORATION OF RECITALS; AND PROVIDING FOR AN EFFECTIVE DATE.

ACTION: Council Member Bruder made a motion to approve the ordinance on first reading. Council Member Leonard seconded the motion, and it passed on a unanimous poll vote.

16. **Consideration and Approval** of a contract award to Jones-Benitez Corporation in the amount of \$195,175.20 for project No. BC 156 for the Rehabilitation of Snapped Tendons in a Pre-stressed U- channel Section of Bridge 875103 (Indian Creek Bridge).

ACTION: Council Member Leonard made a motion to approve the contract award to Jones-Benitez Corporation. Council Member Bruder seconded the motion, and it passed by a 6-0 poll vote. Council Member Tricoche was absent from the dais.

Council Member Salver requested information regarding repairs to the north side of the of flat bridge that was damaged.

Public Works Director Douglas explained the planned repairs scheduled for this coming Monday. He noted that the party's insurance paid for the repairs.

15. **Discussion** Regarding The Finvarb Group's Request for a Perpetual Right to Use the Town's Right-of- Way.

Rick Romero, Finvarb Group and Mr. Finvarb made a presentation to the Council regarding plans to purchase the Landon Hotel and Palm Restaurant area on the property. They requested to utilize the Town's right-of-way to create a drop off area, in return for an easement on the west property line to the Town. They requested that the Town Council direct the Town Manager and the Town Planner to assist them with accomplishing their request.

Discussion followed as to whether there will be a barrier between the bike lane and the drop off point; providing a 4 foot wide sidewalk in addition to carving into the Town's right-of-way; concern about perpetual easement on Town's property to move the sidewalk further into the street in exchange for two parking spaces; suggestion for the Town Planner to bring back information about the parking on the property; item not on the agenda for Council to direct staff; sidewalk remaining and ability for bike path after renovations; pushing back the property closer in; and request for Mr. Finvarb to provide a concept of their plans with detail for the next meeting.

Town Attorney Geller stated that he, the Town Planner, and the Town Manager looked at the request; and he advised that while he didn't have an operational issue with the request, one of the technical issues was concern about granting a perpetual easement on the right-of-way, which has implications for the time when the hotel reaches the end of its useful life, as approval of the request is something that would be linked to the use. He also mentioned that there were some Block 11 issues.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, spoke about information not being provided by the presenters that they are converting an existing lobby at the hotel to a restaurant and outdoor seating area; giving away parking that belongs to the business district; and

under \$500,000 in revenue in budget for parking not enough.

PUBLIC COMMENT CLOSED

17. **Consideration and Approval** of a Business Tax Receipt Application from Bay Harbor Islands PropertyOwner I, LLC (DBA Continuum Realty, LLC) for a Sales Center to be located at 1111 Kane Concourse, Ground Floor Space.

Bruce Eichner, CEO, Continuum Group stated that he was under contract to acquire the two largest undeveloped parcels in Bay Harbor at 9201 and 9461 East Bay Harbor Drive, and the closing is scheduled for Friday or Monday. The project contemplates two phases with approximately 140 units, commencing with the first phase of 70 units in the south building and approximately 70 in the north building, with the start of construction contemplated in December, with a 23-month schedule. Mr. Eichner explained that in conjunction with the development, they are seeking to obtain approval for a design and sales center for the properties only, with a two-year lease with a one-year option, at which point the property would be handed back to the owners who contemplate building back their restaurant.

Matthew Amster, Bercow Radell Fernandez Larkin & Tapanes, 200 S Biscayne Blvd #300, Miami, FL 33131, addressed the Council on behalf of the Continuum Group, for a sales center at 1111 Kane Concourse regarding the Island House and Royal House projects, for two years with the option to extend, if needed. He stated that there will be two completely different projects. Island House was approved for 86 units and Royal House was approved for 72, but they are looking to lower the numbers, which is where the 140 came from.

Discussion followed regarding location being empty for a long time; having a sales center would bring people to the town; the request being temporary and not permanent; whether parking was available, and suggestion for the applicant to commit to not having short term vacation rentals and waiving agreement for grandfathering.

Milton Raijman clarified the request to lease out space for two years, with an option for a third year for sale of the two projects. He explained that a model will be there; no sale centers would be on the property; and guest parking would be available at the 1111 Kane Concourse parking lot.

Mr. Eichner concurred with concerns about short-term rentals, which he stated was inconsistent with his vision for either building. He agreed to include a prohibition in the Condominium Documents on rentals for less than one month. Additionally, there will not be daily and weekly rentals and no Airbnb's.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and addressed the Council in opposition to the sales center at 1111 Kane Concourse. She spoke about the sales center not promoting, but destroying the business district, and lack of parking for business owners.

PUBLIC COMMENT CLOSED

ACTION: Council Member Leonard made a motion to approve the sales center with the following conditions:

- Approval of a two-year lease with the tenant having the option to renew for a third year.
- The sales center shall be for the two projects at 9161-9201 and 9431-9481 East Bay Harbor Drive.
- The Condominium Documents shall include language that there be no grandfather for vacation rentals.
- There will be no vacation rentals for less than 30 days.

Council Member Yaffe seconded the motion, and it passed by a unanimous vote.

18. **Consideration** and **Approval** of a Business Tax Receipt Application from Kundani, LLC for an Early Childcare Center to be located at 1037 Kane Concourse. Enclosed is a copy of the Business Tax Receipt Application and other supporting documents.

It was the consensus of the Town Council to pull Item 18 from the agenda.

- ~~19. **Discussion** and **possible action** requested by Council Member Leonard to remove the Town Clerk and Appoint an Interim Town Clerk.~~

20. **Discussion** and **direction** on the policy and procedures for naming and re-naming of Town-owned properties. Enclosed is a copy of Resolution No. 1057 and staff's recommendation on the matter.

Council Member moved the item to the floor; and there was no second to the motion.

At this time, Matthew Amster, Bercow Radell Fernandez Larkin & Tapanes, 200 S. Biscayne Blvd #300, Miami, FL 33131, addressed the Council to allow the signing of the related assignment of transfer of TDR's for the 9161-9201 and 9431-9481 East Bay Harbor Drive projects, subject to the Council Meeting in May. The Council was not in favor of addressing the matter at this time.

There being no further business to discuss the meeting was adjourned at 9:45 p.m.

MINUTES OF A REGULAR COUNCIL MEETING held on May 12, 2021.....11

MAYOR

ATTEST

TOWN CLERK

**MINUTES OF A SPECIAL COUNCIL MEETING
TOWN OF BAY HARBOR ISLANDS**

A Special Meeting of the Town Council was held on Wednesday, May 26, 2021 at 6:00 p.m. in the Council Chambers. Upon roll call the following members responded:

Mayor Joshua Fuller	
Vice Mayor Elizabeth Tricoche	Council Member Stephanie Bruder
Council Member Molly Diallo	Council Member Jordan Leonard
Council Member Isaac Salver	Council Member Robert Yaffe

Consideration and **approval** of an ordinance on **second** reading amending Section 23-21(e) of the Town Code to modify the Kane Concourse setback requirements for ground level restaurants and certain weatherization.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING THE TOWN'S ZONING AND PLANNING CODE TO MODIFY THE GATEWAY (G) ZONING DISTRICT, AMENDING SECTION 23-21(e) OF THE CODE OF ORDINANCES TO MODIFY THE KANE CONCOURSE SETBACK REQUIREMENTS FOR GROUND LEVEL RESTAURANTS AND CERTAIN WEATHERIZATION, PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE TOWN CODE; AND PROVIDING AN EFFECTIVE DATE.

Council Member Bruder moved the item to the floor, and Council Member Leonard seconded the motion.

PUBLIC COMMENT:

Frances Neuhut, of 1060 Kane Concourse, came forward to address the Council and spoke about the lack of parking on Kane Concourse; changing ordinance for one person who is requesting restaurant seats; issue considered spot zoning; the Council should not consider adding restaurant with more parking and more density without having a parking garage; current intensity; and Council not listening to Comprehensive Plan about the Gateway.

Council Member Salver clarified that discussion is being held on the actual footprint of the building and what it would look like relative to the neighboring properties. He asked Mrs. Neuhut about her feelings regarding the proposed changes to the Zoning Code.

Council Member Yaffe explained that the building was approved with parking; and it went back before the Planning & Zoning Board for revisions, which were also approved. He stated that the issues were whether the footprint of the building can go closer to the bridge and a proposed amendment to permit the canopy for the parking.

Mrs. Neuhut stated that Town Attorney Geller represented the Gateway project several months ago, and Town Planner Miller was against the 20-foot-wide setback pedestrian promenade and mandatory 8-foot-wide walkway. She stated that the Comprehensive Plan is being changed; density and intensity are being increased; and she was not in favor of the proposed changes to the ordinance.

Council Member Bruder asked if the hotel in the Gateway were destroyed if the new changes would apply to all the properties in the Gateway.

Mayor Fuller stated that an indemnification and hold harmless provision was included for the additional space; in the event anything happens within those 10 feet of the bridge, it would be the sole responsibility of the owner; not the Town.

Council Member Salver requested that each proposed change to the ordinance be addressed separately, because he believed each one had its own importance. He stated that he was against changing the setback for the building to be closer to the bridge; and he wanted to hear from other Council Members about the canopy before deciding. He stated that he might be more open to accepting the change in the rear towards the water side, if it were setup as an outdoor café.

Mayor Fuller asked Special Counsel Gonzalez about the legality of addressing the proposed ordinance piecemeal since it was not noticed as such.

Special Counsel Alfredo L. Gonzalez, Genovese, Joblove & Battista, PA, 100 Southeast Second Street, 44th Floor, Miami, Florida 33131, advised that the Council could address separate items and determine if they wanted to amend the ordinance to eliminate or add language. However, if the changes were significant, the notice may be impaired.

Council Member Yaffe stated that he was not clear as to whether the Council could approve one section of the proposed ordinance that was already passed on first reading; and not approve other sections.

Special Counsel Gonzalez opined that the Council could discuss the different parts of the proposed ordinance to determine whether to amend it in some respect, and then a determination could be made as to whether the change is so significant that the ordinance would have to be readvertised.

It was the consensus of the Town Council to move forward with addressing the ordinance by sections.

Council Member Bruder amended the motion for the Council to address the proposed ordinance in sections. Council Member Leonard accepted the amendment to the motion.

Council Member Yaffe stated that the developer did not respond to the Council's request regarding the depiction of the project on the property, because the model that was submitted was not clear. He stated his understanding that an amendment to the ordinance would be required for the trellis to go to the edges of the building. However, it was learned that the extension of the trellis to the edge of the building was granted at a prior Planning & Zoning Board Meeting, upon a request by the developer. He expressed opposition to the Trellis. He stated that the trellis will go to the edges of the building on four sides, which will look like another story and doesn't take the 75' height limitation into account. He stated that he didn't have a problem with dining on the roof but was not accepting of the trellis to the four sides of the building, which he didn't think was in the spirit of the 75' height limitation or the prior Gateway approval.

Mayor Fuller agreed that the rendering did not depict the building going closer to the bridge; the five-foot setback; and the 10 feet instead of 20 feet. He noted that the Council was not addressing the project, but the proposed ordinance.

Council Member Tricoche asked if it was in the purview of the Planning & Zoning Board to allow the change to the trellis. She stated that she had an issue with the amendment regarding the southside facing the residential building but was okay with the amendment for the building, to be closer to the bridge.

Town Planner Michael Miller clarified that the proposed ordinance was not being amended to allow further encroachment to the south. He explained that the amendments to the proposed ordinance were for the building to be closer to the bridge; a request for the north side setback for a first story ground level restaurant from 20 feet to 10 feet; a bigger cover over the car drop off area for the building itself on the west side; closing in the outdoor seating with weatherization; and rooftop seating and weatherization. He explained the Code requirements for roof tops and the allowance for roof top structures to cantilever out. He informed the Town Council that former Town Manager Watson had directed staff on the approval of the trellis, which was subsequently approved by the Planning & Zoning Board.

Discussion ensued about the Planning & Zoning Board's authority to approve the trellis after approval by the Town Council and for to staff research the Minutes of the Planning & Zoning Board when the trellis was approved.

Council Member Bruder withdrew her motion to approve the ordinance on second reading.

PUBLIC COMMENT

Former Mayor Linda Zilber, 1231 – 95th Street, hoped that the Council would agree to a building being built on the site, which she felt would bring more people to Kane Concourse.

PUBLIC COMMENT CLOSED

Council Member Leonard requested that the item be deferred to the June Council Meeting.

There was discussion about the Planning & Zoning Board’s action and authority.

Mayor Fuller requested that Town Attorney Geller provide a legal opinion as to whether the Planning & Zoning Board had the authority to make changes to a Gateway project, after approval by the Town Council.

Town Attorney Geller expressed his concern with items that are being approved by the Planning & Zoning Board that should come before the Town Council.

Council Member Salver suggested that each element in the proposed ordinance be re-submitted separately. He felt that the setback from Kane Concourse should be removed and not be considered; he stated that the amendments pertaining to the carport and to the waterfront setback were acceptable requests, because they were on the property; he was not in favor of giving away 10 feet of property; and felt that a path was being opened up for the roof to become another story, which he was not in favor of.

Council Member Salver further stated that the setback to the bridge should remain unchanged, because others who have developed Gateway projects had to deal with a certain set of criteria that worked.

Council Member Yaffe discussed the regulations for limited activities on the rooftops of buildings. He stated that in looking at one of the renderings from the last meeting, the roof top trellis going to the edges of the buildings looks like another story.

Council Member Bruder stated that she agreed with the roof trellis; even though the concept of its approval was bothersome. However, she did not have an issue with the amendments regarding the rear of the building and the overhang to prevent people from getting wet. She was concerned with the amendment that would affect the property, on the side of the Bijou; and was uncertain with the amendment regarding the setback to the bridge. She supported the matter being heard by the Council in June.

Council Member Salver asked for the Special Counsel's opinion as to whether removal of a paragraph from the proposed ordinance would be considered a material change. Mr. Rodriguez opined that it shouldn't, as ordinances are amended on second reading all the time. He stated that there would have to be something so fundamentally different than what was advertised to be considered a material change.

ACTION: Council Member Bruder made a motion to defer the hearing on the proposed ordinance to the June 2021 Town Council Meeting. Council Member Leonard seconded the motion, and it passed by a unanimous vote.

1. **Consideration and Approval** of an ordinance on **second** reading authorizing the use of Communication Media Technology (CMT) during periods when the Town's Mayor or the Governor declares a Local Public Health Emergency or local State of Emergency. Enclosed is a copy of the proposed ordinance.

AN ORDINANCE OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA AUTHORIZING THE USE OF COMMUNICATION MEDIA TECHNOLOGY AND FOR ATTENDANCE BY USE OF SUCH TECHNOLOGY BY ELECTED AND APPOINTED OFFICIALS AND MEMBERS OF THE PUBLIC UNDER SUCH CIRCUMSTANCES AS IS APPROPRIATE AND AUTHORIZED BY LAW, INCLUDING DURING PERIODS WHEN THE TOWN MAYOR OR GOVERNOR DETERMINES AND DECLARES A LOCAL PUBLIC HEALTH EMERGENCY OR STATE OF EMERGENCY AND FURTHER DETERMINES AND DECLARES THAT IT IS NECESSARY TO PROTECT THE HEALTH AND SAFETY OF TOWN OFFICIALS, TOWN STAFF, AND THE PUBLIC; PROVIDING FOR CONFLICT AND REPEALER; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR INCORPORATION OF RECITALS; AND PROVIDING FOR AN EFFECTIVE DATE.

Frances Neuhut, 1060 Kane Concourse, came forward to address the Council and spoke about problems with the technology and about people not being able to hear the meetings.

ACTION: Council Member Salver made a motion to approve the Ordinance on Second Reading and Council Member Bruder seconded the motion, and it passed by a unanimous poll vote.

2. **Consideration and possible action** of assignment and assumption of a Transfer of Development Rights (TDR) contract between Casa Capri South, LLC formerly known as Island Club Towers, LLC (assigner) and Bay Harbor Islands Property Owner I, LLC (assignee). Enclosed is a copy of the proposed contract.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and addressed the Council. She spoke about digging up projects from 2013 that have not been built; Planning & Zoning Board not addressing changes; wrong elevations; no underground garages allowed; flooding problems and height increase that are not being addressed; density having a lot to do with parking; issues without underground parking; project approval for 51 TDR's with large density; and 2013 original project for two lots.

There was discussion about the name change and number of TDR's. Town Planner Miller clarified that the Island Towners is a four-lot development project with 86 units that was originally approved by the Planning & Zoning Board, for four lots. The matter was addressing the original assignment of the Town's TDR's to the new owners.

Attorney Matthew Amster, 200 S. Biscayne Boulevard, Suite 300, Miami, FL 33131 was present representing Bay Harbor Islands Property 1, the new owner who obtained the property on May 17th. He stated that the request was to formally obtain approval for 13 of the Town's TDR's, which was approved in April 2021, to be transferred from the old owner to the new owner. Regarding density, the 13 TDR's are in addition to 27 private ones that were previously obtained. Collectively, a total of 75-unit count can be done as of right. The reduction from 86 units was intended to combine units inside the building to have larger units, but the exterior of the building will remain the same as originally approved.

Council Member Salver requested that staff and the Town Attorney work on certain safeguards for the TDR regulations, to ensure that the Council is aware of who they are dealing with and what is going to be built.

Council Member Bruder stated that the sale of TDR's should be attached to the land. She stated that the Council was not aware that the property was being sold when approval was granted; and approval should have been granted after the sale. Additionally, the sale of TDR's should be on a cash basis.

Council Member Yaffe stated that there should be some type of ability to approve the transferee or for a presentation to be given, so that the Town Council knows who they are dealing with, not just with TDR's, but with the project itself.

ACTION: Council Member Yaffe made a motion to approve the assignment. Council Member Bruder seconded the motion, and it passed by a unanimous vote.

3. **Consideration** and **Approval** for a Request for Proposals (RFP) for the On-demand Shuttle Service. Enclosed is a copy of the proposal package material.

Council Member Yaffe made a motion to approve the Request for Proposals. Council Member Salver seconded the motion, and it passed by a unanimous vote.

Town Attorney Geller informed the Town Council that Dr. Wittels had agreed to extend the lease for one month until the end of June.

There was discussion that the Block 11 issue needs to be resolved.

There being no further business to discuss, the meeting was adjourned at 6:52 P.M.

MAYOR

ATTEST

TOWN CLERK

TOWN OF BAY HARBOR ISLANDS
MINUTES OF A VIRTUAL HYBRID REGULAR COUNCIL MEETING

A Virtual Meeting of the Town Council was held on Wednesday, June 9th, 2021, at 7:03 p.m. through the ZOOM Platform. Upon roll call the following members responded:

Mayor Joshua Fuller

Vice Mayor Elizabeth Tricoche	Council Member Molly Diallo
Council Member Jordan Leonard	Council Member Isaac Salver
Council Member Robert Yaffe	

Council Member Stephanie Bruder joined the meeting at 7:30 p.m.

1. Student of the Year Award
Miami Beach Senior High School - Luciana Ruggiero

Recent Miami Beach Senior High graduate, Luciana Ruggiero, was recognized by the Town Council as “Student of the Year” and was awarded a \$1,000 scholarship and a “Student of the Year” plaque. Miss Ruggiero thanked the Council Members.

SPECIAL PRESENTATION:

1. Lobbyist David Caserta provided a legislative update.
2. Honorable Senator Jason Pizzo also addressed the Council on legislative issues.
3. Florida House of Representatives, Joseph Geller reported on legislative actions.

REQUESTS FOR WITHDRAWALS, DEFERMENTS AND FUTURE AGENDA ITEMS:

Council Member Diallo pulled Item #6; Town Manager Lasday pulled Item #5, and Council Member Leonard pulled Item #'s 7 and 15 from the Consent Agenda for discussion.

TOWN MANAGER'S REPORT:

- Pizza with Bay Harbor Island Police Department event.
- COVID19 Vaccination at Town Hall on Friday from 9:00 A.M.-12:00 Noon
- Budget Workshop scheduled for June 23, 2021.
- OpenGov portal live providing information on the Town's finances.
- Hired new Building Official, Michael Mesa.
- FPL utility work for 1177 Kane Concourse/Road improvements/Road Closures

TOWN CLERK'S REPORT

Town Clerk Chang informed the Council of the requirement for a Charter and Ordinance Review Committee to be activated 12 months prior to November 2022, and of her intention to notice the matter in the Town's newsletter.

TOWN ATTORNEY'S REPORT

Town Attorney Geller reported that some progress has been made with the FAA situation, and a motion was filed to extend the deadline for briefs.

COUNCIL REPORTS: Each Council Member will be afforded two (2) minutes to make their reports.

Council Member Yaffe wished everyone a pleasant and safe Summer.

Council Member Leonard thanked the Florida League of Cities for recognizing him with the "Home Rule Hero" award. He also congratulated the recent high school graduates.

Council Member Salver reported that he attended the Florida League of Cities Board of Directors' Meeting where there was discussion on Short Term Vacation Rentals (STVR's), Home-based businesses, and a joint venture with NASA on a hybrid concrete flooring product.

Council Member Diallo reported on her attendance at a Sisterhood Brunch. She congratulated high school graduate Luciana Ruggiero.

Council Member Bruder urged everyone to be cautious when driving as kids are out of school and to be safe. She noted that Miami Shores is opened to activities for the Town's residents; and she congratulated all graduating students, including Luciana Ruggiero. She also invited residents to provide their input on the Town's budget.

Vice Mayor Tricoche urged residents to submit their comments regarding the 2021-2022 Budget to the Town Council, including via emails.

Mayor Fuller congratulated the graduating students. He reported that progress is being made with the FAA; and conversations were had with the DOJ on potential mediation.

PUBLIC COMMENT:

There is a three (3) minute time limit for each speaker during public comment and a two (2) minute time limit for each speaker during all other agenda items. Your cooperation is appreciated in observing the three (3) minute rule. If you have a matter you would like to discuss which requires more than three (3) minutes, please arrange a meeting with the Town Manager or appropriate administrative official. A request form is available from staff; please fill it in and return it to the Town Clerk prior to the start of the meeting if you would like to speak during public comment. Please come forward to the podium, give your name and address, and the name and address of the organization you are representing if any.

Kathleen Kennedy, 9180 West Bay Harbor Drive, spoke of the need for term limits for Council Members; low employee morale; poor working conditions for Public Works employees; allegation of discrimination at Community Center; and the Council not naming the park after former Council Member Doris Marano.

Council Member Leonard stated for the record that respect was paid to former Council Member Morano, when flags were lowered at half staff for two weeks, during her passing.

Frances Neuhut, 1060 Kane Concourse, spoke about Church by the Sea.

Janet Adler, 10350 West Bay Harbor Drive, spoke in favor of a charging station on her property; lack of code on charging stations for new developments; and use of rapid charging stations in municipal parking lots.

Lorraine Lynn, 10350 West Bay Harbor Drive, spoke in favor of having electric charging stations in the town and next to the light poles.

Council Member Bruder stated that the rapid charging station item could be added to the budget.

Maurice Robert, 1141 99th Street, expressed concern with the loud noise from Short Term Vacation Rentals and suggested the matter be addressed at the local level.

COMMITTEE REPORTS:

5. **Consideration** and **Approval** of a resolution requested by Council Member Leonard to designate June 19th "Juneteenth" as an official Town Holiday. Enclosed is a copy of the proposed resolution.

Council Member Salver stated that the matter of declaring a holiday for the Town should be on the general agenda, not on the Consent Agenda, since it was not a routine item. He was not in favor of closing Town Hall for another day, denying citizens of service.

Council Member Bruder was in favor of recognizing the event but was not in favor of closing Town Hall.

Council Member Leonard supported honoring the event with a holiday. He stated that several cities, including Miami-Dade County, will be closed for the holiday.

PUBLIC COMMENT

Kathleen Kennedy, 9180 Kane Concourse, spoke in favor of the Resolution.

PUBLIC COMMENT CLOSED

Council Member Salver referred to the \$10,000 fiscal impact stated and mentioned the actual gross amount of \$30,000-\$35,000 payroll cost, including overtime pay. He suggested that the matter be voted on by citizens through referendum. He felt that not serving citizens was not in the best interest of Town Hall.

Town Manager Lasday announced that administrative employees will be working remotely until August, due to renovations to Town Hall.

ACTION: Council Member Tricoche made a motion to approve the Resolution. Council Member Leonard seconded the motion, and it passed by a 5-2 poll vote, with Council Members Salver and Bruder opposing.

6. **Consideration and Approval** of a resolution requested by Council Member Leonard urging the Miami- Dade County Public School Board to allow the Town to designate a School Based Law Enforcement Officer at the Ruth K. Broad Bay Harbor K-8 center for the 2021 / 2022 school year.

Council Member Diallo recused herself from participating in the matter to avoid the appearance of conflict, as a School Board employee-teacher.

Council Member Salver asked if other municipalities had requested to appoint a school-based officer. He expressed support for the item, but felt it was overreaching by appointing the Town's own officer, since Miami-Dade County has auspices over the officers.

Council Member Yaffe agreed to having the Town's own resource officer. He noted that Miami-Dade County School Board had indicated this was the last year they would pay for the resource officer.

Vice Mayor Tricoche spoke in favor of having the resource officer for the safety of the children.

Town Attorney Geller reminded the Council that the matter was only a proposal to the School Board at this time.

Mayor Fuller stated that he felt comfortable with providing the request to the School Board.

Council Member Leonard clarified that the contract with the School Board expired at the end of the third year; and if the Resolution passed, it would give the Town the ability to address the School Board on the matter.

Council Member Bruder suggested reaching out to Surfside and Bal Harbour.

Mayor Fuller stated that a Special Meeting could be called to address the matter, if necessary.

PUBLIC COMMENT

Kathleen Kennedy, 9180 West Bay Harbor Drive, spoke in support of the School Resource Officer.

PUBLIC COMMENT CLOSED

ACTION: Council Member Leonard made a motion to approve the Resolution. Council Member Bruder seconded the motion, and it passed by unanimously.

7. **Consideration and Approval** of a resolution amending the fee schedule for the Building Department's Activities and permits.

Council Member Leonard requested that the matter of changing the fee schedule be deferred until after the new Building Official is hired.

Council Member Yaffe preferred for the fees to be in place prior to the new Building Official being hired.

Mayor Fuller expressed agreement to the new fee schedule.

PUBLIC COMMENT

Kathleen Kennedy, 9180 West Bay Harbor Drive, asked if a permit is required when a resident closes the pool.

Frances Neuhut, 1060 Kane Concourse, spoke about preferential treatment in processing Building Permits.

PUBLIC COMMENT CLOSED

ACTION: Council Member Tricoche made a motion to approve the Resolution. Council Member Bruder seconded the motion, and it passed by a 6-1 poll vote, with Council Member Leonard opposed.

15. **Consideration and approval** of the General Ledger and Manual Journal Entries Policy.

Finance Director Peter Kajokas reported that the policy was created in response to the auditor's findings.

Council Member Salver questioned the policy being submitted to the Town Council for approval, rather than being instituted by the Town Manager.

Town Manager Lasday spoke about the importance of policies to create structure. She will consolidate policies in the future, for submittal to the Town Council.

ACTION: Council Member Bruder made a motion to approve the General Ledger and Manual Journal Entries Policy. Council Member Leonard seconded the motion, and it passed by unanimously.

CONSENT AGENDA: *(Consent agenda items are those which are routine, do not require discussion or explanation prior to Town Council action, or have already been discussed and/or explained and do not require further discussion or explanation. Items can be removed from the consent agenda by the request of an individual Council member for independent consideration provided such request is made prior to the vote on the consent agenda.)*

4. **Consideration and Approval** of the following Meeting Minutes:
 - a. February 10, 2021 - Regular Council Meeting
 - b. March 10, 2021 - Public Hearing
8. **Consideration and Approval** of a resolution authorizing the Town Manager to allocate and expend the American Rescue Plan Covid-19 Relief Funds in the amount of \$2,434,347.
9. **Consideration and approval** to issue a Request for Proposals (RFP) BC-157 to replace the high voltageelectrical conduit, bracketing, and power cable on the north side of the Intra Coastal Waterway Bridge (Bridge No. 875101).
10. **Consideration and Approval** to piggyback off the City of Fort Lauderdale's Annual Asphalt Mill and Resurfacing Contract with M&M Asphalt Maintenance Inc. (DBA All County Paving Inc.) in the amount of \$272,927.25 for the Milling and Paving of the East Island Internal Streets pursuant to Section2-1.2(6) of the Town Code.
11. **Consideration and Approval** to extend the Program Grant Agreement for Address Verification Plan between the Town and the School Board of Miami-Dade County for the 2021/2022 School Year.
12. **Consideration and approval** to piggyback off the Sourcewell Contract #130356-GVR with SGI Builders, Inc. in the amount of \$29,794.44 for the purchase and installation of a new fuel dispenser system for the Town fleet, pursuant to Section 2-1.2(6) of the Town Code. Enclosed is a copy of the proposal provided by SGI Builders, Inc.

13. **Consideration and Approval** to piggyback off the City of Fort Lauderdale's Continuing Services Contract with Team Contracting, Inc. for Continuing Services Annual Concrete and Asphalt for the repairs of the existing sidewalk, driveway, and roadway in front of Fire Station 76 on 95th Street, pursuant to Section 2-1.2(6) of the Town Code.
14. **Consideration and Approval** to piggyback off the Town of Palmetto Bay contract with CentralSquare Technologies, LLC in the amount of \$201,180 for the software upgrade to the Business Tax Receipt, Code Compliance and Building Permits Programs, pursuant to Section 2-1.2(6) of the Town Code. Enclosed is a copy of the proposed agreement.
16. **Consideration and Approval** to piggyback off the City of Miami Gardens' Contract with Imperial Electric Inc. (ITB No. 16-17-029) to procure and install a solar powered lighting system for all four Town Parks in the amount of \$116,988, pursuant to Section 2-1.2(6) of the Town Code.
17. **Consideration and Approval** to piggyback off Miami-Dade County Contract No 8254-1/22-1 with Blue Digital Inc. in the amount of \$36,081.49 for records scanning service, pursuant to Section 2-1.2(6) of the Town Code.
18. **Consideration and Approval** of an Agreement between the Town of Bay Harbor Islands and Miami Shores for the usage by the residents of Miami Shore's Aquatic Facilities.

ACTION: Council Member Bruder made a motion to approve the Consent Agenda. Council Member Leonard seconded the motion, and it passed by a unanimous poll vote.

ORDINANCES ON SECOND READING:

19. **Consideration and approval** of an ordinance on **second** reading amending Section 23-21(e) of the Town Code to modify the Kane Concourse setback requirements for ground level restaurants and certain weatherization.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING THE TOWN'S ZONING AND PLANNING CODE TO MODIFY THE GATEWAY (G) ZONING DISTRICT, AMENDING SECTION 23-21(e) OF THE CODE OF ORDINANCES TO MODIFY THE KANE CONCOURSE SETBACK REQUIREMENTS FOR GROUND LEVEL RESTAURANTS AND CERTAIN WEATHERIZATION, PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE TOWN CODE; AND PROVIDING AN EFFECTIVE DATE.

Council Member Yaffe stated that based on the information provided at the last meeting, he had questioned whether the Planning & Zoning Board had modified the project after it was approved by the Council by ordinance, because it was a Gateway project. Based on information he received, the approval was done correctly, and no modifications were made after the Council had approved it as a Gateway project. He noted that he was not present at the April 17th meeting when the project was approved.

Council Member Salver stated that he had a discussion with Ms. Tauber that the modeling was not fully responsive to his request for imaging, modeling, and scaling for the type of presentation. He stated that his main concern was with the change in the right-of-way, which was his reason for requesting the scale modeling to see how the building would look on approach entering and exiting the Town. He also spoke with other property owners in the Gateway. He felt that the code was being changed to accommodate certain requests, and the matter was being addressed as a request for a variance. He stated that the overall project is beautiful, and will be a tremendous addition to the Town, but he was concerned about the aspect of the right-of-way next to the bridge. He stated that he cannot approve all the aspects of what is being proposed. And although the attorney stated that part of the parcel they are looking to build on in the setback belongs to them, he wasn't 100 percent convinced it would benefit the Town in the long run. Therefore, if the Council addressed the ordinance with all the changes considered at once, he will vote against it, because of the setback to the bridge.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, spoke about being shocked that the Council was approving the ordinance that the Town Planner had opposed; comments at the April 7th meeting that the existing building was not to be demolished until a Building Permit was received; the project having one year from April 19, 2017 to apply for a Building Permit; and about no parking in the business district. She outlined the proposed parking for the project; and commented that there are problems with elevations and flooding in the Gateway.

PUBLIC COMMENTS CLOSED

Council Member Yaffe stated that the Town Planner was very specific in his February 26th memorandum to the Council as to concerns he had, being opposed to the extension of the wall toward the bridge but would not be opposed to a cantilever roof covering with weatherization panels of outdoor seating next to the building. He stated that while he appreciates the clarity, he did not appreciate that the Town Planner had advised the Council in 2017 that he had concerns, but never stated those concerns; and the trellis was not mentioned in the Planning & Zoning Board Minutes or in the memorandum. He advised the Town Planner to inform the Council of any concerns he may have in the future. He stated that he would like to see the outdoor seating of the restaurant and how

the weatherization would affect it.

Council Member Salver stated that there are some items in the ordinance regarding rooftop amenities that would be applicable to other properties that have already been built.

Mayor Fuller noted that the Grand Beach Hotel is not permitted to open a restaurant outside.

ACTION: Council Member Bruder made a motion to approve the Ordinance. Council Member Leonard seconded the motion, and it passed by a 6-1 poll vote, with Council Member Salver opposed.

ORDINANCES ON FIRST READING:

20. **Consideration** and **Approval** of an ordinance on first reading requested by Council Member Bruder amending Chapter 12 of the Town Code to modify the decibel noise limits allowed in the Town.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING THE TOWN'S CODE OF ORDINANCES AS RELATED TO NOISE AND MAXIMUM DECIBEL ALLOWANCES; AMENDING ARTICLE II OF CHAPTER 12 OF THE CODE TO MODIFY THE DECIBEL NOISE LIMITS ALLOWED IN THE TOWN; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

Council Member Bruder stated that there is a difference between homes and buildings for emergency purposes, and there needs to be a change in the decibels. She suggested that testing be done during the day and not on weekends.

Council Member Salver stated that the ordinance doesn't address the needs of properties next to construction sites.

Council Member Yaffe explained that single-family owners who want to install generators cannot do so under the current code; because they cannot obtain a Building Permit to install generators, since all the generators now exceed the decibel level that is set forth in the Town Code. A request was made to amend the ordinance now, so people can install generators, as it's already into the hurricane season.

Mayor Fuller explained that the suggested language was to clarify the hours; length/distance from the properties and the different types of generators. He added that manufacturers do not test below the decibel that the Town currently has. The goal is to

allow testing, but certain hours need to be prescribed during the week. He stated that there needs to be a better understanding of acceptable decibel, with the length and distance from properties.

Town Attorney Geller asked the Council Members to provide suggested changes to him or to Town Planner Miller, so that they can amend the ordinance and circulate the proposed language, in advance of the next Council Meeting.

Council Member Salver questioned the logic of having different decibel levels of 75 in the Single-Family District and 85 elsewhere. It was noted that the difference pertains to larger generators.

PUBLIC COMMENT

David Alenor, 10350 East Bay Harbor Drive, complained about noise from the Bijoux generator. He discussed the generator regulations and felt that a construction site should not be allowed to run a generator over the 60-decibel limit, similarly to what is being done by the Bijoux.

PUBLIC COMMENT CLOSED

Town Planner Miller explained that according to current language in Section 5-19 of the Zoning Regulations, emergency powered generator maintenance cycle run shall be permitted at a maximum of once per week between the 10:00 a.m. and 5:00 p.m., Monday through Friday only; and shall continue for no more than the manufacturer's recommended duration, but not to exceed 30 minutes per cycle.

Council Member Salver recommended that the following language be added to Section 5-19, "until the sound attenuating method is in place, there shall be no generator testing".

Council Member Bruder expressed concern to complaints of ongoing noise and questioned why Code Compliance has not enforced the ordinance against the Bijoux. She suggested allowing the Bijoux to test once a week if they follow the code; but allowing them to continue would be a nuisance.

Town Manager Lasday explained that the decibel level is allowed to be exceeded in a construction zone. The Temporary Certificate of Occupancy for the Bijou was held up due to the noise issue. She stated that she would like to review the code and see if it can be amended at a future meeting, because there is an issue with the construction noise ordinance in general.

Council Member Leonard suggested that the Town Manager contact the Bijoux and ask them not to run the generator.

Town Attorney Geller asked for clarification on the amendment to the ordinance to ensure that it was properly advertised on second reading. Town Planner Miller stated that no changes are contemplated to Section 5-19.3 of the ordinance. He clarified the ordinance amendment is to allow people to put small generators in their homes. And the regulations addressed weekly testing with the decibel level changed from 65 to 75; and higher numbers would be required for bigger commercial installation. He stated that he had looked at the decibel readings regulations for other cities.

The Town Manager will contact the Bijou Project about running their generator.

ACTION: Council Member Bruder made a motion to approve the Ordinance. Council Member Yaffe seconded the motion, and it passed by a unanimous poll vote.

21. **Consideration** and **Approval** of an ordinance on **first** reading approving Budget Amendment No. 2 for the 2020/2021 Fiscal Year.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, APPROVING BUDGET AMENDMENT NO. 2 FOR THE FISCAL YEAR 2020/2021 BUDGET; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

PUBLIC COMMENT

Frances Neuht, 1060 Kane Concourse, spoke about the budget mentioning taxpayer dollars paying for stormwater expense; Church by the Sea (Brownfield site) dumping concrete and water into the storm drain; no testing being done to the water; and DERM coming out after the fact. She stated that she has a police report, and asked why Church by the Sea is not being fined.

PUBLIC COMMENT CLOSED

ACTION: Council Member Leonard made a motion to approve the Ordinance on first reading. Council Member Yaffe seconded the motion, and it passed by a unanimous poll vote.

22. **Consideration** and **possible action** of a request by N/R Wharton Kane Concourse Property Owner, LLC for an assignment of Development Agreement for the property located at 1177 Kane Concourse.

Council Member Salver stated that in his opinion this is another example of a developer making representations, appealing to the Council for certain gifts and exchanges, cutting deals with the town, and obtaining extra height, and then selling the package.

Council Member Yaffe stated that the issue is they are building what was approved, and not changing the project. He liked that the Council had the ability to approve the proposed assignment, and while representations were made to the Council by the Wharton Group of how great they are and what projects they built around the world, part of it is their sales pitch and it's a real estate transaction that the Council cannot prevent. There is another developer, and the Council has the opportunity to ask questions and make sure they feel the developer can do the project.

Council Member Bruder stated that people receive offers and sell their homes all the time; and stated it's a real estate transaction.

Vice Mayor Tricoche concurred with Council Member Salver and felt that it was disingenuous, but it was perfunctory item that the Council was compelled to approve, while annoying; because there is no scope of control to alter it.

Mayor Fuller stated that the Council knows the developer who is making the purchase; and it is not someone who has financial issues or the inability to build. And because it is the exact opposite, it provides some comfort.

Council Member Salver stated that the Council should consider changes to the policy or procedures regarding giving away TDR's or certain development rights, for negotiation to be with one party and be nontransferable.

PUBLIC COMMENT

Benjamin Yonker, Norwood Investors, on behalf of current owners, stated that they have been working on the project for many years, and their goal has always been to provide a project that will become a cherished community asset. And after collaborating with residents and local leaders on a wide variety of features and considerations, they arrived at a design that is capable of the challenge. He stated that the design cannot be changed; and the Development Agreement will be kept in intact; and the Town will get to keep the public benefits that have already been given. He further stated that the Development Agreement includes a variety of operational obligations that they believe are best handled by local operators and David Martin, Terra Group, was selected for the task.

Nicholas Brachel, Akerman LLP, 98 S.E. 7th Street, Suite 1100, Miami, FL 33131, counsel for property owner was present.

David Martin, 315 East San Marino Drive, Miami Beach, FL 33131, stated that they have been studying the town and its progress and was looking forward to working with the Council; to getting the project started; to building it quickly, and to become the community asset that the Council wants.

Frances Neuhut, 1060 Kane Concourse, spoke about a February 5, 2020 appeal; taxpayers being ripped off; no Unity of Title for the three separate buildings; concern there will be a parking garage; and they will separate residential or separate business district with office building.

PUBLIC COMMENT CLOSED

ACTION: Council Member Yaffe made a motion to approve the request. Council Member Bruder seconded the motion, and it passed by unanimously.

TOWN MANAGER ITEMS: *(Town business items requiring Council approval)*

- 23. Consideration and possible action** of a contract award for Tennis Professional services to Caniza Tennis Instructors, Inc. for a three (3) year term.

Christian Garcia, GM Sport, 8888 Collins Avenue, Surfside, Florida, addressed the Council and spoke of his priority to meet the needs of the residents of Bay Harbor Islands and of his experience in running a junior program at Surfside. He stated his willingness to work with the current operator of the tennis court to run a more organized program. He proposed Pickle Ball as a new activity.

Council Member Salver mentioned that he received complaints that the current tennis court operator favored people who take lessons over residents who do not take lessons but want to use the tennis courts; and he asked Mr. Garcia how he would handle the situation. Mr. Garcia responded that he would work his schedule around paid customers.

Vice Mayor Tricoche asked Mr. Garcia how he would manage two courts, when they are used exclusively for afterschool program, and no adults are allowed. Mr. Garcia responded that he would adjust to the rules.

Pedro Caniza, 151 N.E. 75th Street, Miami, Florida stated that he appreciated working with the town; and if he wins the bid, he will work hard to keep everybody happy. He spoke of his good relationship with the kids and part of his job to keep the residents happy, which he takes very strongly.

Council Member Salver asked Mr. Garcia how he would address residents who cannot get court time.

Mr. Garcia responded that one of the courts will be available to residents; and he would spread the time around, since he was aware what days people play and was familiar with the afterschool program.

Council Member Salver asked if the Town could block off time for new residents who wants to use the tennis courts. Following discussion, it was the consensus of the Council that staff would work with the vendor to create an online reservation system where people who want to play tennis can sign up on a first come first serve basis, so that the program can be equitable to all residents.

Director of Community Services Regine Choute recommended that a registration software be used; more programs be added; and that registration software be accessible from the Town website.

Mr. Garcia stated that he works with a software where residents of Surfside can log in and reserve the court on a first come first serve basis. Mr. Caniza stated that he does not utilize a software, but he would use it, if the town purchases it.

PUBLIC COMMENT

Patricia Gil, 10350 West Bay Harbor Drive, stated that the tennis programs do not meet the needs of the community. She stated that GMC addresses the needs of adult seniors with free adult tennis clinics, children tennis clinics, and an after-school reservation system. She stated that there is currently a program servicing afterschool care with kids running around and with private lessons. She expressed her support for GMC Sport, who also recommended Pickle Ball sport.

Council Member Diallo mentioned that she was contacted by residents, who were interested in Pickle Ball, which the tennis court cannot accommodate.

Council Member Leonard stated that staff had recommended Mr. Caniza. He stated that cost was a factor; no contract was provided from GM Sport; they did not answer all the questions; and they were deficient in their response.

It was noted that the Bid did not call for a contract.

Director of Community Services Regine Choute stated that Pedro Caniza met all requirements of the Bid.

Council Member Salver suggested a six-month trial period with the current operator, without a contract; and be revisited. He stated that the contract for the vendors should have a provision for a one-year termination.

Vice Mayor Tricoche stated that the Town needs to procure with vendors properly by providing them with what they need and supervising them to ensure they follow the guidelines of their contract.

Council Member Bruder requested a report from staff as to what is required of the vendors.

Town Attorney Geller pointed out that the Bid Documents gave the Town the discretion to waive any informalities in the Bid responses.

ACTION: Council Member Tricoche made a motion to award the contract to Caniza. Council Member Bruder seconded the motion, and it passed by a 6-1 poll vote with Council Member Salver opposed.

23. **Discussion** and **possible action** regarding the remodel of the interior of Town Hall. Enclosed are renderings, estimated costs, and some options for discussion.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, questioned the renovations to Town Hall with a building value of \$80,000. She suggested the building be brought up to code; that the Council resolve parking issues in Block 11 and for Town employees.

Linda Zilber, 1231 E. Bay Harbor Drive, offered assistance with designing the Council Chambers, if necessary.

PUBLIC COMMENT CLOSED

The Town Manager will reach out to the Council Members for direction on designing the Council Chambers.

DISCUSSION ITEMS:

25. **Discussion** and **Possible Action** requested by Mayor Fuller with regards to the Planning and Zoning Board's scope and review process.

Item #25 was deferred to the August Council Meeting by Mayor Fuller.

ADJOURNMENT:

There being no further business to discuss meeting was adjourned at 11:03 P.M.

MAYOR

ATTEST:

TOWN CLERK

**TOWN OF BAY HARBOR ISLANDS
MINUTES OF A SPECIAL COUNCIL MEETING**

A Special Meeting of the Town Council was held on Wednesday, June 23rd, 2021, at 7:05 p.m. in the Council Chambers. The meeting was opened with the Pledge of Allegiance. Upon roll call the following members responded:

Mayor Joshua Fuller	
Vice Mayor Elizabeth Tricoche	Council Member Stephanie Bruder
Council Member Diallo	Council Member Jordan Leonard
Council Member Yaffe	

Council Member Isaac Salver was absent.

1. **Consideration and Approval** of an ordinance on **second** reading requested by Council Member Bruder amending Chapter 12 of the Town Code to modify the decibel noise limits allowed in the Town. Enclosed is a copy of the proposed ordinance and staff report prepared by Town Planner Michael Miller.

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY
HARBOR ISLANDS, FLORIDA, AMENDING THE TOWN'S CODE
OF ORDINANCES AS RELATED TO NOISE AND MAXIMUM
DECIBEL ALLOWANCES; AMENDING ARTICLE II OF CHAPTER 12
OF THE CODE TO MODIFY THE DECIBEL NOISE LIMITS ALLOWED
IN THE TOWN; PROVIDING FOR SEVERABILITY; PROVIDING
FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.**

Mayor Fuller explained his suggested changes to the ordinance to define "installation".

Council Member Bruder asked if the ordinance addressed homeowners, or if it was across-the-board.

Mayor Fuller responded that the ordinance addressed issues across-the-board.

Mayor Fuller explained his suggested changes to include the following language in the ordinance: "which shall be defined and limited as five business days from the date the emergency power generator first generates any electrical power to the structure to which it is intended per the associated permit. "

The second amendment was regarding the frequency of the testing to be once per week.

Council Member Bruder asked the Town Manager about amendments to the Town Code pertaining to building and construction. Town Manager Lasday responded that the Town Code needs to be examined, regarding the noise level on the construction site, because currently there are no regulations on minimum or maximum decibel level for noise on construction sites. And it was at the discretion of the Town Council to address the matter. It was the consensus of the Town Council for the item to be brought forward at the August Council Meeting.

PUBLIC COMMENT

Kathleen Kennedy, 9180 West Bay Harbor Drive, came forward to address the Council. She expressed concern with noise next door to her residence and asked if the ordinance was related to noise in general.

It was explained that the item was related to noise from generators.

PUBLIC COMMENT CLOSED

ACTION: Council Member Yaffe made a motion to approve the Ordinance on first reading as amended. Council Member Leonard seconded the motion, and it passed by a unanimous poll vote.

2. **Consideration and Approval** of an ordinance on **second** reading approving Budget Amendment No. 2 for the 2020/2021 Fiscal Year.

**AN ORDINANCE OF THE TOWN COUNCIL OF THE
TOWN OF BAY HARBOR ISLANDS, FLORIDA,
APPROVING BUDGET AMENDMENT NO. 2 FOR THE
FISCAL YEAR 2020/2021 BUDGET; PROVIDING FOR
IMPLEMENTATION; AND PROVIDING FOR AN
EFFECTIVE DATE.**

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and asked why the Council was denying citizens and residents' right to public hearing; and she commented that the Council was approving the 2020-2021 Town budget for the third time and citizens were not benefiting from the Council's action.

Dominguez A. Lopez, 1120 – 102nd Street, Bay Harbor Islands, Florida, Executive Director, Young Tigers, came forward to address the Council. He stated that he had entered into a contract with the Town on December 21, 2020, for an afterschool program dealing with "At Risk Youth Prevention Program", through the Parks and Recreation Program.

Town Manager Lasday informed the Town Council that she did not sign a contract with Mr. Lopez. A presentation was made to residents to see if there was any interest; and she didn't think any was received.

It was the consensus of the Town Council for the Town Attorney to investigate the matter of the contract, to see if there was something the Council needed to address.

Mayor fuller recessed the meeting for 10 minutes due to technical difficulties.

The meeting reconvened.

ACTION: Council Member Bruder made a motion to approve the Ordinance on second reading. Council Member Tricoche seconded the motion, and it passed by a unanimous poll vote.

PUBLIC COMMENT CLOSED

3. **Consideration and Approval** of a Resolution requested by Council Member Leonard in support of the AFL-CIO's Federal Legislation – The Protecting the Right to Organize Act.

Curtis Herrero, CWA Union, 8290 Lakeview Drive, Doral, Florida, came forward to address the Town Council. He stated that he was representing members and retirees of the Town, CWA members in Miami-Dade County, flight attendants, and newspaper workers. He thanked the Council for considering the important Resolution.

PUBLIC COMMENT:

Debra Dion, South Florida AFL-CIO, 1660 135th Street, North Miami, FL 33181, came forward to address the Council. She explained that the PRO Act will restore the right of workers to freely organize and come together to improve their situation at work. She spoke about imposition of fines for violation of this labor law; allowing workers to obtain their first union contract in a month; and the law overriding right to work legislation.

Kathleen Kennedy, 9180 West Bay Harbor Drive, came forward to address the Council. She questioned the timing of the Resolution, stated that it was well needed in the Town, and should have been done a long time ago to address equality for all.

PUBLIC COMMENT CLOSED

Council Member Leonard responded that sponsorship of the Resolution was requested from all members of the Council. Mayor Fuller stated that the related Bill was before the Senate.

Mayor Fuller suggested replacing the word “providing” in the third “WHEREAS” clause with “promoting”.

ACTION: Council Member Leonard made a motion to approve the Resolution on first reading as amended. Council Member Tricoche seconded the motion, and it passed unanimously.

ADJOURNMENT

There being no further business to address the meeting was adjourned at 8:30 p.m.

MAYOR

ATTEST

TOWN CLERK

**TOWN OF BAY HARBOR ISLANDS
MINUTES OF A BUDGET WORKSHOP**

A Budget Workshop of the Town Council was held on Wednesday, June 23rd, 2021, at 8:02 p.m. in the Council Chambers. The meeting was opened with the Pledge of Allegiance. Upon roll call the following members responded:

Mayor Joshua Fuller	
Vice Mayor Elizabeth Tricoche	Council Member Bruder
Council Member Molly Diallo	Council Member Jordan Leonard
Council Member Robert Yaffe	

Council Members Isaac Salver was absent.

1. Discussion and review of the Town of Bay Harbor Islands Proposed Budget for Fiscal Year 2021 /2022. Brief overview will be presented by Town Manager Maria Lasday.

Town Manager Lasday stated that the 2021/2022 proposed budget was prepared in accordance with the Florida Government Finance Officers Association's (GFOA) standards, with the highest standards in transparency and letting the residents know what is in the budget. She stated that the budget includes performance matrixes of what was done this year; what will be done next year; and goals that staff will be working on that are consistent with the Town's Strategic Plan. She noted that more funds were appropriated for Parks & Recreation Programming and for charging stations, as a result of feedback from a Citizens Survey, that was conducted by the Town. She informed the Town Council of her intention to submit the Budget for the GFOA Award.

PUBLIC COMMENT:

Matthew Carley, 1145 -101st Street, #4, Bay Harbor Islands, FL, came forward to address the Town Council and presented an idea for a Marine Park in the Town/3D printing reef. He requested that an estimated amount of \$55,000 be appropriated in the FY 2021-2022 Budget to move the idea forward. Discussion ensued regarding possible locations on the causeway; creating a budget of \$125,000 from the Causeway Funds; exploring different locations; and obtaining more information from Mr. Carley to assist in addressing the matter.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward to address the Council and spoke about shortage of parking spaces in the business district; lack of outreach for the business district; and suggestion for the Town to build a garage for the business district.

PUBLIC COMMENT CLOSED

Kathleen Kennedy, 9180 West Bay Harbor Drive, came forward to address the Council. She thanked the Town Manager, the Finance Director, and the department heads for their work on the budget. She also commended Chief Diaz on preparing a good budget. She questioned the increase in the amount appropriated for supplies from \$19,000 to \$30,000; she asked about the amount in the Town's Reserve Fund, the TDR Fund, and about the amount of the Town's Annual Budget; she suggested that more TDR money be spent on the Town's infrastructure; that benches be added for seating on the Causeway Island; that a small boat be provided for use by Public Works to pick up garbage from the waterways; she questioned \$4 Million for parks; and requested that the Council Meeting from last month be re-instated where she discussed term limits.

Vice Mayor Tricoche referred to residents' desire to utilize the causeway island more. She stated that the Town has to be cautious with addressing the request due to concerns of safety with speeders on the causeway. She was not in favor of putting seats in that area but hoped that tangible use of the space could be accomplished in the future when the new bridge is built. She suggested that staff reach out to a nonprofit organization that removes garbage from the bay, and support and work with them.

Vice Mayor Tricoche further commended the Town Manager and staff for presenting a budget with zero percent increase. She expressed appreciation for the collaborative efforts by staff and for them listening to the Town Council in not continuing to assess cost to the residents.

The Vice Mayor continued to discuss some items in the budget presentation such as the 92nd Dog Park expansion; lights across the parks; events such as teen field trips, big truck event; group dog training; 96th Street Park; speed bumps and green striping around the parks; charging station in lots; and the Sun Pass Technology. She specifically thanked the Police Chief for addressing the Body Worn Cameras and for the GPS. She also referred to providing alternative energy source on the causeway with the possibly of adding wind turbines.

Vice Mayor Tricoche discussed the idea of having a larger dog park and expanding the 98th Street Park to have a large kids field and a little kids field, with some retractable netting between them and the possibility of acquiring a double lot. She asked about the Council's interest for the Town Manager and the Town Attorney to explore the feasibility of acquiring a double lot, to see if it would make sense for the Town. She spoke about the Town's responsibility to continue to expand green space in a way that makes sense.

Council Member Bruder stated that a double lot will not be available for less than \$4 Million. And since the monies for purchasing the land would come from the \$8 Million in reserves, she was not in favor of the taxpayers paying for the facility. She suggested expanding the parking lot on the other side of the 92nd Street Park for small and big dogs and revitalize the park. She did not think it was good government to utilize half of the Town's reserves or to use bond monies to purchase land. She spoke in favor of having a municipal parking garage behind Town Hall.

Council Member Diallo stated that she was not interested in having staff explore options to acquire a double lot.

Council Member Yaffe clarified that a specific amount was not being referred to, but he was in favor of staff exploring options without making any commitment. He suggested other park options be looked at; whether configuring the 91st or 98th Streets Parks.

Vice Mayor Tricoche clarified that the 92nd Street Park project was included in the budget.

Council Member Leonard stated that he was not in favor of exploring the possibility of purchasing property, especially with the height of the real estate season and the uncertainty with COVID. He expressed favor to enhancing available park space.

Mayor Fuller agreed with increasing park space inexpensively. He pointed out that in addition to the \$4 Million for purchasing a double lot, maintenance and building out the space would have to be considered; and he was hesitant to commit to spending money at this time.

Vice Mayor Tricoche clarified that she did not suggest taking \$4 Million from the reserves. She suggested converting underutilized parking lot for a Pickle Ball Court; working with local college in connecting with branding/identity for Bay Harbor Islands; and looking at options associated with getting a prep school.

Council Member Leonard spoke about liability with having benches on the causeway islands; and he suggested using the beach cleanup nonprofit group on Miami Beach for this purpose at no charge. He spoke about exploring the Town's rights under the FPL Franchise agreement; exploring the idea of sharing the cost for the budgeted IT employee with other municipalities to reduce cost as there is no demand for the Town to have a full time IT position; and adding funding to the budget for a motorcycle for traffic control detail.

Council Member Bruder remarked that FDOT is not in agreement to having benches on the causeway.

Council Member Diallo expressed concern with cost, but was in favor of looking at existing space. She liked the idea of monies budgeted for activities, such as “Night Out for Teens” and field trips for teenagers and felt that more should be done for this specific age group, because there are no structured activities for them.

Council Member Bruder thanked the Town Manager, staff, and department heads for a wonderful budget. She suggested that the Parks & Recreation Department facilitate with Barry University or FIU to enhance the afterschool tutoring service for kids; that money be budgeted for this purpose, and that the garage lights be fixed.

Town Manager Lasday informed the Town Council that the Purchase Orders were signed for street humps and for the garage lights repairs. She further stated that FIU had submitted quotes for two of the parks; and she was waiting for two more quotes.

Vice Mayor Tricoche liked the idea of enhancing the after-school tutoring. She noted that monies are budgeted, and the program has been ongoing for several years.

Council Member Leonard stated that there is a huge demand for one-on-one tutoring, and the Town needs to make sure that the service is being provided.

Council Member Yaffe expressed his appreciation to the Town Manager and staff for presenting a professional budget and for detailed information on TDR funds and park impact fees. He asked about the status of the School Resource Officer (SRO). Town Manager Lasday responded that the attorney for the School District said the Town can have the SRO at its own expense. Accordingly, she reached out to the Town of Surfside and the Village of Bal Harbour about sharing the cost.

Council Member Yaffe stated that he had received several complaints about speeding along Kane Concourse and along the causeway and wanted to ensure that there is focus on the issue of speeding, by ensuring appropriate resources are being utilized. He stated his dissatisfaction with Brightview Landscaping.

Town Manager Lasday stated that she had authorized the installation of signs regarding speeding.

Council Member Leonard suggested use of the electronic radar equipment, which was previously used to gage speed.

Mayor Fuller stated that he was impressed and proud of staff in putting the budget together, which was easy to read and follow. He advocated a \$100,000 housing allowance with \$20,000 forgiven each year, for a five-year period with zero percent interest, for the Town Manager to reside in Bay Harbor Islands; as well as an additional week of vacation time, as an incentive for her to remain with the Town.

Council Member Leonard preferred a salary increase and was more amenable to the Town Manager living in a radius, rather than being limited to Bay Harbor.

Vice Mayor Tricoche was in favor of a generous salary increase, which she felt was warranted for the Town Manager's level of work and commitment.

Council Member Bruder complimented Town Manager Lasday's diligence, hard work, and accessibility to the Council. She stated that the Manager had proven herself and had brought value to the community. As such, she proposed a \$50,000 salary increase for the manager, to be added to the budget, in addition to a housing allowance for residing within a 10-mile radius of Bay Harbor.

Council Member Diallo agreed with compensating the Town Manager with housing allowance and salary increase. She stated that the manager has been great, is always available, and has made her transition easier.

PUBLIC COMMENT

Linda Zilber, 1231 – 95th Street, suggested that the Town helps children with tutoring, rather than spending monies on dog parks.

PUBLIC COMMENT CLOSED

It was the consensus of the Town Council that a \$50,000 salary increase; a \$100,000 housing allowance for residence within 10 miles of Bay Harbor, \$20,000 forgiven per year; zero percent interest, while working for the Town, and one additional week of vacation be budgeted for Town Manager Lasday.

2. Discussion regarding the tentative millage to be advertised via the Notice of Proposed Taxes to be mailed by Miami-Dade County.

Council Member Bruder left the meeting because she was having difficulty participating, due to technical difficulties during the meeting.

Finance Director Peter Kajokas reported that the FY 2021/2022 millage rate will be the same as last year. He stated that estimates were received from Miami-Dade County Property Appraiser of One Billion Seven Hundred and Thirty Million (\$1,730,000,000), which represented half of a percent reduction in the property values.

Mayor Fuller announced that a 3.62450 millage rate will be advertised.

3. Discussion regarding additional workshops (if necessary) and the dates and times for the Budget Hearings to adopt the millage and budget. The first Budget Public Hearing will be scheduled on Monday, September 13, 2021 at 5:00 p.m.. The second Budget Public Hearing will be scheduled for Wednesday, September 29, 2021 at 5:00 p.m.

It was the consensus of the Town Council to hold the Budget Public Hearings on the referenced dates at 6:00 P.M; a Public Hearing on the Administrative Appeal of the Brownfield approval for July 21st; and for the Town Council to be polled for a meeting in September to address the Workshop on the Town's Comprehensive Plan.

ADJOURNMENT

There being no further business to address the meeting was adjourned at 9:30 p.m.

MAYOR

ATTEST

TOWN CLERK

**TOWN OF BAY HARBOR ISLANDS
SPECIAL COUNCIL MEETING**

A Special Council meeting was held on Wednesday, July 29th, 2021, at 6:03 p.m. in the Council Chambers. The meeting was opened with the Pledge of Allegiance. Upon roll call the following members responded:

Mayor Joshua Fuller	
Vice Mayor Elizabeth Tricoche	Council Member Diallo
Council Member Jordan Leonard	Council Member Yaffe

Council Members Isaac Salver and Stephanie Bruder were absent.

1. **Consideration and Approval** of a resolution approving the proposed millage rate as required by Section 200.065, Florida Statutes and setting the date, time, and place of Public Hearing to adopt tentative and final millage and budget for fiscal year 2021 /2022.

Assistant Town Manager Jenice Rosado announced the millage rate for FY 2021-2022 as 3.6245 mills; the rolled back rate of 3.5958, and the Budget Public Hearings for September 13, 2021, and September 29, 2021 at 6:00 P.M.

Town Attorney Geller announced that the proposed millage is 0.8% more than the rolled back rate.

ACTION: Council Member Leonard made a motion to approve the Resolution. Vice Mayor Tricoche seconded the motion, and it passed by a unanimous poll vote.

2. **Consideration and Approval** of an inland marine insurance policy for the Shepard Broad Causeway Bridge from AXIS Surplus Insurance Company and Starstone Specialty Insurance Company for a term beginning July 15, 2021, to September 30, 2022, with a total premium not to exceed \$275,000.00.

ACTION: Council Member Yaffe made a motion to approve the Resolution. Council Member Leonard seconded the motion, and it passed by a unanimous poll vote.

3. **Discussion** and presentation regarding the Block 11 parking leases for Hippo Land Inc. and Bay Harbor Executives Offices Inc. Enclosed are copies of the proposed leases.

Town Attorney Joseph Geller informed the Town Council that Skip Miller will attend the August 10th Council Meeting, as he and the Assistant Town Attorney, James Rauh, will not be available.

Town Attorney Geller presented two leases that he had, tentatively, reached agreements with two of the five property owners. He noted that the Town was one of the property owners. Bay Harbor Executives Office proposed lease had a price of \$13,000 per year with a provision for nonpayment of taxes, because the property is being used for municipal purposes. Dr. Wittels proposed lease was for \$19,000 a year with a 2% escalator. He stated that discussions are still ongoing with the Cohen Group, and he is in the process of scheduling a meeting.

Town Attorney Geller explained that he was attempting to avoid renegotiating leases every six (6) months. He discussed the leases that had five-year terms at the referenced rates, with the Town having a sixth-year option to renew, which he felt would provide some stability. There was agreement of a one-year cancellation, after each party provided notice.

Town Attorney Geller stated that there is an FPL vault in the alley, which could cost about \$50,000 to be removed, as well as curbing, landscaping, and a significant number of spaces would be lost if the area were converted into a real alley, including spaces along the southern edge of the hotel. He stated that it appears to be a benefit to the town to have more parking immediately available to Town Hall; to reach peace with long-time property owners; to avoid the expense of making an alley where the alley is platted; to avoid possible litigation expense; and to continue to allow access to everyone who needs it. He recommended that the two leases be approved, when the Council considers the matter at the August Council Meeting, as he believes will improve the bargaining position with the remaining property owners.

Mayor Fuller believed that the language of the leases, calls for a two-year commitment.

Town Attorney Geller explained that the language could be amended to provide for pro-ratio in the event of termination and clarification on the insurance provision is also needed.

PUBLIC COMMENT

Frances Neuhut, of 1060 Kane Concourse, came forward to address the Council and spoke about the lack of parking for the business district.

PUBLIC COMMENT CLOSED

Vice Mayor Tricoche stated that the Council was there to represent the best interest of the Town; and the new proposal does not match financially. The matter was being viewed as a private land issue.

Council Member Yaffe stated that the policy is whether to provide parking close to Town Hall for the residents. If the alley is closed and left for private property owners, without working out some type of solution, there will be no place to park close to Town Hall. He stated that the Council needs to either make a determination that the Town is losing money, so leases should not be entered into, but the question would still remain as to where parking would be found for people who want to come to Town Hall. He stated that a determination could be made to build a parking garage where the employees now park, but in the interim, but the Council needs to figure out where people who come to Town Hall will park.

Council Member Leonard asked if Miami-Dade County Property Appraiser had been contacted about eliminating the taxes on the Block 11 properties, since the Town is required to pay those taxes, which would change the economics of the cost.

Mayor Fuller stated that he did not have a with issue entering into the leases on a short-term basis, but not long term, a two-year lease at the most. He expressed concern that all the property owners were not in agreement, because his preference was to have them all in agreement, or to have none. He spoke about one of the properties being sold at some point, which would most likely result in development, making the matter moot, once that is done. He stated that he didn't have an issue starting with a one-year lease.

Council Member Yaffe asked if obtaining the three leases would get to the middle of the alley, so that people coming off Bay Terrace could exit onto 97th Street if the property owners further down didn't agree.

Town Attorney Geller responded that it would probably take a minor modification in the Town's property, if flow through from center bay through to 97th Street could be arranged. And if there was blockage at the other end, there could still be the availability for people to drive in, still have parking, and still have free flow of exit.

Mayor Fuller stated that under the current scenario, the Town does not have access, would have a problem, and would have to make alterations, which would include additional cost and design.

Town Attorney Geller stated his intentions to ensure that parking is available during budget hearings and during elections at Town Hall. He stated that the closest it came to benefiting private property is that the Town has some interest in seeing the hotel develop and do well. He stated that there was no intention on his part to benefit the people that are leasing the areas on Block 11. He advised the Council not to move forward if the matter is not viewed in the policy sense. He stated that as far as time is concerned, the Town would want to be able to get out of the lease when necessary; and the payment terms and some standard pro-rata language can address that. The

intent is to have flexibility for the Town to do what it needs to for the best interest of the citizens and not to have to be locked into something, but at the same time, not to have to constantly renegotiate the leases.

Vice Mayor Tricoche pointed out that one of the buildings has a contract for sale of one of the buildings, which would provide an added layer of individuals that the Town has to negotiate with if they are willing to do something. She stated that the property owners have diversion interest to profit off of the spaces. And the Council continues to talk about providing parking, is doing everything for parking; and there are property owners who are not providing parking to their customers that are getting ticketed, because the landlord wants additional income. She felt that there needs to be a coming together, as the Town can only do so much. She added that there was not an equal coming to the table by the landlords. She stated that if the Council is saying more parking spaces is needed and is increasing the business district, participation is required by the landlords.

Mayor Fuller clarified that none of the Council Members was referring to building a parking garage in the next year.

Council Member Leonard mentioned that free parking will be available to the residents on the Church by the Sea property.

Mayor Fuller stated that there is a general idea of consensus on what the Town Attorney is trying to do, but some things need to be addressed; and having one-year leases might be the approach until something is done. He agreed that entering into leases was not a long-term approach.

Council Member Yaffe stated that the inability of the prior administration to follow through on the Block 11 issue caused a lot of frustration on the part of the property owners, that were not capable of responding. He stated that looking at the short term, if the Town was not going to work something out with the owners in the alleyway, something has to be done where employees of Town Hall would have to park elsewhere, in order to provide parking for the residents, because the residents and people who come to the Town to do business should be able to use that parking lot, and not have to walk.

Vice Mayor Tricoche stated that there are options that are not being addressed. She stated that there is an underutilized parking lot in walking distance that Town Hall staff can easily use, so that the parking lot can be kept opened for handicapped parking and for visitors. Additionally, alternative parking situations could be found during events and during elections. She stated that the Town needs to find alternate solutions to ensure that parking is available, and she believed that signing leases with the property owners was not the solution for the Town, even in the short term.

Vice Mayor Fuller stated that conversations have to occur with the two parties that have not come to agreement yet, making it clear to them that the Council would like to see all the agreements on the table. As to making the one alteration, if the other leases were not received, the question would be whether to accept the two leases, say the properties are no longer needed; and completely terminate communication with them along those lines.

Vice Mayor Tricoche stated that she will not be available for the August 10th Council Meeting.

Mayor Fuller requested that staff provide a cost analysis of the initial design with and without parking leases and check with Miami-Dade Property Appraiser regarding tax exemption on the properties.

Town Attorney Geller advised the Council to send other changes, in addition to the few language adjustments, so that he can provide the lease agreements by August 10th. He thought that a one-year termination clause was the most workable for the Town, because they would want some stability.

Mayor Fuller asked Town Attorney Geller to inform the other parties in Block 11 that the Council was looking at redesigning the area without their properties; therefore, now is the time to put something in front of them if they were interested.

PUBLIC COMMENT

Anna Marie Kelly StOPPA, 9881 E. Bay Harbor Drive, urged the Council to resolve the parking issue. She suggested that both residential and commercial property owners meet in a workshop to come up with a plan to serve the entire community.

PUBLIC COMMENT CLOSED

Staff will provide the Council with cost analysis for the initial design, moving forward with the two leases and bypassing the others; and check with Miami-Dade County Property Appraiser on tax exemption on the Block 11 properties that have leases with the Town.

ADJOURNMENT

There being no further business to address the meeting was adjourned at 7:07 p.m.

MAYOR

ATTEST

TOWN CLERK

AGENDA ITEM REPORT

September 9, 2021

ITEM NUMBER: 2.

ITEM: Approval and Ratification of Memoranda of Understanding with the School Board of Miami-Dade County and with Surfside and Bal Harbor for funding of a Town of Bay Harbor Islands appointed School Based Law Enforcement Officer for Ruth K. Broad / Bay Harbor K-8 Center. Enclosed is a copy of the proposed Memorandums of Understanding.

DESCRIPTION:

Miami-Dade County Public School had proposed significant changes to the existing School Resource Officer (SRO) agreement that would have jeopardized the continued appointment of our existing SRO and provide for no cost recovery to the Town. After much discussion, the School Board has agreed to allow the Town to continue to appoint Officer Paul Brilliant as the SRO to be present daily at Ruth K. Broad Elementary. The School Board MOU with the Town for FY 20-21 provides cost reimbursement of \$30,000 annually to the Town to be applied toward Mr. Brilliant's salary of \$55,000. An MOU between Bal Harbor, Surfside and Bay Harbor provides for cost sharing for the \$25,000 salary difference needed to complete Mr. Brilliant's salary. The total annual cost for the Town to use Mr. Brilliant after cost sharing with the School Board and the two adjacent municipalities will be \$8,333.

The Town Manager seeks approval and ratification of both Memoranda of Understanding.

Enclosed is a copy of the proposed agreements.

RECOMMENDED ACTION:

Approval and Ratification

FINANCIAL ANALYSIS:

Annual Town budgeted amount for Ruth K. Broad Town appointed SRO: \$55,000

Town's annual cost recovery from School Board for the SRO: \$30,000

Town's annual cost recovered through cost share MOU with Bal Harbour and Surfside: \$16,000

Actual Town's annual expense for Town appointed SRO (after cost recovery): \$8,333

BUDGET IMPACT:

Submitted By: Jenice Rosado, Assistant Town Manager
Maria Lasday, Town Manager

ATTACHMENTS

1. 2021 School Resource Officer SRO MOU Bay Harbor Bal Harbour Surfside - further

revised

2. 2021-2022 SBLEO MOU - Bay Harbor Islands Revised August 2021 (002)

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE TOWN OF SURFSIDE, THE
VILLAGE OF BAL HARBOUR, AND THE TOWN
OF BAY HARBOR ISLANDS**

This Memorandum of Understanding ("MOU") is entered into this _____ day of _____, 2021 by and between The Town of Surfside ("Surfside"), The Village of Bal Harbour ("Bal Harbour") and the Town of Bay Harbor Islands ("Bay Harbor Islands"). Surfside, Bal Harbour, and Bay Harbor Islands are collectively referred to as the "Parties" and individually as a "Party."

WHEREAS, Surfside, Bal Harbour, and Bay Harbor Islands are municipalities located within Miami-Dade County that border each other; and

WHEREAS, children who are residents of Surfside, Bal Harbour, and Bay Harbor Islands attend Ruth K. Broad K-8 Center School ("School") which is located in Bay Harbor Islands; and

WHEREAS, Bay Harbor Islands intends to execute a Memorandum of Understanding with the Miami-Dade County School Board ("School Board") in which, Bay Harbor Islands will provide a police officer ("Resource Officer") at the School during School hours and the School Board will pay Bay Harbor Islands \$30,000 towards the cost of the Resource Officer ("School Board's Contribution"); and

WHEREAS, the Parties understand and agree that the cost of the Resource Officer will be approximately \$55,000, per year, which cost shall exceed the amount of the School Board's Contribution in the approximate amount of \$25,000; and

WHEREAS, the Parties wish to equally share the cost of the Resource Officer that is in excess of the School Board's Contribution ("Excess Cost") as the Resource Officer will serve to protect the safety of the children who reside within Surfside, Bal Harbour, and Bay Harbor Islands; and

WHEREAS, the Parties find that the adoption of this Memorandum of Understanding is in the best interest of the residents of Surfside, Bal Harbour, and Bay Harbor Islands.

NOW, THEREFORE, the Parties agree as follows:

1. The above recitals are true and correct and are incorporated herein by reference.
2. The Parties agree to equally share the Excess Cost of the Resource Officer.
3. Based upon the information known to Bay Harbor Islands as of the Effective Date (defined below) of this MOU, the Excess Cost applicable for the School Resource Officer is anticipated to be approximately \$25,000.¹
4. Within thirty (30) days after the end of the school year, Bay Harbor Islands shall prepare and

¹ The anticipated Excess Cost of \$25,000 divided by 3 (Bay Harbor / Bal Harbour / Surfside) equals \$8,333 each.

send Surfside and Bal Harbour an invoice identifying the hours worked by the Resource Officer(s), the total cost of the Resource Officer(s), the School Board's Contribution, the actual Excess Cost, and each Party's equal share of the actual Excess Cost ("Invoice"). Surfside and Bal Harbour shall pay their equal share of the actual Excess Cost within thirty (30) days of their receipt of the Invoice.

5. Bal Harbour and Surfside's obligations under this MOU are solely limited to their financial contribution of approximately \$8,333 each. Nothing in this agreement permits, and Bal Harbour and Surfside do not have the ability to exercise, any control over any aspect of the employment, duties, tasks, responsibilities, operations, actions or inactions of any Resource Officer(s) employed by Bay Harbor Islands. Under no circumstance shall this MOU provide the basis for any claim that: a) the Resource Officer is an employee or agent of Bal Harbour or Surfside; or b) Bal Harbour or Surfside are a "joint employer" of the Resource Officer or are in any way responsible for the actions or inactions of the Resource Officer. Bay Harbor Islands shall be solely responsible for the employment of the Resource Officer and payment of salary, wages, and fringe benefits, if any, to the Resource Officer. Bay Harbor Islands shall be solely responsible for any employment based claims made by the Resource Officer, including claims for the payment of salary, wages, fringe benefits, and for unlawful termination, and for any claims based on the employee's actions or inactions. Under no circumstance shall this MOU provide the basis for any Party to make a claim against any other Party for indemnification.
6. The Parties agree that this MOU represents the Parties' entire agreement and it cannot be amended or modified without the express consent of the Parties.
7. The Parties have had the opportunity to consult with legal counsel of their choosing.
8. The Parties signify their agreement with this MOU by affixing their signatures below.
9. This MOU shall become effective the date on which it is fully ratified by the Parties ("Effective Date"). The term of this MOU shall run concurrently with the term of Bay Harbor Island's Memorandum of Understanding with the School Board, a copy of which is attached hereto as Exhibit "A."

Town of Bay Harbor Islands, Florida

By: _____
Maria Lasday, Town Manager

Date: _____

Town of Surfside, Florida

By: _____

Date: _____

Village of Bal Harbour, Florida

By: _____

Date:_____

Memorandum of Understanding

School Based Law Enforcement Officers

THIS AGREEMENT, made and entered into this ____ day of _____, 2021, is between The School Board of Miami-Dade County, Florida, a political subdivision of the State of Florida ("the School Board"), through The Miami-Dade Schools Police Department ("MDSPD") and the Town of Bay Harbor Islands ("BHIPD"), through the Bay Harbor Islands Police Department (also referred to as "Law Enforcement Agency"), together referred to as "the Parties."

Intent

It is the intent of both parties to enter in to this this Memorandum of Understanding ("MOU") to provide guidelines as to the roles and responsibilities of the Law Enforcement Agency and the MDSPD regarding the placement of school-based law enforcement officers (SBLEOs) at Miami-Dade County Public Schools ("MDCPS") as listed in item 9 below and in accordance with the terms set out below.

SBLEO Orientation

The MDSPD is responsible for providing an orientation for SBLEOs that will include information pertaining, but not limited to, MDCPS policies and procedures, lockdown and evacuation procedures, and confidentiality expectations as they relate to state and federal law. Every SBLEO is required to attend the orientation class prior to being assigned to a school site.

Roles and Responsibilities of SBLEOs

1. The primary mission of the SBLEOs is to support the MDSPD by providing a visible deterrent to crime and a safe learning environment for all students and staff.
2. Non-criminal violations of student conduct are the responsibility of school administrators.
3. The Law Enforcement Agency and the assigned SBLEO shall abide by state and federal law and School Board Policies, including The Family Education Rights and Privacy Act (20 U.S.C. §1232g; 34 CFR Part 99) (otherwise known as "FERPA"), which requires all student information be kept confidential and not disclosed to any third party. Also, The Law Enforcement Agency understands the broad nature of Florida's Public Records Laws and agrees to act in compliance with Chapter 119 of Florida Statutes. With regard to juvenile information obtained by the Law Enforcement Agency, the Law Enforcement Agency agrees to abide by Florida Statute Section 985.04 and any other applicable state and federal laws.

4. SBLEOs shall adhere to their respective Law Enforcement Agency's Standard Operating Procedures/General Orders (written policies).
5. The Law Enforcement Agency is responsible for conducting use of force investigations involving their SBLEO.
6. SBLEOs are required to complete School Resource Officer (SRO) training, to be provided by MDSPD prior to the start of each school year, and mental health crisis intervention training (CIT), as specified in Florida Statute Section 1006.12. Each SBLEO participating in covering schools must, prior to the start of each school year, provide a copy of his/her CIT certificate as proof of completion of CIT to Ms. Corina Putt via email to cputt@dadeschools.net.
7. School site administrators are responsible for all personnel at MDCPS school sites. As such, SBLEOs must work cooperatively with school administration. SBLEOs must remain responsive to the chain of command within their respective Law Enforcement Agency and his/her primary supervisor shall be designated by the Law Enforcement Agency.
8. At the conclusion of the School Board's Fiscal Year 2021-2022, the School Board shall provide BHIPD reimbursement of funds in the amount of Thirty Thousand Dollars (\$30,000.00) per school for which an SBLEO provides coverage as indicated in the chart in Paragraph 9. BHIPD will provide MDSPD no less than 24 hours advance notice, when feasible, in writing via email to Ms. Corina Putt at cputt@dadeschools.net, in the event the Law Enforcement Agency cannot provide coverage services as agreed upon in this MOU. BHIPD shall provide The School Board invoices for services completed. The School Board will only pay BHIPD's invoices for services completed and for days where coverage was provided by the Law Enforcement Agency. The School Board will not pay invoices for future and/or uncompleted services, regardless of the circumstances for non-completion.
9. BHIPD agrees that, during the term of the MOU, at least one (1) BHIPD shall be present at each of the schools indicated in the chart below, when requested by MDSPD, during the entirety of the school day. For the purposes of this MOU, a "school day" is defined as a weekday in which school is in regular session, from the hours of 7:00am to 3:00pm or 8:00am to 4:00pm, and shall not include recess days, legal holidays, teacher planning days, summer days or days in which no students are present at the school, as a result of distance learning, or otherwise.

LOC #	SCHOOL/ FACILITY NAME	ADDRESS
0241	Ruth K Broad/Bay Harbor K-8 Center	1155 93 Street Bay Harbor Islands, FL 33154

10. BHIPD hereby agrees and provides assurances that BHIPD will use the funding provided by the School Board exclusively toward its fulfillment of assigning SBLEOs to the Schools indicated and otherwise completing its performance under the MOU during the School Board's Fiscal Year 2021-2022.

Force Majeure and Warranties

The Parties shall not be responsible for interruptions of service due to forces of nature, war, manmade disasters or other such acts beyond the control of any the Parties.

Indemnification and Duty to Defend

Each party to this Agreement agrees to assume responsibility for the acts, omissions, or conduct of such party's own employees while participating herein and pursuant to this Agreement, subject to the provisions of Section 768.28, Florida Statutes, where applicable. "Assume Responsibility" shall mean incurring any and all costs associated with any suit, action, or claim for damages arising from the performance of this Agreement. Furthermore, each party agrees to indemnify the other party as set forth below.

Subject to the limitations of Florida Statutes Section 768.28, BHIPD agrees to indemnify, hold harmless and defend the School Board from and against any and all claims, suits, actions, damages, or causes of action arising out of the intentional wrongdoings or willful negligent acts of BHIPD, the Law Enforcement Agency and/or its SBLEOs arising out of or in connection with the provisions of this MOU.

Subject to the limitations of Florida Statutes Section 768.28, the School Board agrees to indemnify, hold harmless and defend BHIPD from and against any and all claims, suits, actions, damages, or causes of action arising out of the intentional wrongdoings or willful negligent acts of the School Board's employees arising out of or in connection with the provisions of this agreement.

Public Records

Both parties understand the broad nature of Florida's public records laws and agree to comply with the laws related to record retention and disclosure, in accordance with Chapter 119, Florida Statutes.

Notifications

When the SBLEO learns of an incident which requires him/her to take lawful action, the SBLEO must call 305-995-2677 (COPS) and report all such incidents. These incidents may garner significant media attention; therefore, it is imperative MDSPD learn about such incidents from the SBLEO in an expedited manner so MDSPD can make the appropriate notifications within the District. A MDSPD supervisor will advise the SBLEO if a MDSPD unit will respond to handle the call for service, or if the SBLEO is to proceed with the investigation. This will not preclude the SBLEO from taking immediate and necessary action during exigent circumstances. The SBLEO must also inform the school principal and/or designee of said action. Any other incident which may result in substantial media attention shall be reported by the SBLEO to MDSPD and school site administration. All reports generated in conjuncture with this term must be categorized as "Assist other Agency."

Term of the MOU

Such activities are fully described herein below for a term concurrent with the School Board's Fiscal Year 2021-2022, which commences on July 1, 2021, and shall continue in full force and effect until June 30, 2022, unless terminated prior thereto by any or all of the parties herein. Under no circumstances may this Agreement be renewed, amended, or extended except in writing and executed by both parties.

Each party reserves the right to terminate this MOU without cause by giving thirty (30) days written notice to the other party.

The addresses for The School Board for all purposes under this agreement and for all noticed hereunder shall be:

The School Board: The School Board of Miami-Dade County, Florida
Attn: Alberto M. Carvalho, Superintendent
1450 NE 2nd Avenue, Suite 912
Miami, Florida 33132

With a copy to: The Miami-Dade Schools Police Department
Attn: Interim Chief Edwin Lopez
3300 NW 27th Avenue
Miami, FL 33142

With a copy to: The School Board of Miami-Dade County, Florida
The School Board Attorney's Office
Attn: Walter J. Harvey, School Board Attorney
1450 NE 2nd Avenue, Suite 430
Miami, FL 33132

The addresses for BHIPD for all purposes under this agreement and for all noticed hereunder shall be:

Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154
ATTN: Maria Lasday, Town Manager

With a copy to:

JOSEPH S. GELLER
Greenspoon Marder
200 East Broward Blvd., Suite 1800
Fort Lauderdale, FL 33301

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA BY: _____ Alberto M. Carvalho <i>Date</i> Superintendent of Schools or Designee	TOWN OF BAY HARBOR ISLAND BY: _____ Joshua D. Fuller <i>Date</i> Mayor
SUBMITTED BY: _____ Edwin Lopez <i>Date</i> Chief of Police APPROVED AS TO FORM AND LEGAL SUFFICIENCY AS TO THE SCHOOL BOARD CONTINGENT UPON EXECUTION OF A WAIVER _____ Assistant School Board Attorney <i>Date</i>	APPROVED AS TO FORM AND LEGAL SUFFICIENCY AS TO LAW ENFORCEMENT AGENCY _____ Joseph S. Geller, Esq. <i>Date</i> Town Attorney
OFFICE OF RISK AND BENEFITS MANAGEMENT _____ Michael G. Fox <i>Date</i> Risk and Benefits Officer	BAY HARBOR ISLANDS POLICE DEPARTMENT _____ Raul Diaz <i>Date</i> Chief of Police

AGENDA ITEM REPORT

September 9, 2021

ITEM NUMBER: 3.

ITEM: Consideration and Approval of the annual contract with the health, life, disability, and dental, vision insurance providers for the 2021 / 2022 fiscal year. Enclosed is a Memorandum with detailed information from Human Resources Manager, Shaun Gelvez.

DESCRIPTION:

At the August 10th, Regular Town Council Meeting, the Town selected Brown & Brown Insurance as its Agent or Broker of Record to solicit quotes for the Town's group health, life, dental, vision and short/long-term disability insurance plans. Due to the approaching open enrollment, upcoming fiscal year-end closing, and timing of the next Council meeting, the Town would like to continue with the same insurance providers for FY 21-22.

To ensure continuity of service without any disruption and because plan participants are satisfied with the plans, it is staff's recommendation that the Town proceed with a renewal of its existing plans: Neighborhood (NHP) / United Health (UHC) for health; Solstice for dental and vision; and The Standard for AD&D, life, and short/long-term disability benefits.

Health:

For FY 21-22, Neighborhood (NHP) / United Health (UHC) has offered the Town a renewal of the existing plan(s) with the same benefit structure(s) at a 12% increase from last year's premiums. Brown & Brown is in ongoing negotiations to obtain, before our effective date of 10/1/2021, a greater discount than the 12% initially offered. They are confident that they can achieve a better deal.

Additionally, a wellness fund is being negotiated from Neighborhood (NHP) / United Health (UHC). If granted, Neighborhood (NHP) / United Health (UHC) will provide the Town with a wellness fund in an amount between \$5,000 to \$10,000 to be used for wellness initiatives for Town employees.

Dental / Vision:

Solstice insurance has offered the Town the same plan structure for dental & vision with no rate increases.

Accidental Death & Dismemberment (AD&D) / Life Insurance / Short & Long-term Disability:

The Standard insurance has also offered the Town a renewal with no rate increases for AD&D, life insurance, short/long-term disability coverage.

Additional Information:

Pursuant to the Town's policy, the Town provides group insurance coverage for all full-time employees and their dependents. The group insurance plan consists of group health coverage, dental, vision, short-term and long-term disability, life and accidental death and dismemberment insurance coverage.

Coverage amounts for full-time, active employees are as follows:

- The Town pays 100% of Employee only monthly premium for health HMO and dental HMO coverage. The Town, if providing another PPO option for health & dental, requires the employee to pay the additional amount of the difference between the HMO monthly premium coverage and the PPO coverage (an additional cost to the employee).
- The Town pays 65% of dependent monthly premium coverage for health and dental HMO or PPO.
- The Town pays the full cost of employee only short term, long term, life and accidental death and dismemberment.
- The Town pays life insurance in the amount that equals the employee's base annual salary.

Employees who are retiring from the Town service are also eligible to continue their health, dental and vision insurance coverage for an indefinite period of time at the full monthly premium cost to the retiring employee. The retiree must renew their elections during open enrollment each year.

Conclusion:

The Town's insurance coverage elections provide employees with a comprehensive yet competitive benefits package that does not compromise quality, but proves to be cost effective in the current insurance market. Funding for these expenses have already been included in the proposed FY2022 budget and fall way below the budgeted amount(s) as a 20% increase from last year's rates had been anticipated.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

Funding for these expenses are included in the proposed FY2022 budget.

Fiscal year cost beginning Oct 2021 (12% increase)

Insurance	Town Annual Cost	Employees & Retirees Annual Cost	TOTAL ANNUAL COSTS
Health Insurance	\$824,697.60	\$ 127,169.40	\$ 951,867.00
Dental Insurance	\$11,399.52	\$24,832.32	\$ 36,231.84
Vision Insurance	-	\$1,774.32	\$1,774.32
AD&D, Life, LTD / STD	\$49,896.96	-	\$49,896.96
TOTAL ANNUAL EXPENSE FOR TOWN			
\$885,994.08			

-

BUDGET IMPACT:

Submitted By: Alba L. Chang, Town Clerk
 Shaun Gelvez, Human Resources Manager

ATTACHMENTS

1. Memo - FY22 Insurance Plan Renewals
2. Payroll Deductions Worksheet FY 21-22
3. Comparison Medical 2021-2022
4. Comparison STD 2021-2022
5. Comparison Vision 2021-2022
6. Comparison Dental 2021-2022
7. Comparison Life 2021-2022
8. Comparison LTD 2021-2022



MEMORANDUM

TO: Maria Lasday, Town Manager

THROUGH: Jenice Rosado, Assistant Town Manager

FROM: Shaun Sharon Gelvez, Human Resources Manager

SUBJECT: FY22 Insurance Plan Renewals

DATE: August 27, 2021

At the 08/10/21 Town Council meeting, the Town selected **Brown & Brown Insurance** as its Agent or Broker of Record to solicit quotes for the Town's group health, life, dental, vision and short/long-term disability insurance plans. Due to the approaching open enrollment, upcoming fiscal year-end closing, and timing of the next Council meeting, the Town would like to continue with the same insurance providers for FY 21-22.

To ensure continuity of service without any disruption and because plan participants are satisfied with the plans, it is staff's recommendation that the Town proceed with a renewal of its existing plans: **Neighborhood (NHP) / United Health (UHC)** for health; **Solstice** for dental and vision; and **The Standard** for AD&D, life, and short/long-term disability benefits.

Health:

For FY 21-22, **Neighborhood (NHP) / United Health (UHC)** has offered the Town a renewal of the existing plan(s) with the same benefit structure(s) at a 12% increase from last year's premiums. Brown & Brown is in ongoing negotiations to obtain, before our effective date of 10/1/2021, a greater discount than the 12% initially offered. They are confident that they can achieve a better deal.

Additionally in negotiations is a wellness fund from **Neighborhood (NHP) / United Health (UHC)**. If granted, **Neighborhood (NHP) / United Health (UHC)** will provide the Town with a wellness fund in an amount between \$5,000 to \$10,000 to be used for wellness initiatives for Town employees.

Dental / Vision:

Solstice insurance has offered the Town the same plan structure for dental & vision with no rate increases.

Accidental Death & Dismemberment (AD&D) / Life Insurance / Short & Long-term Disability:

The Standard insurance has also offered the Town a renewal with no rate increases for AD&D, life insurance, short/long-term disability coverage.

Additional Information:

Pursuant to Town policy, the Town provides group insurance coverage for all full-time employees and their dependents. The group insurance plan consists of group health coverage, dental, vision, short-term and long-term disability, life and accidental death and dismemberment insurance coverage.

Coverage amounts for full-time, active employees are as follows:

- The Town pays 100% of Employee only monthly premium for health HMO and dental HMO coverage. The Town, if providing another PPO option for health & dental, requires the employee to pay the additional amount of the difference between the HMO monthly premium coverage and the PPO coverage (an additional cost to the employee).
- The Town pays 65% of dependent monthly premium coverage for health and dental HMO or PPO.
- The Town pays the full cost of employee only short term, long term, life and accidental death and dismemberment.
- The Town pays life insurance in the amount that equals the employee's base annual salary.

Employees who are retiring from the Town service are also eligible to continue their health, dental and vision insurance coverage for an indefinite period of time at the full monthly premium cost to the retiring employee. The retiree must renew their elections during open enrollment each year.

Conclusion:

The Town's insurance coverage elections provide employees with a comprehensive yet competitive benefits package that does not compromise quality but proves to be cost effective in the current insurance market. Funding for these expenses have already been included in the proposed FY2022 budget and fall way below the budgeted amount(s) as staff had anticipated a 20% increase from last year's rates.

Fiscal year cost beginning Oct 2021 (12% increase)

Insurance	Town Annual Cost	Employees & Retirees Annual Cost	TOTAL ANNUAL COSTS
Health Insurance	\$824,697.60	\$ 127,169.40	\$ 951,867.00
Dental Insurance	\$11,399.52	\$24,832.32	\$ 36,231.84
Vision Insurance	-	\$1,774.32	\$1,774.32
AD&D, Life, LTD / STD	\$49,896.96	-	\$49,896.96
TOTAL ANNUAL BENEFIT EXPENSE FOR TOWN			
\$885,994.08			

Health Insurance Payroll Deductions Worksheet 2021/2022

NHP BXJK			UHC BWMG		
	Monthly			Monthly	
Employee	\$ 678.78	12.0%	\$ 741.10	12.0%	
Employee +Spouse	\$ 1,642.64	12.0%	\$ 1,793.46	12.0%	
Employee+Child(ren)	\$ 1,225.88	12.0%	\$ 1,338.44	12.0%	
Employee +Family	\$ 2,261.36	12.0%	\$ 2,469.01	12.0%	
Town Pays Monthly:					
Employee	\$ 678.78	12.0%	\$ 678.78	12.0%	
Employee +Spouse	\$ 1,305.29	12.0%	\$ 1,305.29	12.0%	
Employee+Child(ren)	\$ 1,034.40	12.0%	\$ 1,034.40	12.0%	
Employee +Family**	\$ 1,707.46	12.0%	\$ 1,707.46	12.0%	
	Biweekly Deductions		Biweekly Deductions		
Employee	\$ -	0.0%	\$ 31.16	0.0%	
Employee +Spouse	\$ 168.68	12.0%	\$ 244.09	12.0%	
Employee+Child(ren)	\$ 95.74	12.0%	\$ 152.02	12.0%	
Employee +Family	\$ 276.95	12.0%	\$ 380.78	12.0%	

*Based on 24 deductions yearly

**For the NHP plan, the Town pays the full cost of employee coverage, and 65% of the dependent

***The employee pays full cost of the buy-up for the UHC plan

October 2021 Medical Plan Comparison for Town of Bay Harbor Islands



Carrier Name					
Plan Type		UHC-NHP	United Health Care	UHC-NHP	United Health Care
Product name		POS 2021	Choice Plus 2021	POS 2021	POS 2021
		BXJK / Rx NH47	BWMG / Rx A16	BXJK-NHLY	BWMG-H54Y
IN-NETWORK		Current	Current	Initial Renewal	Initial Renewal
Calendar Year Deductible (CYD)					
Individual / Family		None	\$500/\$1,000	None	\$500/\$1,000
Coinsurance		100%	80% / 20%	100%	80% / 20%
Provider Services			Open Access	Open Access	Open Access
Primary Care Office Visit			\$15	\$15	\$15
Specialist Office Visit			\$25	\$35	\$35
Virtual Visit			\$0	\$0	\$0
Preventative Care			\$0	\$0	\$0
Hospital Services					
Inpatient Hospital Facility		\$500 / Adm	\$1,000 / Adm	\$500 / Adm	\$1,000 / Adm
Hospital Physician Services		\$0	\$0	\$0	\$0
Outpatient Hospital Facility		\$0	\$350	\$0	\$350
Emergency Room Facility		\$350	\$350	\$350	\$350
Outpatient Facility/Diagnostic					
Ambulatory Surgery Center		\$0	\$350	\$0	\$350
ASC Physician Services		\$0	\$0	\$0	\$0
Lab / X-Ray		\$0	\$0	\$0	\$0
Major Diagnostic (MRI,CAT,NM,PET)		\$0	\$150	\$0	\$150
Urgent Care		\$50	\$40	\$50	\$40
Annual Out-of-Pocket Maximum					
Includes Deductible (Yes / No)		Yes	Yes	Yes	Yes
Individual / Family		\$2,500 / \$5,000	\$2,500 / \$5,000	\$2,500 / \$5,000	\$2,500 / \$5,000
Lifetime Maximum		Unlimited	Unlimited	Unlimited	Unlimited
Prescription Drugs					
Tier 1/Tier 2/Tier 3		\$10/\$45/\$85	\$10/\$50/\$85	\$10/\$45/\$85	\$10/\$50/\$85
Preferred Specialty		\$10/\$150/\$500	\$10/\$150/\$500	\$10/\$150/\$500	\$10/\$150/\$500
Mail Order (90 Day Supply)		\$25/\$125/\$212.50	\$25/\$125/\$212.50	\$25/\$125/\$212.50	\$25/\$125/\$212.50
Out-Of-Network Benefits					
Coinsurance		60% / 40%	50% / 50%	60% / 40%	50% / 50%
Emergency Room Facility		\$350	\$350	\$350	\$350
All Other Services		40% Aft Ded	50% Aft Ded	40% Aft Ded	50% Aft Ded
Deductible - Individual/Family		\$500 / \$1,000	\$1,000 / \$3,000	\$500 / \$1,000	\$1,000 / \$3,000
Annual Out-of-Pocket - Indiv/Family		\$5,750 / \$11,500	\$5,000 / \$10,000	\$5,750 / \$11,500	\$5,000 / \$10,000
Lifetime Maximum		Unlimited	Unlimited	Unlimited	Unlimited
Rates					
Employee	29	\$606.05	7 \$679.60	29 \$661.70	7 \$741.78
Employee & Spouse	6	\$1,466.64	0 \$1,644.63	6 \$1,601.31	0 \$1,795.10
Employee & Child(ren)	12	\$1,094.54	3 \$1,227.37	12 \$1,195.04	3 \$1,339.67
Family	13	\$2,019.07	0 \$2,264.10	13 \$2,204.47	0 \$2,471.26
Monthly Total by Product		\$65,757.68	\$8,439.31	\$71,795.75	\$9,211.47
Monthly Total		\$74,196.99		\$81,007.22	
Annual Total		\$890,363.88		\$972,086.64	

SHORT TERM DISABILITY	
Carrier	Standard
Eligibility	All Eligible Active Employees
Plan Benefits	
STD Benefit	60%
Maximum Weekly Benefit	\$1,250
Benefit Duration	90 Days
Pre-existing Condition Limitation	
Elimination Period (days)	
Accident	14 Days
Illness	14 Days
Contribution Type	Non-Contributory
Participation Requirement	
Rate Guarantee (months)	Until 10/01/2022
Rates	
Covered Volume	\$54,008
STD Rate per \$10 Weekly Benefit	\$0.246
Monthly Premium	
Total Annual STD Premium	

October 2021 Vision Comparison for Town of Bay Harbor Islands

Carrier
Network Provider
Network Status
Eye Care Wellness
Eye Exam
Frequency
Lenses
Single Vision
Bifocals
Trifocal
Frequency
Frames
Selected Frames
Frequency
Contacts
Medically Necessary
Elective Contacts
Contribution Type
Participation Requirements
Rate Guarantee
Rates
Employee
Employee + Spouse
Employee + Child
Family

Solstice	
In-Network	OON
\$10 Copay	up to \$30
Every 12 Months	
\$25 Copay	Reimbursement up to \$25
\$25 Copay	up to \$35
\$25 Copay	up to \$45
Every 12 Months	
\$120 allowance	Reimbursement up to \$30
Every 12 Months	
100%	Reimbursement up to \$150
\$110 allowance	up to \$85
Expires 9/30/2021	
Current	
\$4.97	
\$9.93	
\$10.23	
\$15.89	

Solstice	
In-Network	OON
\$10 Copay	up to \$30
Every 12 Months	
\$25 Copay	Reimbursement up to \$25
\$25 Copay	up to \$35
\$25 Copay	up to \$45
Every 12 Months	
\$120 allowance	Reimbursement up to \$30
Every 12 Months	
100%	Reimbursement up to \$150
\$110 allowance	up to \$85
12 Months	
Renewal	
\$4.97	
\$9.93	
\$10.23	
\$15.89	



Rates shown are based on census data provided. Final rates are subject to underwriting and actual enrollment. This comparison is for illustrative purposes only. The full policy and certificate of coverage will supersede any and all materials provided herein.

October 2021 Dental Comparison for Town of Bay Harbor Islands



Carrier	
Plan Name	
Provider Access	
Benefit Description	
Preventive (Class I)	
Basic (Class II)	
Major (Class III)	
Maximum Annual Benefit	
Deductible (Individual/Family)	
Deductible Waived - Class I	
Orthodontia (coverage/lifetime max)	
Reimbursement Schedule	
Benefits	
Routine Exams - 9430	
Teeth Cleaning - 1110	
Full Mouth/Panoramic X-rays - 0330	
Simple Extractions - 7111	
Root Canal (Endodontics) - 3330	
Perio. Scaling/Root Planning - 4341	
Full or Partial Dentures - 5110	
Crowns - 6752	
Employer Contribution	
Minimum Participation Requirement	
Waiting Period Major Services	
Rate Guarantee	
Rates	
Employee	27
Employee + Spouse	4
Employee + Child(ren)	5
Family	11

Solstice		Solstice	
DHMO S200B		PPO	
In Network Only		In-Network	Out of Network
n/a		100%	100%
n/a		100%	80%
n/a		60%	50%
Unlimited		\$3,000	\$3,000
n/a		\$50/\$150	\$50/\$150
n/a		Yes	Yes
\$2,185 Child / \$2,285 Adult		\$1,000 Child & Adult	\$1,000 Child & Adult
Fee Schedule		Fee Schedule	MAC
No Charge		100%	100%
No Charge		100%	100%
\$35		100%	100%
\$45		100%	80%
\$210		100%	80%
\$36 per quad		100%	80%
\$210		60%	50%
\$195		60%	50%
Expires 9/30/2021		Expires 9/30/2021	
Current		Current	
\$13.97	16	\$42.43	
\$24.45	7	\$88.39	
\$29.29	6	\$88.04	
\$41.21	5	\$142.46	

Solstice		Solstice	
DHMO S200B		PPO	
In Network Only		In-Network	Out of Network
n/a		100%	100%
n/a		100%	80%
n/a		60%	50%
Unlimited		\$3,000	\$3,000
n/a		\$50/\$150	\$50/\$150
n/a		Yes	Yes
\$2,185 Child / \$2,285 Adult		\$1,000 Child & Adult	\$1,000 Child & Adult
Fee Schedule		Fee Schedule	MAC
No Charge		100%	100%
No Charge		100%	100%
\$35		100%	100%
\$45		100%	80%
\$210		100%	80%
\$36 per quad		100%	80%
\$210		60%	50%
\$195		60%	50%
12 Months		12 Months	
Renewal		Renewal	
\$13.97		\$42.43	
\$24.45		\$88.39	
\$29.29		\$88.04	
\$41.21		\$142.46	

October 2021 Life and Accidental Death and Dismemberment Comparison for Town of Bay Harbor Islands

Carrier	The Standard
Classes Defined	All Eligible Active Employees
Benefit	
Life Benefit	1 x earnings to a maximum of \$200,000
AD&D Benefit	1 x earnings to a maximum of \$200,000
Minimum Benefit	\$50,000
Reduction Formula	
At Age 70	to 50%
Additional Benefits	
Accelerated Benefit	Included
Waiver of Premium	Included
Conversion	Included
Portability	Included
Contribution	Non-Contributory
Participation Requirements	
Rate Guarantee (months)	Expires 10/1/2022
Rates	
Covered Volume	\$5,122,500
Life Rate per \$1,000	\$0.273
AD&D Rate per \$1,000	\$0.030



Rates shown are based on census data provided. Final rates are subject to underwriting and actual enrollment. This comparison is for illustrative purposes only. The full policy and certificate of coverage will supersede any and all materials provided herein.

LONG TERM DISABILITY	
Carrier	
Eligibility	
Benefits	
<i>Maximum Monthly Benefit</i>	\$6,615 \$6,000
<i>Benefit %</i>	66 2/3
<i>Elimination Period</i>	90 Days
<i>Maximum Benefit Period</i>	SSNRA
<i>Survivor Income</i>	Included
Definition of Disability	
<i>Own Occupation Coverage Period</i>	
Contribution Type	Non-Contributory
Participation Requirement	100%
Rate Guarantee (months)	Until 10/01/2022
Rates	
Covered Volume	\$389,864
<i>STD Rate per \$10 Weekly Benefit</i>	\$0.450

AGENDA ITEM REPORT

September 9, 2021

ITEM NUMBER: 4.

ITEM: Consideration and Approval of the annual renewal of insurance (general, professional, automobile, property, and workers' compensation) from the Florida Municipal Insurance Trust (Florida League of Cities) for the 2021 / 2022 fiscal year and authorizing staff to make expenditures at an amount not to exceed the budget request of \$379,350.

DESCRIPTION:

The Town of Bay Harbor Islands is seeking to renew its annual property, casualty and liability insurance to protect the assets and financial stability of the Town. Included in the proposed FY 2021-2022 Budget is the amount of \$379,350 to cover the afore-mentioned insurance. Although the Town has not received the quote for the annual renewal premiums, it is staff's recommendation for the Town Council to approve the insurance renewal, providing it does not exceed the budgeted amount of \$379,350. The approval will ensure that there is no lapse in insurance coverage.

Enclosed is a copy of the existing insurance coverage summary.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

The total amount paid for last year's insurance policy was \$251,201 for Normal Premium and \$144,579 for Net Premium with Incentive Credit. The Town budgeted an insurance increase from last year's budget amount and we do not expect the insurance to be over \$376,350. The insurance line item is 400045.000 Insurance in various Funds.

BUDGET IMPACT:

Name	Impact Date	Fund(s)	Account(s)	Project #(s)	Amount Budgeted
Town 's general, professional, automobile, property and worker's compensation insurance	9/9/2021	\$379,350.00	400045.000	Florida Municipal Insurance Trust (Florida League of Cities)	\$379,350.00

Submitted By: Shaun Gelvez, Human Resources Manager

ATTACHMENTS

1. Insurance Policy Info

**FLORIDA LEAGUE OF CITIES
SPONSORED INSURANCE PROGRAMS
DECLARATIONS**

I. DESIGNATED MEMBER: Town of Bay Harbor Islands

Address: 9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154

II. COVERAGE PERIOD

From October 1, 2020 to October 1, 2021

12:01 A.M. Standard Time at the address of the Designated Member.

III. AGREEMENT NUMBER

Florida Municipal Insurance Trust (FMIT) FMIT #0033

IV. COVERAGES INCLUDED

General Liability
Automobile
Property
Workers' Compensation

V. ESTIMATED ANNUAL PREMIUM

Normal Premium	Expense Constant	Incentive Credit	Net Premium
\$251,201	\$160	\$(106,782)	\$144,579



Signature of Authorized Representative

October 1, 2020

Date

**FLORIDA MUNICIPAL INSURANCE TRUST
AUTOMOBILE LIABILITY AND PHYSICAL DAMAGE
DECLARATIONS**

I. DESIGNATED MEMBER:
Town of Bay Harbor Islands

Agreement No.: FMIT #0033

II. GOVERNMENT DESCRIPTION
Other

III. COVERAGE PERIOD

From 10/01/2020 to 10/01/2021 12:01 A.M. Standard Time at the address of the Designated Member

IV. AUTOMOBILE	Premium Basis	Deductible/ Type	Limit	Net Premium
1. Automobile Liability	Per Schedule	\$1,000	\$2,000,000	\$23,914
Number of Vehicles: 55				
2. Uninsured Motorists Protection			N/A	N/A
3. Personal Injury Protection			\$10,000	Included
4. Automobile Medical Payments			N/A	N/A
5. Automobile Physical Damage	Per Schedule	Per Schedule	N/A	\$15,256

V. This Agreement includes these endorsements and schedules: See Schedule B

VI. ESTIMATED ANNUAL PREMIUM

Florida Municipal Insurance Trust (FMIT)

**Normal
Premium
\$39,170**

Florida League of Cities Sponsored Insurance Programs Since 1977

THIS DECLARATIONS AND THE SUPPLEMENTAL DECLARATIONS, TOGETHER WITH THE COMMON
CONDITIONS, COVERAGE FORM(S) AND ENDORSEMENTS COMPLETE THE ABOVE NUMBERED
AGREEMENT.

FMIT AUTOMOBILE LIABILITY AND PHYSICAL DAMAGE COVERAGES

October 1, 2020 - October 1, 2021 Scheduled Coverage Forms List

Town of Bay Harbor Islands, FMIT #0033

Schedule B

Form #	Description
FMIT AUTO SCH 1002	Automobile Schedule
FMIT COND 1019	Conditions of Coverage
FMIT CA 1020	Coverage Agreement
FMIT AL 1019	Automobile Liability
FMIT PIP 1014	Personal Injury Protection
FMIT APD 1016	Automobile Physical Damage Coverage Form
FMIT ARR 1009	Rental Reimbursement Coverage
FMIT SE AL 1012	Specific Excess Endorsement - Automobile Liability
FMIT DEDA 1011	Deductible Endorsement - Automobile Liability
FMIT AE 1020	Employer - Provided Vehicles - Automobile Liability
FMIT 2 YR 1020	FMIT 2-Year Rate Program

Automobile Schedule

Town of Bay Harbor Islands, FMIT #0033

10/01/2020 - 10/01/2021

Veh #	Eff Date	Exp Date	City #	Year	Make	Description				ID #	Cost New	
			Code	Liab	PIP	Med Pay	UM	Comp Ded	SP Ded	Coll Ded	Phy Dmg	Total Prem
0	10/1/2020	10/1/2021										
			6619	\$146	\$0	\$0	\$0	n/a	n/a	n/a	\$0	\$146
0	10/1/2020	10/1/2021										
			6638	\$146	\$0	\$0	\$0	n/a	n/a	n/a	\$0	\$146
0	10/1/2020	10/1/2021										
				\$379	\$0	\$0	\$0	n/a		n/a	\$2,244	\$2,623
1	10/1/2020	10/1/2021										
			68499	\$61	\$2	\$0	\$0	\$1000	n/a	\$1000	\$49	\$112
2	10/1/2020	10/1/2021										
			01499	\$589	\$24	\$0	\$0	\$1000	n/a	\$1000	\$151	\$764
3	10/1/2020	10/1/2021										
			7911	\$279	\$14	\$0	\$0	\$1000	n/a	\$1000	\$144	\$437
4	10/1/2020	10/1/2021										
			01499	\$589	\$24	\$0	\$0	\$1000	n/a	\$1000	\$203	\$816
5	10/1/2020	10/1/2021										
			68499	\$61	\$2	\$0	\$0	\$1000	n/a	\$1000	\$49	\$112
6	10/1/2020	10/1/2021										
			7911	\$279	\$14	\$0	\$0	\$1000	n/a	\$1000	\$154	\$447
7	10/1/2020	10/1/2021										
			7911	\$279	\$14	\$0	\$0	\$1000	n/a	\$1000	\$132	\$425
8	10/1/2020	10/1/2021										
			7398	\$279	\$13	\$0	\$0	\$1000	n/a	\$1000	\$149	\$441
9	10/1/2020	10/1/2021										
			7911	\$279	\$14	\$0	\$0	\$1000	n/a	\$1000	\$180	\$473
10	10/1/2020	10/1/2021										
			7911	\$279	\$14	\$0	\$0	\$1000	n/a	\$1000	\$180	\$473
11	10/1/2020	10/1/2021										
			7911	\$279	\$14	\$0	\$0	\$1000	n/a	\$1000	\$235	\$528
12	10/1/2020	10/1/2021										
			7911	\$279	\$14	\$0	\$0	\$1000	n/a	\$1000	\$235	\$528
13	10/1/2020	10/1/2021										
			7911	\$279	\$14	\$0	\$0	\$1000	n/a	\$1000	\$261	\$554
14	10/1/2020	10/1/2021										
			7911	\$279	\$14	\$0	\$0	\$1000	n/a	\$1000	\$261	\$554
15	10/1/2020	10/1/2021										
			01499	\$589	\$24	\$0	\$0	\$1000	n/a	\$1000	\$266	\$879
16	10/1/2020	10/1/2021										
			7911	\$279	\$14	\$0	\$0	\$1000	n/a	\$1000	\$296	\$589
17	10/1/2020	10/1/2021										
			7911	\$279	\$14	\$0	\$0	\$1000	n/a	\$1000	\$296	\$589
18	10/1/2020	10/1/2021										
			7911	\$279	\$14	\$0	\$0	\$1000	n/a	\$1000	\$296	\$589
19	10/1/2020	10/1/2021										
			7911	\$279	\$14	\$0	\$0	\$1000	n/a	\$1000	\$277	\$570
20	10/1/2020	10/1/2021										
			7911	\$279	\$14	\$0	\$0	\$1000	n/a	\$1000	\$132	\$425
21	10/1/2020	10/1/2021										
			01499	\$589	\$24	\$0	\$0	\$1000	n/a	\$1000	\$96	\$709

Automobile Schedule

Town of Bay Harbor Islands, FMIT #0033

10/01/2020 - 10/01/2021

Veh #	Eff Date	Exp Date	City #	Year Make		Description				ID #	Cost New	
			Code	Liab	PIP	Med Pay	UM	Comp Ded	SP Ded	Coll Ded	Phy Dmg	Total Prem
22	10/1/2020	10/1/2021		2013	FORD		EXPLORER			1077	\$30,000	
			7911	\$279	\$14	\$0	\$0	\$1000	n/a	\$1000	\$235	\$528
23	10/1/2020	10/1/2021		2015	FORD		F150			2827	\$24,000	
			01499	\$589	\$24	\$0	\$0	\$1000	n/a	\$1000	\$207	\$820
24	10/1/2020	10/1/2021		2015	FORD		F150			2826	\$24,000	
			01499	\$589	\$24	\$0	\$0	\$1000	n/a	\$1000	\$207	\$820
25	10/1/2020	10/1/2021		2016	FORD		EXPLORER			5528	\$25,586	
			7398	\$279	\$13	\$0	\$0	\$1000	n/a	\$1000	\$328	\$620
26	10/1/2020	10/1/2021		2016	FORD		EXPLORER			5529	\$25,586	
			7398	\$279	\$13	\$0	\$0	\$1000	n/a	\$1000	\$328	\$620
27	10/1/2020	10/1/2021		2016	FORD		EXPLORER			5530	\$25,586	
			7398	\$279	\$13	\$0	\$0	\$1000	n/a	\$1000	\$328	\$620
28	10/1/2020	10/1/2021		2016	FORD		XIC PICKUP			2446	\$27,518	
			01499	\$589	\$24	\$0	\$0	\$1000	n/a	\$1000	\$278	\$891
29	10/1/2020	10/1/2021		2016	FORD		F150-XIC			2445	\$27,518	
			01499	\$589	\$24	\$0	\$0	\$1000	n/a	\$1000	\$278	\$891
30	10/1/2020	10/1/2021		2016	FORD		EXPLORER			4374	\$26,745	
			7398	\$279	\$13	\$0	\$0	\$1000	n/a	\$1000	\$328	\$620
31	10/1/2020	10/1/2021		2016	FORD		EXPLORER			4375	\$26,745	
			7398	\$279	\$13	\$0	\$0	\$1000	n/a	\$1000	\$328	\$620
32	10/1/2020	10/1/2021		2016	FORD		EXPLORER			8197	\$34,429	
			7398	\$279	\$13	\$0	\$0	\$1000	n/a	\$1000	\$328	\$620
33	10/1/2020	10/1/2021		2016	FORD		EXPLORER			0844	\$26,178	
			7911	\$279	\$14	\$0	\$0	\$1000	n/a	\$1000	\$317	\$610
34	10/1/2020	10/1/2021		2016	FORD		EXPLORER			0836	\$35,321	
			7911	\$279	\$14	\$0	\$0	\$1000	n/a	\$1000	\$317	\$610
35	10/1/2020	10/1/2021		2016	FORD		EXPLORER			1482	\$35,000	
			7911	\$279	\$14	\$0	\$0	\$1000	n/a	\$1000	\$317	\$610
36	10/1/2020	10/1/2021		2017	FORD		EXPLORER			8666	\$36,375	
			7398	\$279	\$13	\$0	\$0	\$1000	n/a	\$1000	\$349	\$641
37	10/1/2020	10/1/2021		2017	FORD		EXPLORER			1114	\$36,072	
			7398	\$279	\$13	\$0	\$0	\$1000	n/a	\$1000	\$349	\$641
38	10/1/2020	10/1/2021		2017	DODGE		DURANGO			5345	\$30,426	
			7911	\$279	\$14	\$0	\$0	\$1000	n/a	\$1000	\$338	\$631
39	10/1/2020	10/1/2021		2017	FORD		F150 W/EQUIPMENT			8023	\$25,814	
			01499	\$589	\$24	\$0	\$0	\$1000	n/a	\$1000	\$313	\$926
40	10/1/2020	10/1/2021		2017	FORD		ESCAPE W/EQUIPMENT			5888	\$21,540	
			7398	\$279	\$13	\$0	\$0	\$1000	n/a	\$1000	\$325	\$617
41	10/1/2020	10/1/2021		2018	FORD		F150			5265	\$25,000	
			01499	\$589	\$24	\$0	\$0	\$1000	n/a	\$1000	\$257	\$870
42	10/1/2020	10/1/2021		2018	FORD		F250 XL CREW CAB			0336	\$44,509	
			01499	\$589	\$24	\$0	\$0	\$1000	n/a	\$1000	\$448	\$1,061
43	10/1/2020	10/1/2021		2018	FORD		F150			7787	\$26,881	
			01499	\$589	\$24	\$0	\$0	\$1000	n/a	\$1000	\$330	\$943
44	10/1/2020	10/1/2021		2019	DODGE		DURANGO			6518	\$28,243	
			7911	\$279	\$14	\$0	\$0	\$1000	n/a	\$1000	\$393	\$686
45	10/1/2020	10/1/2021		2019	FORD		EXPLORER			8572	\$31,353	
			7398	\$279	\$13	\$0	\$0	\$1000	n/a	\$1000	\$406	\$698

Automobile Schedule

Town of Bay Harbor Islands, FMIT #0033

10/01/2020 - 10/01/2021

Veh #	Eff Date	Exp Date	City #	Year	Make	Description				ID #	Cost New	
			Code	Liab	PIP	Med Pay	UM	Comp Ded	SP Ded	Coll Ded	Phy Dmg	Total Prem
46	10/1/2020	10/1/2021		2018	CHEVROLET		EXPRESS 12 PASSENGER			4689	\$25,000	
			5882	\$850	\$0	\$0	\$0	\$1000	n/a	\$1000	\$232	\$1,082
47	10/1/2020	10/1/2021		2019	CHEVROLET		TRAVERSE			0871	\$28,776	
			7911	\$279	\$14	\$0	\$0	\$1000	n/a	\$1000	\$393	\$686
48	10/1/2020	10/1/2021		2019	FORD		TRANSIT T150			6147	\$29,554	
			01499	\$589	\$24	\$0	\$0	\$1000	n/a	\$1000	\$347	\$960
49	10/1/2020	10/1/2021		2019	FORD		F150			0325	\$25,301	
			01499	\$589	\$24	\$0	\$0	\$1000	n/a	\$1000	\$347	\$960
50	10/1/2020	10/1/2021		2019	FORD		EXPLORER			4346	\$38,700	
			7911	\$279	\$14	\$0	\$0	\$1000	n/a	\$1000	\$393	\$686
51	10/1/2020	10/1/2021		2019	NISSAN		MAXIMA			0281	\$26,276	
			7398	\$279	\$13	\$0	\$0	\$1000	n/a	\$1000	\$406	\$698
52	10/1/2020	10/1/2021		2020	DODGE		CHARGER			4102	\$30,969	
			7911	\$279	\$14	\$0	\$0	\$1000	n/a	\$1000	\$393	\$686
53	10/1/2020	10/1/2021	629	2020	FORD		F150 XL 4X2			6252	\$24,957	
			01499	\$589	\$24	\$0	\$0	\$1000	n/a	\$1000	\$272	\$885
54	10/1/2020	10/1/2021		2020	CHEVROLET		TAHOE 2WD			7341	\$33,725	
			7911	\$279	\$14	\$0	\$0	\$1000	n/a	\$1000	\$393	\$686
55	10/1/2020	10/1/2021	631	2020	FORD		ESCAPE			4665	\$28,544	
			7398	\$279	\$13	\$0	\$0	\$1000	n/a	\$1000	\$406	\$698
Total Normal Premiums				\$20,801	\$869	\$0	\$0				\$17,500	\$39,170
Normal Premium												\$39,170
Net Premium												\$39,170

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FORM NAME: FMIT 2-YEAR RATE PROGRAM (Year 2 of 2)

FMIT offered a fixed 2-year Rate Program for FMIT Members in good standing that were approved for program participation. The program was offered subject to the following disclosures and conditions:

1. The rates used to calculate the Member's estimated premium for the FMIT coverage year October 1, 2019 through September 30, 2020 (Previous Coverage Year) were used to calculate the Member's total estimated premium for coverage year October 1, 2020 through September 30, 2021 (Current Coverage Year), excluding Group Health and Workers' Compensation rates.
2. Changes in Member coverage exposure information such as changes in personnel and payroll data, specific coverage lines, coverage limits elected, deductibles elected, or scope of risks will impact the Current Coverage Year calculation for General/Professional Liability, Property, Automobile Liability and Automobile Physical Damage premiums;
3. In the event of Member cancellation of any line of coverage within the Coverage Agreement entered subject to the FMIT 2-Year Rate Program during the Previous Coverage Year or Current Coverage Year, Member shall owe an amount equal to the greater of sixty (60) days of fully earned premium for all such cancelled line(s) of coverage or the amount calculated pursuant to any other cancellation provision(s) specified in the Coverage Agreement and applicable to the line(s) of coverage cancelled; and
4. Coverage provided in Current Coverage Year shall be subject to any coverage changes adopted for application to all FMIT Members by the FMIT Board of Trustees pursuant to the board's ordinary discretion and procedure; however, the applicable rates for purposes of premium calculation in Current Coverage Year shall remain the same as specified above.

Authorized Representative Signature

FLORIDA MUNICIPAL INSURANCE TRUST
COMMERCIAL AUTO CHANGE ENDORSEMENT

THIS ENDORSEMENT FORMS A PART OF THE AGREEMENT NUMBERED BELOW:

MEMBER'S NAME AND MAILING ADDRESS	FMIT NUMBER	COVERAGE PERIOD
Town of Bay Harbor Islands 9665 Bay Harbor Terrace Bay Harbor Islands, FL 33154	FMIT #0033	October 1, 2020 to October 1, 2021

IT IS HEREBY NOTED AND AGREED THAT THE FOLLOWING CHANGES ARE MADE:

CHANGES
Effective October 1, 2020 Vehicle Deletions: #9, 2011 Ford Crown Victoria, VIN 6504 #10, 2011 Ford Crown Victoria, VIN 9441 Non-premium bearing endorsement.

	ADDITIONAL	RETURN
PREMIUM	\$0	\$0

THE ADDITIONAL/RETURN PREMIUM IS INCLUDED IN THE ATTACHED BILLING INVOICE

ENDORSEMENT #: 1
INITIALS: BLESHER
DATE: 11/04/2020

FLORIDA MUNICIPAL INSURANCE TRUST
COMMERCIAL AUTO CHANGE ENDORSEMENT

THIS ENDORSEMENT FORMS A PART OF THE AGREEMENT NUMBERED BELOW:

MEMBER'S NAME AND MAILING ADDRESS	FMIT NUMBER	COVERAGE PERIOD
Town of Bay Harbor Islands 9665 Bay Harbor Terrace Bay Harbor Islands, FL 33154	FMIT #0033	October 1, 2020 to October 1, 2021

IT IS HEREBY NOTED AND AGREED THAT THE FOLLOWING CHANGES ARE MADE:

CHANGES
Effective December 17, 2020 Vehicle Addition: #56, 2020 Ford F350, VIN 2922, Cost New \$39,636 Non-premium bearing endorsement.

	ADDITIONAL	RETURN
PREMIUM	\$0	\$0

THE ADDITIONAL/RETURN PREMIUM IS INCLUDED IN THE ATTACHED BILLING INVOICE

ENDORSEMENT #: 2
INITIALS: BLESHER
DATE: 12/17/2020

**FLORIDA LEAGUE OF CITIES
SPONSORED INSURANCE PROGRAMS
DECLARATIONS**

I. DESIGNATED MEMBER: Town of Bay Harbor Islands

Address: 9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154

II. COVERAGE PERIOD

From October 1, 2020 to October 1, 2021

12:01 A.M. Standard Time at the address of the Designated Member.

III. AGREEMENT NUMBER

Florida Municipal Insurance Trust (FMIT) FMIT #0033

IV. COVERAGES INCLUDED

General Liability
Automobile
Property
Workers' Compensation

V. ESTIMATED ANNUAL PREMIUM

Normal Premium	Expense Constant	Incentive Credit	Net Premium
\$251,201	\$160	\$(106,782)	\$144,579



Signature of Authorized Representative

October 1, 2020

Date

**FLORIDA MUNICIPAL INSURANCE TRUST
GENERAL/PROFESSIONAL LIABILITY COVERAGE AGREEMENT
DECLARATIONS**

I. DESIGNATED MEMBER
Town of Bay Harbor Islands

Agreement No.: FMIT #0033

II. GOVERNMENT DESCRIPTION
Municipality

III. COVERAGE PERIOD
From October 1, 2020 to October 1, 2021 12:01 A.M. Standard Time at the address of the Designated Member.

	Premium Basis	Deductible/ Type	Limit	Net Premium
IV. General/Professional Liability		\$1,000	\$1,000,000	\$73,548
Payroll:	3,701,638			
1. General Liability				
a. Broad Form Property Damage		\$1,000	Per Form	Included
b. Extra Contractual Legal Expense		N/A	\$25,000	Included
c. Fire Legal Liability		\$1,000	\$500,000	Included
d. Medical Attendants'/Medical Directors' Malpractice Liability		\$1,000	\$1,000,000	Included
2. Errors and Omissions Liability		\$1,000	\$1,000,000	Included
a. Employment Practices Liability		\$1,000	\$1,000,000	Included
b. Employee Benefits Program Administration Liability		\$1,000	\$1,000,000	Included
3. Law Enforcement		\$1,000	\$1,000,000	Included
Full Time with Arrest Powers:	23			
Part Time with Arrest Powers:	11			
Clerical:	7			
V. Breach Response & Cyber Liability				
Coverage Type: Claims-made and reported coverage per FMIT CYBER insuring agreement.				
Retroactive Period: Full prior acts coverage, except as noted in FMIT CYBER insuring agreement.				

Breach Response Services Limit:

Cyber Liability Limit:

First Party Loss

Third Party Loss

eCrime

Criminal Reward

	Per-claim retention Equal to General/Professional Liability per-occurrence deductible in IV. above or the per-occurrence retention noted in Supplemental Declarations, whichever is less	\$1,000,000 Per occurrence and aggregate limit, in addition to Cyber Liability Limit	
	Per-claim retention equal to General /Professional Liability per-occurrence deductible in IV. above or the per-occurrence retention noted in FMIT CYBER Endorsement Supplemental Declarations, whichever is less	\$2,000,000 Per-occurrence and aggregate limit	
	\$0	\$5,000 each loss	
	(See FMIT CYBER Endorsement Supplemental Declarations for all retentions)	(See FMIT CYBER Endorsement Supplemental Declarations for all coverage types, limits and sub-limits)	

VI. This agreement includes these endorsements and schedules: See Schedule A

VII. ESTIMATED ANNUAL PREMIUM

Florida Municipal Insurance Trust (FMIT)

Normal Premium	Incentive Credit	Net Premium
\$124,226	\$(50,678)	\$73,548

Florida League of Cities Sponsored Insurance Programs Since 1977

THIS DECLARATIONS AND THE SUPPLEMENTAL DECLARATIONS, TOGETHER WITH THE COMMON CONDITIONS, COVERAGE FORM(S) AND ENDORSEMENTS COMPLETE THE ABOVE NUMBERED AGREEMENT.

FMIT GENERAL/PROFESSIONAL LIABILITY COVERAGES
October 1, 2020 - October 1, 2021 Schedule Coverage Forms List

FMIT #0033

Schedule A

<u>Form #</u>	<u>Description</u>
General Liability Common	
FMIT COND 1019	Conditions of Coverage
FMIT CA 1020	Coverage Agreement
General Liability	
FMIT BFPD 1018	Broad Form Property Damage Endorsement
FMIT ECLE 1016	Extra Contractual Legal Expense Endorsement
FMIT FLL 1012	Fire Legal Liability Endorsement
FMIT MA 1018	Medical Attendants' / Medical Directors' Malpractice Liability Endorsement
FMIT EO 1019	Errors and Omissions Liability Endorsement
FMIT EBL 1019	Employee Benefit Program Admin. Errors and Omissions Liability
FMIT LE 1018	Law Enforcement Liability Endorsement
FMIT IC BH A 1016	Inverse Condemnation and Bert J. Harris Jr. Private Property Rights Protection Act
FMIT SE GL 1012	Specific Excess Endorsement - General Liability
FMIT DEDL 1013	Deductible Endorsement - General Liability
FMIT CYBER 1019	Breach Response & Cyber Liability Endorsement
FMIT CIE 1011	Crisis Intervention Expense Endorsement
FMIT SBU 1019	Sewerline Backup and Initial Cleanup Expense
GL MANUSCRIPT 1020	FMIT 2 Year Rate Program

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FORM NAME: FMIT 2-YEAR RATE PROGRAM (Year 2 of 2)

FMIT offered a fixed 2-year Rate Program for FMIT Members in good standing that were approved for program participation. The program was offered subject to the following disclosures and conditions:

1. The rates used to calculate the Member's estimated premium for the FMIT coverage year October 1, 2019 through September 30, 2020 (Previous Coverage Year) were used to calculate the Member's total estimated premium for coverage year October 1, 2020 through September 30, 2021 (Current Coverage Year), excluding Group Health and Workers' Compensation rates.
2. Changes in Member coverage exposure information such as changes in personnel and payroll data, specific coverage lines, coverage limits elected, deductibles elected, or scope of risks will impact the Current Coverage Year calculation for General/Professional Liability, Property, Automobile Liability and Automobile Physical Damage premiums;
3. In the event of Member cancellation of any line of coverage within the Coverage Agreement entered subject to the FMIT 2-Year Rate Program during the Previous Coverage Year or Current Coverage Year, Member shall owe an amount equal to the greater of sixty (60) days of fully earned premium for all such cancelled line(s) of coverage or the amount calculated pursuant to any other cancellation provision(s) specified in the Coverage Agreement and applicable to the line(s) of coverage cancelled; and
4. Coverage provided in Current Coverage Year shall be subject to any coverage changes adopted for application to all FMIT Members by the FMIT Board of Trustees pursuant to the board's ordinary discretion and procedure; however, the applicable rates for purposes of premium calculation in Current Coverage Year shall remain the same as specified above.

Authorized Representative Signature

**FLORIDA LEAGUE OF CITIES
SPONSORED INSURANCE PROGRAMS
DECLARATIONS**

I. DESIGNATED MEMBER: Town of Bay Harbor Islands

Address: 9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154

II. COVERAGE PERIOD

From October 1, 2020 to October 1, 2021

12:01 A.M. Standard Time at the address of the Designated Member.

III. AGREEMENT NUMBER

Florida Municipal Insurance Trust (FMIT) FMIT #0033

IV. COVERAGES INCLUDED

General Liability
Automobile
Property
Workers' Compensation

V. ESTIMATED ANNUAL PREMIUM

Normal Premium	Expense Constant	Incentive Credit	Net Premium
\$251,201	\$160	\$(106,782)	\$144,579



Signature of Authorized Representative

October 1, 2020

Date

**FLORIDA MUNICIPAL INSURANCE TRUST
PROPERTY, ALLIED LINES AND CRIME
DECLARATIONS**

Agreement No.: FMIT #0033

I. DESIGNATED MEMBER

Town of Bay Harbor Islands

II. GOVERNMENT DESCRIPTION

Municipality

III. COVERAGE PERIOD

From October 1, 2020 to October 1, 2021 12:01 A.M. Standard Time at the address of the Designated Member.

IV. Property and Allied Coverages

	Premium Basis	Deductible/ Type	Limit	Net Premium
Real Property*		\$2,500	\$18,773,640	Included
Personal Property		\$2,500	\$837,600	Included
Named Storm Coverage and Percentage Deductible		Refer to Your NS Deductible Endorsement NS-A or NS-B /2%, 3% or 5% of damages incurred		
Coinsurance:	Agreed Amount			
Valuation Basis:	Replacement Cost			
Blanket**:	Yes			
Inflation Guard:	No			
Non-scheduled PITO Sub-Limit*			\$200,000	Included
Time Element				
Business Income	Per Extension	\$0		Included
Extra Expense	Per Extension	\$0		Included
Inland Marine	Valuation Basis:	Actual Cash	Per Schedule	\$325,069
		Value		
Blanket:	Yes			Included
Valuable Papers	Per Extension	\$0		Included
Accounts Receivable	Per Extension	\$0		Included
Crime				
Inside The Premises:				
Theft of Money and Securities		\$1,000	\$250,000	Included
Outside The Premises:		\$1,000	\$250,000	Included
Forgery or Alteration		\$1,000	\$250,000	Included
Computer and Funds Transfer Fraud		\$1,000	\$250,000	Included
Bond				
Faithful Performance Blanket Bond		\$1,000	\$250,000	Included
Employee Theft - Per Loss Coverage		\$1,000	\$250,000	Included

V. This agreement includes these endorsements and schedules: See Schedule C

VI. ESTIMATED ANNUAL PREMIUM

Florida Municipal Insurance Trust (FMIT)

Normal

Premium

\$87,869

Florida League of Cities Sponsored Insurance Programs Since 1977

THIS DECLARATIONS AND THE SUPPLEMENTAL DECLARATIONS, TOGETHER WITH THE COMMON CONDITIONS, COVERAGE FORM(S) AND ENDORSEMENTS COMPLETE THE ABOVE NUMBERED AGREEMENT.

*Real Property limit is inclusive of Non-scheduled PITO Sub-Limit.

**If a blanket limit is selected, the blanket limit applies only to Covered Property at locations contained in the Member's Property Schedule, subject to all coverage exclusions, deductible requirement(s) and other provisions of the Coverage Agreement.

FMIT PROPERTY AND ALLIED COVERAGES
October 1, 2020 - October 1, 2021 Scheduled Coverage Forms List
FMIT #0033

Schedule C

Form #	Description
Property Common	
FMIT COND 1019	Conditions of Coverage
FMIT CA 1020	Coverage Agreement
IL 00 17 1198	Common Policy Conditions
FMIT MPC 1019	Miscellaneous Property Coverages
IL 02 55 0106	Florida Changes - Cancellation and Non-renewal
Property	
FMIT PROP EP 1015	Earned Premium
PR-SCHED	Property Schedule
CP 00 90 0788	Commercial Property Conditions
CP 00 10 0402	Building and Personal Property Coverage Form
FMIT PROP 03 1020	Coverage Extensions
CP 01 25 1007	Florida Changes
CP 10 30 0402	Causes of Loss - Special Form
CP 10 50 0788	Additional Exclusions - Wind Exclusion
FMIT PROP 12 1016	Ordinance or Law Change
CP 10 35 0695	Watercraft Exclusion
FMIT FLOOD 1020	Flood Coverage Excess of Loss
FMIT PROP NS DED-A 1020	Named Storm Percentage Deductible Endorsement
FMIT PROP TER 1018	Terrorism Physical Loss or Physical Damage
FMIT EBC 1015	Equipment Breakdown Coverage Schedule
FMIT EBC/EBX 1015	Equipment Breakdown Coverage
FMIT FCR 1009	Fungus Remediation
IL 04 01 1007	Florida-Sinkhole Loss Coverage
CP 00 60 0695	Leasehold Interest Coverage Form
FMIT ACTIVE ASSAILANT 1019	Event Response for Covered Events at Covered Property
FMIT RECOVERY 1020	FMIT Property Turnkey Recovery Service
CP 00 50 0402	Extra Expense Coverage Form
CP 00 32 0402	Business Income Coverage
FMIT ASSET SURVEY DA 1020	Asset Survey Disclosure and Acknowledgement
FMIT PROP APPRAISAL 1020	Appraisal Clause Amendment
PR MANUSCRIPT 1020	FMIT 2 Year Rate Program
Inland Marine	
FMIT IM SCH	Miscellaneous Schedule of Inland Marine
FMIT PROP 02 1016	Inland Marine Floater
CM 00 01 0904	Commercial Inland Marine Conditions
CM 00 66 0904	Accounts Receivable Coverage Form
CM 00 67 0904	Valuable Papers and Records Coverage Form
Crime	
CR 00 25 0506	Government Crime Coverage Form
FMIT GC FD 1012	Government Crime Coverage Form Amendment
CR 25 09 1010	Include Volunteer Workers as Employees
CR 25 19 0506	Add Faithful Performance of Duty Coverage

Miscellaneous Property Coverages

FMIT #0033

October 1, 2020 - October 1, 2021

Business Income

All locations are covered under Coverage Extension 5h.

Extra Expense

All locations are covered under Coverage Extension 5e.

Limits on Loss Payment: 40%-80%-100%

Valuable Papers & Records

All locations are covered under Coverage Extension 5b.

Accounts Receivable

All locations are covered under Coverage Extension 5d.

Crime / Bond

Bond Type	Bond Limit	Deductible Amount
Finance Director	\$250,000	\$0
Employee Theft - Per Loss	\$250,000	\$1,000
Faithful Performance Blanket Bond	\$250,000	\$1,000

Forgery or Alteration

Limit	Deductible Amount
\$250,000	\$1,000

Theft of Money and Securities - Inside Premises

Limit	Deductible Amount
\$250,000	\$1,000

Outside Premises

Limit	Deductible Amount
\$250,000	\$1,000

Computer and Funds Transfer Fraud

Limit	Deductible Amount
\$250,000	\$1,000

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FLORIDA CHANGES - CANCELLATION AND NONRENEWAL

This endorsement modifies insurance provided under the following:

BOILER AND MACHINERY COVERAGE PART
CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
CRIME AND FIDELITY COVERAGE PART
FARM COVERAGE PART

A. Paragraph 2. of the Cancellation Common Policy Condition is replaced by the following:

2. Cancellation For Policies In Effect 90 Days Or Less

a. If this policy has been in effect for 90 days or less, we may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation, accompanied by the specific reasons for cancellation, at least:

- (1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
- (2) 20 days before the effective date of cancellation if we cancel for any other reason, except we may cancel immediately if there has been:
 - (a) A material misstatement or misrepresentation; or
 - (b) A failure to comply with underwriting requirements established by the insurer.

b. We may not cancel:

- (1) On the basis of property insurance claims that are the result of an act of God, unless we can demonstrate, by claims frequency or otherwise, that you have failed to take action reasonably necessary as requested by us to prevent recurrence of damage to the insured property; or

(2) On the basis of filing of claims for partial loss caused by sinkhole damage, regardless of whether this policy has been the subject of a sinkhole claim, or on the basis of the risk associated with the occurrence of such a claim. However, we may cancel this policy if:

- (a) The total of such property insurance claim payments for this policy exceeds the current policy limits of coverage for property damage; or
 - (b) You have failed to repair the structure in accordance with the engineering recommendations upon which any loss payment or policy proceeds were based.
- (3) Solely on the basis of a single property insurance claim which is the result of water damage, unless we can demonstrate that you have failed to take action reasonably requested by us to prevent a future similar occurrence of damage to the insured property.

B. The following is added to the Cancellation Common Policy Condition:

7. Cancellation For Policies In Effect For More Than 90 Days

a. If this policy has been in effect for more than 90 days, we may cancel this policy only for one or more of the following reasons:

- (1) Nonpayment of premium;
- (2) The policy was obtained by a material misstatement;

- (3) There has been a failure to comply with underwriting requirements established by the insurer within 90 days of the effective date of coverage;
 - (4) There has been a substantial change in the risk covered by the policy;
 - (5) The cancellation is for all insureds under such policies for a given class of insureds;
 - (6) On the basis of property insurance claims that are the result of an act of God, if we can demonstrate, by claims frequency or otherwise, that you have failed to take action reasonably necessary as requested by us to prevent recurrence of damage to the insured property;
 - (7) On the basis of filing of claims for partial loss caused by sinkhole damage, or on the basis of the risk associated with the occurrence of such a claim, if:
 - (a) The total of such property insurance claim payments for this policy exceeds the current policy limits of coverage for property damage; or
 - (b) You have failed to repair the structure in accordance with the engineering recommendations upon which any loss payment or policy proceeds were based; or
 - (8) On the basis of a single property insurance claim which is the result of water damage, if we can demonstrate that you have failed to take action reasonably requested by us to prevent a future similar occurrence of damage to the insured property.
- b. If we cancel this policy for any of these reasons, we will mail or deliver to the first Named Insured written notice of cancellation, accompanied by the specific reasons for cancellation, at least:
- (1) 10 days before the effective date of cancellation if cancellation is for non-payment of premium; or
 - (2) 45 days before the effective date of cancellation if:
 - (a) Cancellation is for one or more of the reasons stated in 7.a.(2) through 7.a.(8) above; and
 - (b) This policy does not cover a residential structure or its contents;
- (3) 90 days before the effective date of cancellation if:
 - (a) Cancellation is for one or more of the reasons stated in 7.a.(2) through 7.a.(8) above; and
 - (b) This policy covers a residential structure or its contents.
- C. The following is added:
- NONRENEWAL**
- 1. If we decide not to renew this policy we will mail or deliver to the first Named Insured written notice of nonrenewal, accompanied by the specific reason for nonrenewal, at least:
 - a. 90 days prior to the expiration of the policy if this policy covers a residential structure or its contents; or
 - b. 45 days prior to the expiration of the policy for all other policies.
 - 2. Any notice of nonrenewal will be mailed or delivered to the first Named Insured's last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice.
 - 3. We may not refuse to renew this policy:
 - a. On the basis of property insurance claims that are the result of an act of God, unless we can demonstrate, by claims frequency or otherwise, that you have failed to take action reasonably necessary as requested by us to prevent recurrence of damage to the insured property; or
 - b. On the basis of filing of claims for partial loss caused by sinkhole damage, regardless of whether this policy has been the subject of a sinkhole claim, or on the basis of the risk associated with the occurrence of such a claim. However, we may refuse to renew this policy if:
 - (1) The total of such property insurance claim payments for this policy exceeds the current policy limits of coverage for property damage; or
 - (2) You have failed to repair the structure in accordance with the engineering recommendations upon which any loss payment or policy proceeds were based.
 - c. Solely on the basis of a single property insurance claim which is the result of water damage, unless we can demonstrate that you have failed to take action reasonably requested by us to prevent a future similar occurrence of damage to the insured property.

D. Limitations On Cancellation And Nonrenewal In The Event Of Hurricane Or Wind Loss - Residential Property:

1. The following provisions apply to a policy covering a residential structure or its contents, if such property has sustained damage as a result of a hurricane or windstorm that is the subject of a declaration of emergency by the Governor and filing of an order by the Commissioner of Insurance Regulation:

a. Except as provided in D.1.b., we may not cancel or nonrenew the policy until at least 90 days after repairs to the residential structure have been substantially completed so that it is restored to the extent that it is insurable by another insurer writing policies in Florida. If we elect to not renew the policy, we will provide at least 90 days' notice that we intend to nonrenew 90 days after the substantial completion of repairs.

b. We may cancel or nonrenew the policy prior to restoration of the structure, for any of the following reasons:

- (1) Nonpayment of premium;
- (2) Material misstatement or fraud related to the claim;
- (3) We determine that you have unreasonably caused a delay in the repair of the structure; or
- (4) We have paid the policy limits.

If we cancel or nonrenew for nonpayment of premium, we will give you 10 days' notice. If we cancel for a reason listed in b.(2), b.(3) or b.(4), we will give you 45 days' notice.

2. With respect to a policy covering a residential structure or its contents, any cancellation or nonrenewal that would otherwise take effect during the duration of a hurricane will not take effect until the end of the duration of such hurricane, unless a replacement policy has been obtained and is in effect for a claim occurring during the duration of the hurricane. We may collect premium for the period of time for which the policy period is extended.

3. With respect to D.2., a hurricane is a storm system that has been declared to be a hurricane by the National Hurricane Center of the National Weather Service (hereafter referred to as NHC). The hurricane occurrence begins at the time a hurricane watch or hurricane warning is issued for any part of Florida by the NHC, and ends 72 hours after the termination of the last hurricane watch or hurricane warning issued for any part of Florida by the NHC.

THIS ENDORSEMENT CHANGES THE AGREEMENT. PLEASE READ IT CAREFULLY.

EARNED PREMIUM ENDORSEMENT

This endorsement amends and supersedes the cancellation provisions as described in FMIT COND 1015 and IL 02 55 11 06 where applicable. This endorsement does not apply to cancellation for non-payment of premium.

1. For locations NOT "Exposed to Hurricanes," if you cancel this policy, remove a location or reduce the amount of insurance on a location, the short rate return premium is 90% of applicable pro-rate premium.
2. For locations "Exposed to Hurricanes," if you cancel this policy, remove a location or reduce the amount of insurance on a location and coverage existed any time during the period of June 1st to November 30th, the amount of premium we will return will be the Unearned premium for the location. The Unearned Premium is the location premium times the Unearned Factor noted below:

Days Policy in Force	Unearned Factor
1 – 180	20%
181 – 210	15%
211 – 240	10%
241 – 270	7.5%
271 – 300	5%
301 – 330	2.5%
331 or more	0%

3. If a location "Exposed to Hurricanes" is added during the term of the policy and coverage exists at any time during the period of June 1st to November 30th, the rate will be calculated as 100% of the annual rate, less the Unearned Factor noted in No. 2 above. Otherwise it shall be pro-rata.
4. Coverage cannot be increased nor additional locations added if they are "Exposed to Hurricanes" and a "Named Storm" is in force, unless specifically accepted by the underwriter.
5. If property is added or deleted, each type of property at each location shall be treated separately and the underwriter shall determine the applicable annual rate based upon the characteristics of the risk. Risks of like kind and quality will be added or deleted as per the account rate submitted to the Unearned Factor, if applicable, noted in No. 1 above.
6. If a location is "Exposed to Hurricanes," the provisions of this endorsement replace any short rate provisions stipulated in this policy. If a location is not "Exposed to Hurricanes" during the period of June 1st to November 30th, the short rate return premium is 90% of applicable pro-rata premium subject to a Minimum Earned Premium of 25%.
7. "Exposed to Hurricanes" is defined as located in the State of Florida.

8. Nothing herein will act to provide coverage unless an automatic acquisition clause is included elsewhere in the policy and then only as per the terms of said clause.
9. Non-payment of premium, material misstatement or non-compliance with underwriting requirements shall be considered a request by the insured to cancel the policy.
10. Proof of mailing will be sufficient proof of notice.

Property Schedule

Town of Bay Harbor Islands, FMIT #0033

October 1, 2020 - October 1, 2021

Location #		Address	Occupancy		Construction Type
Loc	Bld	Cause of Loss - Building	Limit	Cause of Loss - Personal Property	Limit
001	001	9665 Bay Harbor Terrace Bay Harbor Islands, FL		Town Hall/Police Station	Masonry Non-Combustible
		Special Form	\$2,391,750	Special Form	\$409,700
001	002	9665 Bay Harbor Terrace Bay Harbor Islands, FL		Town Hall Annex (Small Circular Building)	Masonry Non-Combustible
		Special Form	\$431,200	Special Form	\$165,800
001	003	9665 Bay Harbor Terrace Bay Harbor Islands, FL		Municipal Service Garage (Large Circular Building With Attached Garage)	Masonry Non-Combustible
		Special Form	\$994,000	Special Form	\$212,100
001	004	9665 Bay Harbor Terrace Bay Harbor Islands, FL		Equipment Building (Between Two Circular Buildings)	Masonry Non-Combustible
		Special Form	\$570,000		\$0
002	001	9600 W. Broadview Drive Bay Harbor Islands, FL		Pavilion: Playground: Metal	Masonry Non-Combustible
		Special Form	\$24,000		\$0
002	002	9600 W. Broadview Drive Bay Harbor Islands, FL		Multi-play Structure: Playground: Metal	Frame
		Special Form	\$40,000		\$0
003	001	1165 95th Street Bay Harbor Islands, FL		Parking Garage/Community Center/Miami Dade Fire Station Building	Masonry Non-Combustible
		Special Form	\$13,143,690	Special Form	\$50,000
004	001	1125 98th Street Bay Harbor Islands, FL		Restroom Building	Masonry Non-Combustible
		Special Form	\$44,000		\$0
005	001	East End of Broad Causeway Bay Harbor Islands, FL		Sun Pass Security Toll Structure	Non-Combustible
		Special Form	\$394,500		\$0
006	001	1025 92nd Street Bay Harbor Islands, FL		Fitness Equipment (5): Metal (Needs Member Review)	Non-Combustible
		Special Form	\$485,000		\$0
006	002	1025 92nd Street Bay Harbor Islands, FL		Dog Obstacle Course Equipment (3): Plastic & Metal	Frame
		Special Form	\$5,500		\$0
007	001	1185 95th Street Bay Harbor Islands, FL		Shade Structures (2): Park: Metal (Needs Member Review)	Joisted Masonry
		Special Form	\$250,000		\$0

Total: \$18,773,640

\$837,600

Miscellaneous Schedule of Inland Marine

1. All Watercraft
2. Scheduled items over \$15,000
3. Unscheduled Inland Marine. Maximum limit is \$1,000,000 per Agreement period. Including:
 - a. Communication Equipment
 - b. Emergency Service Portable Equipment
 - c. Miscellaneous Inland Marine Equipment \$15,000 or less.
 - d. Non-Owned Inland Marine Equipment - Rented, Leased, Borrowed: Limit: \$50,000 annual aggregate.

#	Limit	Description	Deductible
1	\$127,000	Generator 600-699 KVA Serial #2403351	\$1,000
2	\$5,069	2014 Tracker Jon Boat/Police Boat 16'16"	\$1,000
3	\$193,000	2019 Boston Whaler/Police Boat 600hp 26'	\$1,000
4		Blanket Inland Marine	\$500

Note: Items valued greater than \$100,000:

* Deductible is either the listed amount or 2% of the limit. (Whichever is greater)

THIS ENDORSEMENT CHANGES THE AGREEMENT. PLEASE READ IT CAREFULLY

It is noted and agreed Government Crime Coverage Form, CR 00 25 05 06, is amended to the following extent:

Exclusion D.2.d. regarding loss caused by any treasurer or tax collector by whatever name known is deleted.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

INCLUDE VOLUNTEER WORKERS AS EMPLOYEES

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
EMPLOYEE THEFT AND FORGERY POLICY
GOVERNMENT CRIME COVERAGE FORM
GOVERNMENT CRIME POLICY
GOVERNMENT EMPLOYEE THEFT AND FORGERY POLICY

The definition of "employee" is amended to include any noncompensated natural person:

1. Other than one who is a fund solicitor, while performing services for you that are usual to the duties of an "employee"; or
2. While acting as a fund solicitor during fundraising campaigns.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADD FAITHFUL PERFORMANCE OF DUTY COVERAGE FOR GOVERNMENT EMPLOYEES

This endorsement modifies insurance provided under the following:

GOVERNMENT CRIME COVERAGE FORM
GOVERNMENT CRIME POLICY

and applies to the Insuring Agreements designated below:

SCHEDULE

Insuring Agreement		Limit Of Insurance
	Employee Theft - Per Loss Coverage	\$ 250,000
	Employee Theft - Per Employee Coverage	\$ N/A
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

1. The following is added to the Employee Theft Insuring Agreement designated above:
We will pay for loss or damage to "money", "securities" and "other property" resulting directly from the failure of any "employee" to faithfully perform his or her duties as prescribed by law, when such failure has as its direct and immediate result a loss of your covered property. The most we will pay for loss arising out of any one "occurrence" is the Limit of Insurance shown in the Schedule. That Limit, is part of, not in addition to, the Limit of Insurance shown in the Declarations.
2. The following exclusions are added to Section D.2. Exclusions:
 - a. Loss resulting from the failure of any entity acting as a depository for your property or property for which you are responsible.
 - b. Damages for which you are legally liable as a result of:
 - (1) The deprivation or violation of the civil rights of any person by an "employee"; or
 - (2) The tortious conduct of an "employee", except the conversion of property of other parties held by you in any capacity.
3. The **Indemnification** Condition is replaced by the following:
We will indemnify any of your officials who are required by law to give bonds for the faithful performance of their duties against loss through the failure of any "employee" under the supervision of that official to faithfully perform his or her duties as prescribed by law, when such failure has as its direct and immediate result a loss of your covered property.
4. Part (I) of the **Termination As To Any Employee** Condition is replaced by the following:
 - (1) As soon as:
 - (a) You; or
 - (b) Any official or employee authorized to manage, govern or control your "employees" learn of any act committed by the "employee" whether before or after becoming employed by you which would constitute a loss covered under the terms of the Employee Theft Insuring Agreement, as amended by this endorsement.

THIS ENDORSEMENT FORMS A PART OF THE AGREEMENT NUMBERED BELOW:

IT IS HEREBY NOTED AND AGREED THAT THE FOLLOWING CHANGES ARE MADE:

Effective October 1, 2020

The Policy is amended per the attached form: FMIT PROP DEC COR 1020

Non-premium bearing endorsement.

THE ADDITIONAL/RETURN PREMIUM IS INCLUDED IN THE ATTACHED BILLING INVOICE

DATE: 12/07/2020

THIS ENDORSEMENT CHANGES THE AGREEMENT. PLEASE READ IT CAREFULLY.

**CORRECTION OF SCRIVENER'S ERROR IN PROPERTY, ALLIED LINES AND CRIME
DECLARATIONS FORM (FMIT PROP DEC 1020)**

It is agreed the Designated Member's coverage provided by the Coverage Agreement to which this endorsement is attached is amended by the following additional terms and conditions. Unless otherwise specified herein, all terms used in this endorsement shall have the meaning set forth in the Coverage Agreement. In the event of a conflict between any of the terms or conditions of the Coverage Agreement and this endorsement, this endorsement will control how coverage shall be applied. All references to "you" or "your(s)," shall mean the Designated Member, and all references to the "Trust," "we," or "our" shall refer to the Florida Municipal Insurance Trust.

This endorsement corrects a scrivener's error in the Property, Allied Lines and Crime Declarations (FMIT PROP DEC 1020) form. In the event of any alleged conflict between the Property, Allied Lines and Crime Declarations (FMIT PROP DEC 1020) form and FMIT PROP 11NS 1020, FMIT PROP 11NS-A 1020 or FMIT PROP 11NS-B 1020 (hereafter, the "Named Storm Coverage and Percentage Deductible Endorsements"), FMIT hereby clarifies its intent that, in the event of a claim or loss, only the express terms provided in the respective and applicable Named Storm Coverage and Percentage Deductible Endorsement referenced herein shall control.

Accordingly, the wording within Section IV. Property and Allied Coverages Named Storm Coverage and Percentage Deductible of the Property, Allied Lines and Crime Declarations (FMIT PROP DEC 1020) form, which currently states:

"Refer to Your NS Deductible endorsement NS-A or NS-B /2%, 3% or 5% of damages incurred."

is deleted and replaced by the following wording:

"Refer to Your applicable Named Storm Coverage and Percentage Deductible Endorsement 11NS, 11NS-A or 11NS-B for the appropriate Named Storm percentage deductible (2%, 3% or 5%)."

This endorsement is effective October 1, 2020, and amends and supersedes the Property, Allied Lines and Crime Declarations (FMIT PROP DEC 1020) form to the extent stated herein. All other terms and conditions of the Coverage Agreement remain unchanged.

**FLORIDA LEAGUE OF CITIES
SPONSORED INSURANCE PROGRAMS
DECLARATIONS**

I. DESIGNATED MEMBER: Town of Bay Harbor Islands

Address: 9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154

II. COVERAGE PERIOD

From October 1, 2020 to October 1, 2021

12:01 A.M. Standard Time at the address of the Designated Member.

III. AGREEMENT NUMBER

Florida Municipal Insurance Trust (FMIT)

FMIT #0033

IV. COVERAGES INCLUDED

General Liability
Automobile
Property
Workers' Compensation

V. ESTIMATED ANNUAL PREMIUM

Normal Premium	Expense Constant	Incentive Credit	Net Premium
\$251,201	\$160	\$(106,782)	\$144,579



Signature of Authorized Representative

October 1, 2020

Date

**FLORIDA MUNICIPAL INSURANCE TRUST
WORKERS COMPENSATION AND EMPLOYERS LIABILITY COVERAGE AGREEMENT
DECLARATIONS**

I. DESIGNATED MEMBER:

Agreement No.: FMIT #0033

Town of Bay Harbor Islands

II. GOVERNMENT DESCRIPTION

Municipality

III. COVERAGE PERIOD

From 10/01/2020 to 10/01/2021 12:01 A.M. Standard Time at the address of the Designated Member

IV. A. Workers Compensation Insurance: Part One of the Agreement applies to the Workers Compensation Law of the state of Florida:

B. Employers Liability Insurance: Part Two of the Agreement applies to work in each state listed in item IV.A. The limits of our liability under Part Two are:

Bodily Injury by Accident	<u>\$1,000,000</u>	each accident
Bodily Injury by Disease	<u>\$1,000,000</u>	policy limit
Bodily Injury by Disease	<u>\$1,000,000</u>	each employee

C. Other States Insurance: if any

D. This Agreement includes these endorsements and schedules: See Schedule D

V. ESTIMATED ANNUAL PREMIUM

Florida Municipal Insurance Trust (FMIT)

Normal Premium	Expense Constant	Incentive Credit	Net Premium
\$124,451	\$160	\$(56,104)	\$68,507

Florida League of Cities Sponsored Insurance Programs Since 1977

THIS DECLARATIONS AND THE SUPPLEMENTAL DECLARATIONS, TOGETHER WITH THE
COMMON CONDITIONS, COVERAGE FORM(S) AND ENDORSEMENTS COMPLETE THE ABOVE
NUMBERED AGREEMENT.

FMIT WORKERS COMPENSATION AND EMPLOYERS LIABILITY COVERAGES

October 1, 2020 - October 1, 2021 Scheduled Coverage Forms List

Town of Bay Harbor Islands, FMIT #0033

Schedule D

Form #	Description
FMIT COND 1019	Conditions of Coverage
FMIT WC EL 1015	Coverage Agreement - Workers Compensation and Employers Liability
FMIT WC EMF 1016	Experience Rating Modification Factor Endorsement
WC 00 00 01A 1002	Workers Compensation Schedule
WC 09 04 03 B 0115	Florida Terrorism Risk Insurance Extension Act Endorsement
WC 00 03 11 A	Voluntary Compensation and Employers Liability Coverage Endorsement

FLORIDA MUNICIPAL INSURANCE TRUST

CONDITIONS OF COVERAGE

As a Member of the Florida Municipal Insurance Trust, Member agrees to abide by all requirements, terms and conditions authorized by, and set forth within, the Agreement and Declaration of Trust creating the Trust, including the following generally applicable conditions of coverage:

I. CONDITIONS

- A. The Member agrees in the event of payment of any loss by the Trust on behalf of the Member, the Trust shall be subrogated to the extent of such payment to all the rights of the Member against any party or other entity legally responsible for damages resulting from said loss, and in such event, the Member hereby agrees, on behalf of itself, its officers, employees, and agents to cooperate with and otherwise assist the Trust as may be necessary to effect any recovery sought by the Trust pursuant to such subrogated rights and to do nothing that will impair the rights of the Trust herein described. The Member further agrees, the Trust shall control all aspects of subrogation recovery efforts. In its discretion, the Trust may seek recovery of the applicable Member deductible or self-insured retention and in such event, will return to the Member the proportionate amount of the Member deductible or self-retention, less the proportionate amount of attorney's fees and related costs incurred by the Trust to effect the recovery.
- B. The Member agrees the Board of Trustees, its Administrator, and any of their other agents, servants, employees or attorneys, shall be permitted at all reasonable times and upon reasonable notice to inspect the property, work places, plants, works, machinery and appliances covered pursuant to this Agreement or any other agreement, certificate, document, or other instrument executed by the Member and the Trust pursuant to this Agreement, and shall be permitted at all reasonable times while the Member participates in the Trust, to examine the Members' books, vouchers, contracts, documents and records of any and every kind which show or tend to show or verify any loss that may be paid or may have been paid by the Trust on behalf of the Member pursuant to this Agreement, or any other agreement, certificate, document, or other instrument executed by the Member and the Trust pursuant to this Agreement, or which show or verify the accuracy of any contribution which is paid or payable by the Member pursuant to the terms of this Agreement, or any other agreement, certification, document or any other instrument executed by the Trust and the Member pursuant to this Agreement. The Member further agrees that in the event of a significant loss occurrence affecting insured property or premises, FMIT or its agents are expressly authorized to enter the insured property and premises to perform loss assessment, adjustment and related activities. However, neither the Trust, its Board of Trustees, its Administrator, nor any of their agents, servants or employees will have any liability to the Member or others because of any inspection or failure to inspect.
- C. The Member shall make prompt payment of all contributions as required by the Board of Trustees, said contributions to be determined by said Board. Contribution requirements may be estimated based on Member-provided information and subject to change pursuant to final audit. The Member shall fully cooperate with auditors of the Trust to promptly determine final audited contributions. Any disputes concerning contributions shall be resolved after payment. Any objections concerning the final

audited contribution shall be filed within 60 days of billing of the final audited contributions. After that time, the final audited contribution amount shall be considered final.

D. Members' duties after loss:

1. give the Trust prompt written notice of any accident, occurrence or potential claim along with all relevant information concerning the claim. The Member shall have a continuing duty to provide to the Trust all relevant information promptly as the Member becomes aware of such information; and
2. cooperate fully with the Trust in defense or settlement of claims or opposition to claims bills, and in the enforcement of any right of contribution or indemnity; and
3. forward to the Trust every notice, demand, summons or other process served upon the Member relating to any occurrence, and take no further action concerning the occurrence without the approval of the Trust or the servicing agent; and
4. take reasonable steps to prevent additional or cumulative bodily injury, personal injury or property damage from or arising out of the same or similar conditions or circumstances; and
5. not engage in settlement negotiations as to any claim or suit, and the Trust shall have no obligation to pay the amount of any settlement negotiated or agreed upon by a Member without prior written approval by the Trust or the servicing agent; and
6. agree to take all reasonable actions, where appropriate, which shall facilitate settlement of claims; and
7. agree to responsible counsel selected by the Trust to defend the claim and agree not to use the City Attorney or any other in-house or contract attorney used ordinarily by the Designated Member as general counsel to its operations to defend said action, unless otherwise provided in this Trust Agreement; and
8. keep all bills, receipts and related documents that establish the amount of loss; and
9. furnish a complete inventory of the lost, damaged and destroyed property, showing in detail the quantity and amount of loss claimed under the valuation provision of the Coverage Agreement; and
10. promptly separate the damaged property from the undamaged property, and keep it in the best possible order for examination; and
11. take all reasonable steps to protect the covered property from further damage; and
12. give notice of such loss to the proper authorities if the loss may be due to a violation of the law; and
13. refrain from any intentional efforts (whether by statements, actions or agreements) that: (1) harm, undermine, injure or conflict with the known legal strategy put forth by the Trust; (2) that are against the Member's self-interest or the interest of the Trust; (3) that are contrary to the Member's pecuniary or proprietary interest, or that of the Trust; or (4) that tend to subject the Member or the Trust to liability or expand existing liability;

E. Transfer of Member's rights and duties under this Agreement.

Members' rights and duties under this Agreement may not be transferred without our written consent. This applies to all coverages under this Agreement or any that may be added after the effective date of this Agreement.

Should the Members' rights and duties be transferred to a legal representative, they may act

only within their scope of duties with regard to this Agreement. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

- F. Required Member contributions shall be in addition to the deductible amount, if any, as set forth in the declarations to the Coverage Agreement. Where such deductible amount is required, coverages arising under this Agreement shall be in excess of such deductible. The Trust may pay on behalf of the Member all or any portion of the deductible amount and upon notification by the Trust of such payment, the Member shall promptly reimburse the Trust for any portion of the deductible the Trust has paid.
- G. In the event any claim or suit results in liability against the Member for which there is coverage under this Agreement and which is reasonably likely to be submitted to, or is submitted to, the legislative claims bill process in the Florida Legislature, the Member agrees, on behalf of itself, its officers, employees, and agents, that the Trust shall have the right to control its representation in such matter before the legislative branch of the state government. Further, the Member agrees to execute and deliver such instruments and papers as required by the Trust, to cooperate with any attorney or other representative retained by the Trust, to provide relevant testimony if required by the Trust, to do whatever else is reasonably necessary in the interest of defending such claim or suit in the legislative claims bill process and to do nothing that will impair or conflict with the rights of the Trust herein described. Additionally, the Member shall refrain from any intentional efforts (whether by statements, actions or agreements) that harm, undermine, injure or conflict with the known legal or legislative defense strategy being put forth by the Trust, that are against the Member's self-interest, that are contrary to the Member's pecuniary or proprietary interest, or that of the Trust, or that tend to subject the Member or the Trust to liability or expand existing liability.
- H. The Member agrees that in the event of any legal issue between the Trust and any Member requiring disposition by a court of law, including any determinations of whether and/or the extent to which coverage exists, this Agreement, or any other agreement, certificate, document, or other instrument executed by the Trust and the Member pursuant to this Agreement, shall be deemed to have been made in Orange County, Florida and venue shall lie in the appropriate state or federal courts of Orange County, Florida.

**FLORIDA MUNICIPAL INSURANCE TRUST
COVERAGE AGREEMENT
WORKERS COMPENSATION AND EMPLOYERS LIABILITY**

- I. In consideration of the payment of the contributions and the covenants and agreements set forth in the COVERAGE AGREEMENTS, in reliance upon the statements of the APPLICATION, the DECLARATIONS, and all terms, conditions, limits and other provisions of the COVERAGE AGREEMENT, the Trust agrees with the Member as to the following:

LIMITS OF LIABILITY

Regardless of the number of (1) Members under this Agreement, (2) persons or organizations who sustain injury or damage, or (3) claims made or suits brought on account of bodily injury, property damage or personal injury, the liability of the Trust is limited as follows:

The total liability of the Trust applicable to "each person" under all coverages and endorsements for all damages, including but not limited to damage awards for derivative claims, taxable costs, attorneys fees, and prejudgment or post-judgment interest, sustained by one person or organization as the result of any one occurrence shall not exceed the limit of liability stated in the Declarations and endorsements thereto.

The total liability of the Trust applicable to "each occurrence" under all coverages and endorsements for all damages, including but not limited to damage awards for derivative claims, taxable costs, attorneys fees, and prejudgment or post-judgment interest, sustained by more than one person or organization as the result of any one occurrence shall not exceed the limit of liability stated in the Declarations and endorsements thereto.

For the purpose of determining the limit of the Trust's liability, all damages arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

DEFENSE AND SETTLEMENT

In addition to the limits of liability the Trust will settle or defend at its own expense, as it considers appropriate, any claim or suit demanding money damages covered by this Agreement. The Trust will defend any suit against a Member which alleges a claim for money damages covered by this Agreement even if such suit is groundless, false or fraudulent. However, the Trust has no duty to defend a Member in any action which on its face alleges facts excluded or not covered by this Agreement.

In the event a suit or other action contains allegations which allege damages which the Trust has a duty to defend and other allegations which allege damages or other relief that the Trust does not have a duty to defend, the Trust will defend all allegations subject to the terms, conditions, limits of liability and exclusions of the Agreement; however, undertaking such defense shall not obligate the Trust to pay any judgments, settlements or awards which a Member becomes legally obligated to pay for allegations to which coverage does not apply. The Trust's duty to defend ends when applicable Limits of Insurance have been exhausted.

DEFINITIONS

Designated Member, means the entity, organization or constitutional officer named in Item I. of the Declarations of this Agreement; Designated Member does not include employees or agents of that entity or organization.

Member, as used herein means:

1. the Designated Member;
2. while acting within the scope of his employment, any officer, volunteer, servant, or employee of the Designated Member, including elected and appointed officials, and members of Boards or Commissions.

II. COVERAGE A - WORKERS COMPENSATION

- A. The Member and the Trust agree that the Trust will pay any sum a Member becomes legally obligated to pay under the workers compensation laws of the state of Florida, including Employers liability as discussed within Coverage B attached hereto for accidents which occur during the period of this Agreement; and the Trust further agrees to pay all administration assessments as may be required in accordance with Florida Law;
- B. The Trust is to defend in the name of and on behalf of the Members any suits or other proceedings which may at any time be instituted against them on account of injuries or death within the purview of the Florida Workers Compensation Law or on the basis of Employers liability, including suits or other proceedings alleging such injuries and demanding damages or compensation therefore, although such suits, other proceedings, allegations or demands are wholly groundless, false, or fraudulent, and to pay all costs taxed against Members in any legal proceeding defended by the Members, all interest accruing after entry of judgment and all expenses incurred for investigation, negotiation or defense;
- C. Liability of the Trust to the employees of any employer is specifically limited to such obligations as are imposed by the Florida law against the employer for workers compensation and/or employers liability as provided in Coverage B. The Trust's liability is further limited to only the obligations it assumes under this Agreement;
- D. The Member agrees the Trust shall not be liable for any additional compensation imposed by Section 440.54, and Section 440.15 (11), Florida Statutes; and
- E. The Member agrees that the Board is authorized to set aside from the contributions and monies collected a reasonable sum for the operating or administrative expenses of the Trust. All remaining funds collected during any one fiscal year of the Trust shall be set aside and shall be used only for the following purposes: payment of a fee for the administrator and claims agent for said Trust; payment for claims, expenses, payments of compensation to employees covered by this contract, including but not limited to settlements, awards, judgements, legal fees, and costs in contested cases; payment of administrative and other assessments as required by Florida law; payment of cost of all bonds; actuarial, and auditing expenses required of the Trust or its agency or employees under Florida law; or other reasonable operating costs or expenses necessary for the administration of the Trust.

- F. Other States Coverage: The Trust will reimburse the Member for the benefits required by the Workers Compensation law of that state. If the Member has worked on the effective date of this Agreement in any state other than Florida, coverage will not be afforded for that state unless the Trust is notified within thirty (30) days.
- G. This agreement requires you to release certain employment and wage information maintained by the State of Florida pursuant to federal and state unemployment compensation laws except to the extent prohibited or limited under federal law. By entering into this agreement, you consent to the release of the information. We will safeguard the information and maintain its confidentiality. We will limit use of the information to verifying compliance with the terms of the agreement.

III. COVERAGE B - EMPLOYERS LIABILITY AGREEMENT

- A. The Member and Trust agree the following definitions apply to the Employers Liability Agreement unless modified or excluded:
 - 1. "Bodily Injury" means bodily injury, disability, disfiguration, sickness or disease or death resulting there from sustained by any person, and any loss, injury or damages sustained by any other person because of bodily injury, which occurs during the period of this Agreement;
 - 2. "Designated Member" means the entity or organization named in this application. Designated Member does not include employees or agents of the entity or organization; and
 - 3. The term "Member" as used in this part means:
 - (a) The Designated Member;
 - (b) While acting within the scope of his employment, any officer, employee, or volunteer of the Designated Member;
 - 4. "Occurrence", means an event or accident, including continuous or repeated exposure to conditions which result in bodily injury, property damage or personal injury and not arising from any form of intentional misconduct.
- B. The Member and the Trust agree the Trust will pay all sums which a Member becomes legally obligated to pay as damages because of bodily injury to an employee of the Designated Member arising out of and in the course of the injured employee's employment by the Designated Member, provided said bodily injury is covered by this Employers Liability Agreement;
- C. The Member and the Trust agree the Trust will pay damages only to the extent where recovery is permitted by Chapter 440.11, Florida Statutes, and Section 768.28, Florida Statutes, including damages:
 - 1. For which a Member becomes liable to a third party by reason of claim or suit against the Member by the third party to recover the damages claimed against the Member as result of injury to an employee of the Designated Member;
 - 2. For care of loss and loss of services; and

3. For consequential bodily injury to spouse, child, parent, brother, or sister of the injured employee; provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by the Member;
- D. In addition to the limits of liability the Trust will settle or defend at its own expense, as it considers appropriate, any claim or suit demanding money damages covered by this Agreement. However, the Trust has no duty to defend a Member in any action, which on its face alleges facts excluded or not covered by this Agreement;
- E. The Member and the Trust agree regardless of the number of (1) Members under this Agreement, (2) persons or organizations who sustain injury or damage, or (3) claims made or suits brought on account of bodily injury or property damage or personal injury, the liability of the Trust is limited as follows:
1. The total liability of the Trust under all coverages and endorsements for all damages, including, but not limited to, damages for derivative claims, or taxable costs, attorneys fees, and prejudgment interest or post-judgment interest, sustained by one person or organization as the result of any one occurrence shall not exceed \$1,000,000 bodily injury by accident per accident, \$1,000,000 bodily injury by disease per disease, and \$1,000,000 bodily injury by disease aggregate limits;
 2. The total aggregate liability of the Trust under all coverages for all damages, including, but not limited to damages for derivative claims, or taxable costs, attorneys' fees, and prejudgment interest or post-judgment interest sustained by more than one person or organization as the result of any one occurrence shall not exceed the limit of liability as stated herein as applicable to "each accident or disease;" and
 3. For the purpose of determining the limit of the Trust's liability, all damages arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence;
- F. The Member and the Trust agree that no liability is afforded by the Trust as follows:
1. To liability assumed by a Member under any contract or agreement;
 2. To any liability arising in whole, or in part out of:
 - (a) Any act or omission of a Member committed while acting outside the course and scope of his employment, or committed in bad faith with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety or property;
 - (b) Any Member obtaining remuneration or financial gain to which the Member was not legally entitled;
 - (c) The willful violation of any federal, state or local law, ordinance or regulation committed by or with the knowledge or consent of any Member; or
 - (d) Malfeasance by any Member;

Except that any fact pertaining to any one Member shall not be imputed to any other Member for the purpose of determining the application of these exclusions;

3. To any liability or injury, sickness, disease, death, or destruction due to the rendering of or failure to render any professional service by any doctor, surgeon, dentist, nurse or agents or employee of a Designated Member;
4. To any liability for punitive or exemplary damages; or any non-compensatory damages or penalties imposed pursuant to any federal or state anti-trust, civil rights, anti-discrimination, or racketeer influence and corrupt organization (RICO) laws;
5. To any damages imposed by act of the Legislature;
6. To bodily injury or property damage for which the Member or his indemnitee may be held liable;
 - (a) As a person or organization engaged in the business or manufacturing, distributing, selling or serving alcoholic beverages, or
 - (b) If not so engaged, as an owner or lessor of premises used for such purposes, if such liability is imposed:
 - i. By, or because of the violation of any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverages, or
 - ii. By reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person.
7. To any liability arising out of any actual or alleged sexual action, abuse, communicable disease or employment related claim, defined for purposes of this exclusion as:
 - (a) Sexual action includes, but is not limited to, any verbal or non-verbal communication, behavior or conduct with sexual connotations or purposes, whether for sexual gratification, discrimination, intimidation, coercion or other purpose, and regardless of whether such action is alleged to be intentional or negligent;
 - (b) Abuse shall include, but is not limited to, the negligent or intentional infliction of physical, emotional or psychological injury or harm to any person or persons in the care, custody, or control of any Member;
 - (c) Communicable disease includes, but is not limited to, Acquired Immune Deficiency Syndrome (AIDS) and any venereal disease; and
 - (d) Employment related claim includes, but is not limited to, claims, accusations or charges of negligent or intentional hiring, placement, training or supervision arising from or related to actual

or alleged sexual action, or any other type of actual or alleged abuse, or a communicable disease;

8. To any liability for injury, loss or damage sustained by any person or entities as a result of exposure to asbestosis or any other disease including mesothelioma and cancer related to asbestos exposure;
9. Bodily injury which is intentionally caused or aggravated by the Member or Members. Coverage is also excluded for any claim alleging gross negligence. Further, cover is also excluded for claims in which it is alleged that the Designated Member or a fellow employee acted in such a manner that it was substantially certain that injury or death would result;
10. Bodily injury to any employee while employed in violation of the law or engaged in any conduct in violation of law with the actual knowledge of any of the executive officers of the Designated Member; and
11. To any obligation imposed by a workers compensation, occupational disease, unemployment compensation or disability benefits law or any similar law.
12. Bodily injury intentionally caused or aggravated by you or which is the result of your engaging in conduct equivalent to an intentional tort, however defined, or other tortuous conduct, such that you lose your immunity from civil liability under the workers compensation laws.

THIS ENDORSEMENT CHANGES THE AGREEMENT. PLEASE READ CAREFULLY

EXPERIENCE RATING MODIFICATION FACTOR ENDORSEMENT

WORKERS' COMPENSATION

It is agreed the Designated Member's coverage provided by the Coverage Agreement to which this endorsement is attached is amended by the following additional terms and conditions. Unless otherwise specified herein, all terms used in this endorsement shall have the meaning set forth in the Coverage Agreement. In the event of a conflict between any of the terms or conditions of the Coverage Agreement and this endorsement, this endorsement will control how coverage shall be applied. All references to "you" or "your(s)," shall mean the Designated Member, and all references to the "Trust," "we," or "our" shall refer to the Florida Municipal Insurance Trust.

The premium charge calculated for the Coverage Agreement will be adjusted by an experience rating modification factor ("Mod Factor"). If the Mod Factor was not available when the policy was issued, the Mod Factor included at the time of coverage proposal or Coverage Agreement inception, if any, was an estimate.

If a different Mod Factor is later determined to be proper for your workers' compensation coverage, we will apply the proper Mod Factor and any resulting premium change will become a required condition of your Coverage Agreement, applicable according to the following terms:

1. If the Mod Factor adjustment is an increase over the initial Mod Factor, it will apply as of the policy effective date and your premium will be calculated:
 - a. Retroactively to the effective date of the policy or to the anniversary rating date if the adjustment is within the first 90 days of the policy period or the anniversary rating date; or
 - b. On a pro rata basis if the adjustment is more than 90 days after the effective date of the policy or the anniversary rating date;
2. The Mod Factor adjustment will be retroactive to the effective date of the policy period when:
 - a. The change in experience modification is the result of a revision in your classifications; or
 - b. The delay in the calculation of the experience modification is due to your failure to make available all your records for examination and audit as provided in the Coverage Agreement; or
4. If the Mod Factor adjustment is a decrease from the initial Mod Factor, it will apply retroactively to the policy effective date or the anniversary rating date if different from the policy effective date and any resulting premium credit shall be applied accordingly.
5. The due date for any retrospective premium/contribution determined pursuant to this endorsement, any audit or otherwise shall be at the date and time specified in the billing notice issued by FMIT.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY EXTENSION OF INFORMATION PAGE ITEM 4. CONTINUED		Policy No. FMIT #0033			
		Page No. 1			
CLASSIFICATION OF OPERATIONS	CODE NO.	Estimated Total Annual Remuneration	Rates Per \$100 of Remuneration	Estimated Annual Premiums	
				Subject to Modification	All Other
FL-9 Intrastate I.D.: 094388058 LOC. 1 Employees: 104 NAICS: 921190 Total Payroll: 6,242,447 FL From 10/01/2020 To 10/01/2021					
Street or Road Maintenance or Beautification & Drivers	5509	355,308	10.17000	36,135	
Waterworks Operation & Drivers.	7520	108,454	3.58000	3,883	
Police Officers & Drivers	7720	2,540,809	3.43000	87,150	
Salespersons or Collectors-Outside	8742	189,826	0.35000	664	
Clerical Office Employees NOC.	8810	2,050,677	0.17000	3,486	
Bridge or Vehicular Tunnel Operation & Drivers.	9019	362,258	2.95000	10,687	
Park NOC-All Employees & Drivers.	9102	392,505	4.13000	16,210	
Municipal, Township, County, or State Employee NOC.	9410	242,610	2.61000	6,332	
AR Adjustment			1.11150	18,347	
Employer Safety Premium Credit	9765		0.02000	-3,658	
Drug-Free Workplace Credit	9841		0.05000	-8,962	
Total After Credits				170,274	
Experience Modification Final	9898		0.85000	-25,541	
Deviation	9034		0.94000	8,684	
STANDARD PREMIUM				136,049	
Advance Discount	0063			-11,470	
Normal Premium				124,579	
Expense Constant	0900				160
IncentiveCredit				-56,104	
Net Premium				68,571	
Terrorism Risk Insurance Act	9740		-		0

FLORIDA TERRORISM RISK INSURANCE PROGRAM REAUTHORIZATION ACT ENDORSEMENT

This endorsement addresses requirements of the Terrorism Risk Insurance Act of 2002 as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2015.

Definitions

The definitions provided in this endorsement are based on and have the same meaning as the definitions in the Act. If words or phrases not defined in this endorsement are defined in the Act, the definitions in the Act will apply.

1. "Act" means the Terrorism Risk Insurance Act of 2002, which took effect on November 26, 2002, and any amendments, including any amendments resulting from the Terrorism Risk Insurance Program Reauthorization Act of 2015.
2. "Act of Terrorism" means any act that is certified by the Secretary of the Treasury, in consultation with the Secretary of Homeland Security, and the Attorney General of the United States as meeting all of the following requirements:
 - a. The act is an act of terrorism.
 - b. The act is violent or dangerous to human life, property or infrastructure.
 - c. The act resulted in damage within the United States, or outside of the United States in the case of the premises of United States missions or certain air carriers or vessels.
 - d. The act has been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.
3. "Insured Loss" means any loss resulting from an act of terrorism (including an act of war, in the case of workers compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if the loss occurs in the United States or at the premises of United States missions or to certain air carriers or vessels.
4. "Insurer Deductible" means, for the period beginning on January 1, 2015, and ending on December 31, 2020, an amount equal to 20% of our direct earned premiums, during the immediately preceding calendar year.

Limitation of Liability

The Act may limit our liability to you under this policy. If aggregate Insured Losses exceed \$100,000,000,000 in a calendar year and if we have met our Insurer Deductible, we may not be liable for the payment of any portion of the amount of Insured Losses that exceeds \$100,000,000,000; and for aggregate Insured Losses up to \$100,000,000,000, we may only have to pay a pro rata share of such Insured Losses as determined by the Secretary of the Treasury.

Policyholder Disclosure Notice

1. Insured Losses would be partially reimbursed by the United States Government. If the aggregate industry Insured Losses exceed:
 - a. \$100,000,000, with respect to such Insured Losses occurring in calendar year 2015, the United States Government would pay 85% of our Insured Losses that exceed our Insurer Deductible.
 - b. \$120,000,000, with respect to such Insured Losses occurring in calendar year 2016, the United States Government would pay 84% of our Insured Losses that exceed our Insurer Deductible.
 - c. \$140,000,000, with respect to such Insured Losses occurring in calendar year 2017, the United States Government would pay 83% of our Insured Losses that exceed our Insurer Deductible.
 - d. \$160,000,000, with respect to such Insured Losses occurring in calendar year 2018, the United States Government would pay 82% of our Insured Losses that exceed our Insurer Deductible.
 - e. \$180,000,000, with respect to such Insured Losses occurring in calendar year 2019, the United States Government would pay 81% of our Insured Losses that exceed our Insurer Deductible.
 - f. \$200,000,000, with respect to such Insured Losses occurring in calendar year 2020, the United States Government would pay 80% of our Insured Losses that exceed our Insurer Deductible.

2. Notwithstanding item 1 above, the United States Government may not have to make any payment under the Act for any portion of Insured Losses that exceed \$100,000,000,000.
3. The premium charged for the coverage for Insured Losses under this policy is included in the amount shown in Item 4 of the Information Page or the Schedule below.

Schedule

Rate per \$100 of Remuneration

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 10/01/2020
Insured Town of Bay Harbor Islands

Policy No. 0033-W20

Endorsement No.
Premium

Insurance Company
Florida Municipal Insurance Trust

Countersigned by _____

VOLUNTARY COMPENSATION AND EMPLOYERS LIABILITY COVERAGE ENDORSEMENT

This endorsement adds Voluntary Compensation Insurance to the policy.

A. How This Insurance Applies

This insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must be sustained by an employee included in the group of employees described in the Schedule.
2. The bodily injury must arise out of and in the course of employment necessary or incidental to work in a state listed in the Schedule.
3. The bodily injury must occur in the United States of America, its territories or possessions, or Canada, and may occur elsewhere if the employee is a United States or Canadian citizen temporarily away from those places.
4. Bodily injury by accident must occur during the policy period.
5. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

B. We Will Pay

We will pay an amount equal to the benefits that would be required of you if you and your employees described in the Schedule were subject to the workers compensation law shown in the Schedule. We will pay those amounts to the persons who would be entitled to them under the law.

C. Exclusions

This insurance does not cover:

1. any obligation imposed by a workers compensation or occupational disease law, or any similar law.
2. bodily injury intentionally caused or aggravated by you.

D. Before We Pay

Before we pay benefits to the persons entitled to them, they must:

1. Release you and us, in writing, of all responsibility for the injury or death.
2. Transfer to us their right to recover from others who may be responsible for the injury or death.
3. Cooperate with us and do everything necessary to enable us to enforce the right to recover from others.

If the persons entitled to the benefits of this insurance fail to do those things, our duty to pay ends at once. If they claim damages from you or from us for the injury or death, our duty to pay ends at once.

E. Recovery From Others

If we make a recovery from others, we will keep an amount equal to our expenses of recovery and the benefits we paid. We will pay the balance to the persons entitled to it. If the persons entitled to the benefits of this insurance make a recovery from others, they must reimburse us for the benefits we paid them.

F. Employers Liability Insurance

Part Two (Employers Liability Insurance) applies to bodily injury covered by this endorsement as though the State of Employment shown in the Schedule were shown in Item 3.A. of the Information Page.

Schedule

Employees**State of Employment****Designated Workers
Compensation Law**

All officers and employees not
subject to the Workers
Compensation Law except
Masters or members of the crew
of any vessel

Florida

State of Hire

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement 10/01/2020
Insured Town of Bay Harbor Islands

Effective Policy No. 0033-W20 Endorsement No.
Premium

Insurance Company
Florida Municipal Insurance Trust

Countersigned by _____

FLORIDA MUNICIPAL INSURANCE TRUST
WORKERS COMPENSATION CHANGE ENDORSEMENT

THIS ENDORSEMENT FORMS A PART OF THE AGREEMENT NUMBERED BELOW:

MEMBER'S NAME AND MAILING ADDRESS	FMIT NUMBER	COVERAGE PERIOD
Town of Bay Harbor Islands 9665 Bay Harbor Terrace Bay Harbor Islands, FL 33154	FMIT #0033	October 1, 2020 to October 1, 2021

IT IS HEREBY NOTED AND AGREED THAT THE FOLLOWING CHANGES ARE MADE:

CHANGES

Effective January 1, 2021

The attached Florida Terrorism Risk Insurance Program Reauthorization Act Endorsement (WC 09 04 03 C) amends the effective date and hereby replaces form WC 09 04 03 B.

Non-premium bearing endorsement.

	ADDITIONAL	RETURN
PREMIUM	\$0	\$0

THE ADDITIONAL/RETURN PREMIUM IS INCLUDED IN THE ATTACHED BILLING INVOICE

ENDORSEMENT #: 1
INITIALS: SNAUGHTON
DATE: 01/11/2021

Florida Terrorism Risk Insurance Program Reauthorization Act Endorsement

This endorsement addresses requirements of the Terrorism Risk Insurance Act of 2002 as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2019.

Definitions

The definitions provided in this endorsement are based on and have the same meaning as the definitions in the Act. If words or phrases not defined in this endorsement are defined in the Act, the definitions in the Act will apply.

1. "Act" means the Terrorism Risk Insurance Act of 2002, which took effect on November 26, 2002, and any amendments, including any amendments resulting from the Terrorism Risk Insurance Program Reauthorization Act of 2019.
2. "Act of Terrorism" means any act that is certified by the Secretary of the Treasury, in consultation with the Secretary of Homeland Security, and the Attorney General of the United States, as meeting all of the following requirements:
 - a. The act is an act of terrorism.
 - b. The act is violent or dangerous to human life, property, or infrastructure.
 - c. The act resulted in damage within the United States, or outside of the United States in the case of the premises of United States missions or certain air carriers or vessels.
 - d. The act has been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.
3. "Insured Loss" means any loss resulting from an act of terrorism (including an act of war, in the case of workers compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if the loss occurs in the United States or at the premises of United States missions or to certain air carriers or vessels.
4. "Insurer Deductible" means, for the period beginning on January 1, 2021, and ending on December 31, 2027, an amount equal to 20% of our direct earned premiums during the immediately preceding calendar year.

Limitation of Liability

The Act may limit our liability to you under this policy. If aggregate Insured Losses exceed \$100,000,000,000 in a calendar year and if we have met our Insurer Deductible, we may not be liable for the payment of any portion of the amount of Insured Losses that exceeds \$100,000,000,000; and for aggregate Insured Losses up to \$100,000,000,000, we may only have to pay a pro rata share of such Insured Losses as determined by the Secretary of the Treasury.

Policyholder Disclosure Notice

1. Insured Losses would be partially reimbursed by the United States Government. If the aggregate industry Insured Losses occurring in any calendar year exceed \$200,000,000, the United States Government would pay 80% of our Insured Losses that exceed our Insurer Deductible.
2. Notwithstanding item 1 above, the United States Government may not have to make any payment under the Act for any portion of Insured Losses that exceed \$100,000,000,000.
3. The premium charged for the coverage for Insured Losses under this policy is included in the amount shown in Item 4 of the Information Page or the Schedule below.

Schedule

Rate per \$100 of Remuneration

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective
Insured

Policy No.

Endorsement No.
Premium

Insurance Company

Countersigned by _____

AGENDA ITEM REPORT

September 9, 2021

ITEM NUMBER: 5.

ITEM: Consideration and Approval of Change Order #1 by Jones-Benitez Engineering for BC - 156 Repair of Snapped Tendons in a Concrete U-Channel under the Indian Creek Bridge (Project approved by Town Council on May 12, 2021) in the amount of \$79,051.00 to mobilize and work at night to avoid traffic congestion. Attached please find supporting documentation.

DESCRIPTION:

On May 12, 2021, the Town Council awarded BC - 156 (Rehabilitation of Snapped tendons in a Pre-stressed U-channel Section on Bridge 875103) to Jones-Benitez Corporation (JBC) in the amount of \$195,175.20. Both the Town and the Engineer of Record presumed that all work would be performed under the bridge during normal working hours. During the preconstruction meeting, it was determined that JBC could not perform the work during regular business hours without affecting bridge traffic by closing the north, westbound lane daily. The conclusion was made during the preconstruction meeting and JBC was asked to present additional pricing for all work to be performed at night (8 P.M. to 4 A.M.).

The proposed change order is included in the attachments. All work shall be performed at night with the north sidewalk closed 24/7 and the north, westbound lane closure to be removed by the end of the shift (4 A.M.) daily. There is a cost differential for nighttime work provided by JBC which adds \$79,051.00 to the awarded cost. Other supporting documentation is attached.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

This project is to commence in September, 2021, but not completed until mid-October. Public Works will seek that funding for this project is carried forward to the next fiscal year (21-22).

BUDGET IMPACT:

Name	Impact Date	Fund(s)	Account(s)	Project #s)	Amount Budgeted
Repair of Snapped Tendons in a Concrete U-Channel - Project Approved	5/12/2021	\$195,175.20	401-541.5-400063.000	BC 156	\$350,000.00
Change Order No. 1 - U-channel section of the Indian Creek Bridge #875103.	9/9/2021	\$79,051.00	401-541.5-400063.000	BC-156	\$0.00

Submitted By:

Douglas Armstrong, Public Works Director
Maria Lasday, Town Manager

ATTACHMENTS

1. ORIGINAL SIGNED CONTRACT BHI 156 JBC
2. ORIGINAL AGENDA ITEM DETAILS BC-156
3. APPROVAL OF ORIGINAL AGENDA ITEM DETAILS BC -165
4. BHI CO Night Shift Differential Supplemental to Contract BC-156 ICW Bridge Repair
30AUG21
5. LAKES (BCC) ENGINEERING REVIEW OF PRICING CHANGE BY
JONES_BENITEZ 30AUG21

AGREEMENT (CONTRACT)

BETWEEN OWNER AND CONTRACTOR

THIS AGREEMENT is dated as of the 15TH day of JUNE, in the year 2021, by and between the Town of Bay Harbor Islands (hereinafter called OWNER), and JONES BENITEZ CORPORATION (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1 WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Provide structural strengthening to the damaged pre-stressed U Channel that supports the sewer force main over the Indian Creek River. The U Channel may have been impacted by a vessel navigating under the bridge and caused the concrete cover to the pre-stressed tendons to be broken off; it is not clear whether the snapped pre-stressed tendons occurred at the time of impact or if the exposed tendons deteriorated over time to the point that they snapped.

The work includes furnishing all materials, labor, equipment, and services for the supply, installation and finish of all structural strengthening using an externally bonded FRP composite system.

The Project, for which the Work under the Contract Documents may be the whole, or only a part, is generally described as follows:

TOWN OF BAY HARBOR ISLANDS

BC 156 "Rehabilitation of Snapped Tendons in a Pre-stressed
U-Channel Section on Bridge 875103"

Article 2 NOT APPLICABLE

Article 3 CONTRACT TIME

- 3.1 The Work will be substantially completed within 96 CALENDAR days after the date that the Contract Time commences to run, as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within 126 CALENDAR days after the date when the Contract Time commences to run.
- 3.2 Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not substantially complete within the time specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not substantially complete on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree, that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER Two Hundred and 00/100 dollars (\$200) for each day that expires after the time specified in Paragraph 3.1 for substantial completion until the Work is substantially complete. Liquidated damages shall be deducted from the final CONTRACTOR pay request.

Article 4 CONTRACT PRICE

- 4.1 OWNER shall pay CONTRACTOR for performance of the Work in accordance with the Contract Document and the Schedule of Values provided for payment request purposes in current funds as follows:

Contract Price \$195,175.20

Contract Price (in Words) ONE HUNDRED NINETY FIVE THOUSAND ONE HUNDRED SEVENTY FIVE AND 20/100 DOLLARS

Article 5 PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for payment will be processed as provided in the General Conditions.

- 5.1 Progress Payments. TOWN shall make progress payments within 30 days of TOWN approval of the CONTRACTOR'S Application for payment. The Applications for Payment shall be in AIA format. All progress payments will

be on the basis of the progress of the Work measured by the schedule of values provided for in paragraph 14.01 of the General Conditions.

5.1.1 Prior to Substantial Completion, progress payments will be in an amount equal to: 90% of the Work completed, less the aggregate of payments previously made.

5.1.2 Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 95% of the Contract Price, less such amounts determined in accordance with paragraph 14.02.B.5 of the General Conditions.

5.2 Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 14.07.B.1 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended in said paragraph 14.07.B.1.

Article 6 INTEREST

Not Applicable

Article 7 CONTRACTOR'S REPRESENTATIONS

In order to induce TOWN to enter into Procurement Agreement, CONTRACTOR makes the following representations:

- 7.1 CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the work.
- 7.2 CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon in the preparation of the Drawings and Specifications and which have been identified in the Supplementary Conditions.
- 7.3 CONTRACTOR has made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in paragraph 7.2 as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by CONTRACTOR for such purposes.

- 7.4 CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports, and data with the terms and conditions of the Contract Documents.
- 7.5 CONTRACTOR has given TOWN written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by OWNER is acceptable to CONTRACTOR.

Article 8 CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR are attached to this Agreement, made a part hereof and consists of the following:

- 8.1 This Agreement
- 8.2 Exhibits to this Agreement
- 8.3 Performance and Payment Bonds
- 8.4 Notice of Award
- 8.5 General Conditions
- 8.6 Supplementary Conditions
- 8.7 Technical Specifications
- 8.8 Contract Drawings
- 8.9 Addendum (if any)
- 8.10 CONTRACTOR'S BID
- 8.11 Documentation submitted by CONTRACTOR prior to Notice of Award
- 8.12 Any Modifications, including Change Orders, duly delivered after execution of Agreement.

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be altered, amended or repealed by a Modification (as defined in Section 1 of the General Conditions).

Article 9 MISCELLANEOUS

- 9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.

- 9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 9.3 TOWN and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 9.4 This Contract may be executed in counterparts.
- 9.5 Should there be any action brought to enforce the terms of this Contract, the prevailing party shall be entitled to recovery of attorney's fees (including paralegal fees) incurred through mediation, arbitration, or the appellate processes.
- 9.6 The TOWN shall retain the ownership of all shop drawings and design drawings once payment therefore is made.
- 9.7 TOWN and CONTRACTOR hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect to any action or proceeding based upon the Contract Documents or arising out of, under, or in connection with the work or the Project.

IN WITNESS WHEREOF, the parties hereto have signed TWO (2) copies of this Agreement. At least one counterpart each has been delivered to TOWN and CONTRACTOR. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR.

OWNER

CONTRACTOR

Town of Bay Harbor Islands

ADDRESS

ADDRESS

9665 Bay Harbor Terrace

Bay Harbor Islands, FL 33154

BY

Maria Casday

MARIA CASDAY

Print Name

Town MANAGER

Title

BY

Print Name

Title

WITNESS

MayThe Martin

(CORPORATE SEAL)

WITNESS

(CORPORATE SEAL)

IN WITNESS WHEREOF, the parties hereto have signed TWO (2) copies of this Agreement. At least one counterpart each has been delivered to TOWN and CONTRACTOR. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR.

OWNER

Town of Bay Harbor Islands

ADDRESS

9665 Bay Harbor Terrace

Bay Harbor Islands, FL 33154

BY

Maria Casday

MARIA CASDAY
Print Name

Town Manager
Title

WITNESS

MayThe Martin

(CORPORATE SEAL)

CONTRACTOR

Jones Benitez Corporation

ADDRESS

12605 NW 115th Avenue, B-101

Medley, Florida 33178

BY

Yvette Benitez

Yvette Benitez, PE
Print Name

President
Title

WITNESS

[Signature]

(CORPORATE SEAL)





Douglas Armstrong

From: noreply@civicclerk.com <donotreply@civicclerk.com>
Sent: Tuesday, April 27, 2021 5:09 PM
To: Douglas Armstrong
Subject: CivicClerk Notification - Agenda Item Initiated

The following agenda item has been initiated.

Agenda: Regular Council Meeting - May 12, 2021

Agenda CutOff Date: 4/28/2021

Agenda CutOff Time: 5:00 PM

Agenda Item Details

Agenda Item: Consideration and approval to award , to Jones-Benitez Corporation in the amount of \$195,175.20. Bid documentation and other supporting documents are attached.

Agenda Item ID: 2021-1395

Agenda Item Category: Action Item

Department: Public Works

Sponsors:
Maria Lasday, Town Manager

[Click to View Agenda Item](#)

Total Control Panel

[Login](#)

To: darmstrong@bayharborislands-fl.gov Message Score: 1
From: bounces+7288047-ed11-darmstrong=bayharborislands-fl.gov@em5364.civicclerk.com My Spam Blocking Level: High
[Block](#) this sender
[Block](#) em5364.civicclerk.com

High (60): **Pass**
Medium (75): **Pass**
Low (90): **Pass**

This message was delivered because the content filter score did not exceed your filter level.

Douglas Armstrong

From: noreply@civicclerk.com <donotreply@civicclerk.com>
Sent: Friday, May 14, 2021 1:27 PM
To: Douglas Armstrong
Cc: Douglas Armstrong; Jose Custodio
Subject: CivicClerk Notification - Task has been assigned

Follow Up Flag: Follow up
Flag Status: Completed

New task has been assigned for the following Agenda and Agenda Item.

Agenda: Regular Council Meeting - May 12, 2021

Agenda Date: 5/12/2021

Task: Contract Award to Jones Benitez for BC 156 was approved as presented.

Agenda Item Details

Agenda Item: **Consideration** and **Approval** of a contract award to Jones-Benitez Corporation in the amount of \$195,175.20 for project No. BC 156 for the Rehabilitation of Snapped Tendons in a Pre-stressed U-channel Section of Bridge 875103 (Indian Creek Bridge). Enclosed is a copy of the bid results and other supporting documents.

Agenda Item ID: 2021-1395

Agenda Item Category: Action Item

Department: Public Works

[Click to View Agenda Item](#)

Total Control Panel

[Login](#)

To: darmstrong@bayharborislands-fl.gov
From: bounces+7288047-ed11-darmstrong=bayharborislands-fl.gov@em5364.civicclerk.com

Message Score: 1
My Spam Blocking Level: High
[Block](#) this sender
[Block](#) em5364.civicclerk.com

High (60): **Pass**
Medium (75): **Pass**
Low (90): **Pass**

This message was delivered because the content filter score did not exceed your filter level.



Date: August 30, 2021

Project Name: Rehabilitation of Snapped Tendons in a Pre-stressed U-Channel Section on Bridge 875103

Contract No: BC-156

Description: Additional Work to swap to Night Shift for 30 days. Includes premium for all labor with 20% productivity reduction for night shift. Officers reduced to 1 per shift.				
DESCRIPTION	QTY	UM	Unit Price	Item Totals
Labor				\$ 33,840.00
Foreman/Supervisor OT	144.00	MH	\$ 55.00	\$ 7,920.00
Carpenter OT	864.00	MH	\$ 30.00	\$ 25,920.00
				\$ -
Equipment				\$ 11,600.00
Light Plants	3.00	EA	\$ 1,200.00	\$ 3,600.00
Additional Barge for light towers	1.00	MO	\$ 8,000.00	\$ 8,000.00
Subcontractors				\$ 22,800.00
Off Duty	240.00	HR	\$ 80.00	\$ 19,200.00
Crane OT	24.00	HR	\$ 150.00	\$ 3,600.00
Permanent Material				\$ -
Consumable Material				\$ 500.00
Additional Supplies for night	1.00	LS	\$ 500.00	\$ 500.00
General Contractor Mark-up				\$ 10,311.00
Total				\$ 79,051.00

Douglas Armstrong

From: Eugenio Ochoa <eochoa@bcceng.com>
Sent: Monday, August 30, 2021 3:50 PM
To: Douglas Armstrong; William Garcia
Subject: RE: Statement from BCC

Follow Up Flag: Follow up
Flag Status: Flagged

Doug, as requested see below:

- The contract documents originally contemplated the project to be constructed utilizing daytime single lane closures from Monday through Friday from 9am to 4pm.
- It is important to note that the Contract Documents were slated to be let some time ago before schools were in session but because of unforeseen circumstances such as Covid and was deferred.
- The submitted bid price by the Contractor also priced the project to the schedule times in bullet one above. During the Pre-Construction Meeting, the contractor verbally noted that the request of night time was a burden that they would pass down to the Town. Accordingly the Town requested contractor provide a price for the additional costs associated with moving the construction operations that required lane closures to nighttime operations.
- This request was made in an effort to mitigate the traffic and congestion impacts to the traveling public by moving the lane closures to periods of substantially reduced traffic given the change of letting for the construction of the project.
- BCC has reviewed the construction documents and finds the submitted change order request to be just as moving the activities requiring lane closures to nighttime operations substantially increases costs. These increased costs include loss of productivity, increases in the equipment required, and the use of an Off-Duty Law Enforcement Officer to be present during all lane closures. BCC also finds the additional costs included within the submitted change order request to be reasonable.

Eugenio L. Ochoa, P.E.
Vice President



Florida | Georgia | Texas | Puerto Rico
6401 SW 87th Avenue, Suite 200
Miami, Florida 33173
t. 305.670.2350 | m. 305.525.6345 | www.bcceng.com

AGENDA ITEM REPORT

September 9, 2021

ITEM NUMBER: 6.

ITEM: Consideration and approval of an ordinance on second reading amending Chapter 7 of the Town Code to require Knox Boxes at all new and existing residential buildings. Enclosed is a copy of the proposed ordinance.

DESCRIPTION:

The purpose of the proposed ordinance is for the Town Council to consider requiring certain structures to have a key lock box installed on the exterior of the structure to aid the Bay Harbor Islands Police Department in gaining access to or within a structure, when responding to calls for emergency service; and to aid access into or within a building that is secured or is unduly difficult to gain entry, due to being unoccupied or if the occupants are unable to respond.

All multi-family residential structures will be required to be in compliance with the Knox Box regulations within six (6) months of the effective date of this ordinance.

Enclosed is a copy of the proposed ordinance.

PREVIOUS MEETING VOTE:

COUNCIL VOTE			
NAME	FOR	AGAINST	ABSENT
Mayor J. Fuller	X		
Vice Mayor E. Tricoche			X
Council Member S. Bruder	X		
Council Member M. Diallo	X		
Council Member J. Leonard	X		
Council Member I. Salver	X		
Council Member Robert Yaffe	X		

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba L. Chang, Town Clerk
Maria Lasday, Town Manager

ATTACHMENTS

1. 08.02.2021 Ordinance - Knox Boxes

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA AMENDING CHAPTER 7 OF THE TOWN'S ADOPTED CODE OF ORDINANCES ENTITLED "FIRE PROTECTION AND PREVENTION"; AND SPECIFICALLY ADDING SECTION 7-33 TO REQUIRE KNOX BOXES AT NEW AND EXISTING RESIDENTIAL BUILDINGS; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR CONFLICT AND REPEALER; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The Town of Bay Harbor Islands has determined that the health, safety, and welfare of the citizens and business owners of the Town are promoted and safeguarded by requiring certain structures to have key lock box installed on the exterior of the structure to aid the Town's Police Department in gaining access to the structure, when the same is not occupied or when the occupants are unable to grant ingress to the Police Department; and

WHEREAS, the benefits of installing Knox Boxes including providing immediate emergency access to police officers leading to increase police department efficiency; preventing costly forced entry damage and allowing undamaged doors to be re-secured after the emergency; and protecting property, inventory, equipment, and supplies, as well as police officers against possible injuries; and

WHEREAS, an ordinance is necessary to require residential buildings to install Knox Boxes.

NOW, THEREFORE, BE IT ENACTED BY THE TOWN COUNCIL OF THE BAY HARBOR ISLANDS, FLORIDA, THAT CHAPTER 7 OF THE TOWN CODE BE AMENDED TO CREATE SECTION 7-33 OF THE TOWN CODE AS FOLLOWS:

Section 1: The foregoing recitals are adopted and hereby incorporated as if fully set forth herein.

Section 2: That is any section, paragraph, sentence or word of this Ordinance or the application thereof to any person or circumstance is held invalid, that the invalidity shall not affect the other sections, paragraphs, sentences, words or application of this Ordinance.

Section 3: That it is the intention of the Town Council of the Town of Bay Harbor Islands, and it is therefore ordained, that the provisions of the Ordinance shall become and be made a part of the Town of Bay Harbor Islands' Code of Ordinances, that sections of this Ordinance may be re-numbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 4: That all Ordinances, parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith be and the same are hereby repealed to the extent of such conflict.

Section 5: That this Ordinance shall be in full force and take effect immediately upon its passage and adoption.

PASSED on First Reading this ____ day ____, 2021.

PASSED AND ADOPTED on Second Reading this ____ day of ____, 2021.

JOSHUA D. FULLER
MAYOR

ATTEST:

ALBA L. CHANG
TOWN CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

JOSEPH S. GELLER, ESQ.
TOWN ATTORNEY

EXHIBIT “A”

The Town of Bay Harbor Islands, Florida Code of Ordinances is hereby amended as follows:

CHAPTER 7

FIRE PROTECTION AND PREVENTION

The following new Zoning Code Definitions are hereby adopted.

Section 7-33. – Knox Box.

For residential and other locations with restricted access through lock gates is hereby created.

A. Purpose. The Council of the Town of Bay Harbor Islands, Florida, has determined that the health, welfare, and safety of the citizens and business owners of Bay Harbor Islands are promoted by requiring certain structures to have a key lock box installed on the exterior of the structure to aid the Bay Harbor Islands Police Department in gaining access to or within a structure, when responding to calls for emergency service, and to aid access into or within a building that is secured or is unduly difficult to gain entry, due to being unoccupied or if the occupants are unable to respond.

B. Definitions.

- 1. Knox Box** means a secure rapid entry system used by Police Department Personnel in the event of an emergency to enter a structure by using the enclosed owner provided key(s). All boxes shall be UL (Underwriters Laboratories) certified and approved by the Town.
- 2. Multiple-Family Residential Structure** means a structure comprised of three (3) or more units used primarily for a dwelling house.

C. Knox Box Required for Multiple-Family Residential Structures. All multiple-family residential structures that have restricted access through gates or doors and have a common corridor for access to the living units shall have installed a Knox Box 3200 series or 1650 series in a location specified by the Town’s Police Chief or Building Official within six (6) months of the effective date of this Ordinance.

D. Knox Box Contents. All Knox Boxes shall contain labeled keys, easily identified in the field to provide access into the property and/or building, and to any locked areas within the said building as the Town’s Police Chief may direct. The operator of the building shall immediately notify the Police Chief or Building Official when any locks are added, changed, or rekeyed, which cannot be opened by the current key set in the Knox Box. Additional keys should be added to the Knox Box immediately. The contents of the Knox Box should include (but not limited to) the following:

- 1. Keys to locked points of ingress or egress, whether on the interior or exterior of such buildings.**
- 2. Building Access Cards, as needed, or combinations to locks, if needed.**
- 3. Keys to any other areas as requested by the Police Chief or Building Official.**

E. Installation and Location. All Knox Boxes shall be recess mounted into the building/structure at a height of not less than six (6) feet above the ground (surface grade) nor more than eight (8) feet above the ground (surface grade). The “face plate” of the Knox Box shall be flushed with the exterior façade of the structure/building. All Knox Boxes shall be located directly above (or as close as reasonably possible to) the main entrance to the structure/building.

F. Police Department’s Responsibilities. Every police department personnel shall carry a Knox Box Master Key, readily available for an emergency scene.

G. Penalties.

- 1. Any property or building owner who fails to comply with or violates the terms of this Ordinance after notice from the Town shall be subject to a fine of not more than Five Hundred Dollars (\$500.00), and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent The Town of Bay Harbor Islands or other**

appropriate authority from taking such other lawful action as is deemed necessary to prevent or remedy any violation.

If any sentence, clause, or section or any part of this Ordinance is for any reason found to be unconstitutional, illegal, or invalid, such constitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, or sections or parts of the same contained in this Ordinance.

DRAFT

AGENDA ITEM REPORT

September 9, 2021

ITEM NUMBER: 7.

ITEM: Consideration and Approval of an ordinance on first reading requested by Council Member Yaffe amending Section 5-19.3 of the Town Code regarding the emergency power generators. Enclosed is a copy of the proposed ordinance.

DESCRIPTION:

The proposed ordinance is being sponsored by Council Member Yaffe for the Town Council's consideration. The purpose of the proposed code amendment is to allow landscaping to serve as a primary buffer, subject to limitations.

Town Planner, Michael Miller researched the Town's existing land development regulations concerning Emergency Power Generators ("EPG"), researched other municipalities' regulations, assembled reference documents on screening mechanical equipment including EPG, and has provided some photos as supporting documents for your review.

The Town currently has regulations that specify the location and screening of the EPG and other mechanical equipment, such as A/C units and pool pumps. In addition, the Code allows for mechanical equipment in the setback areas subject to screening them from street and adjoining neighbors. The current Code for EPG's focuses on single-family residential installations and requires minimum setbacks and mandatory screening by neighbors, fence or wall, and supplemental landscaping. Since mechanical equipment is noisy and unattractive, virtually all cities heavily restrict their locations and mandate screening. Two similar cities now ban all mechanical equipment in side yards entirely. Landscaping alone is usually insufficient for visual screening and does nothing for noise. Because EPG's are so large and must be elevated to meet FEMA BFE requirements, they are now more imposing and not easily screened anymore.

The Town has received several Building Permit requests for EPG and some owners have objected to the Town's existing regulations – mostly the fence / wall mandate.

The proposed ordinance would also address multi-family and commercial installations for EPG's. These EPG units are typically much larger and noisier – but are usually installed inside an enclosed building room – but the exhaust is vented outdoors. The Town has received some complaints from nearby residents about the noise and exhaust locations from EPG's. The Town has insisted that some EPG installations include additional insulation and noise reduction methods, extra exhaust mufflers and reorientation.

Enclosed is a copy of the proposed ordinance and other supporting documents.

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba L. Chang, Town Clerk
 Robert Yaffe, Council Member

ATTACHMENTS

1. 09.03.2021 BHI EPG Screening Draft Ord
2. BHI EPG Screening TC Staff Report Aug 24 2021
3. Installing Mechanical Equipment & Utilites Doc
4. BHI EPG Examples
5. Sample GB Mechanical Equip Screening Report
6. Sample Mechanical Equipment Screening Guidelines

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING THE TOWN'S CODE OF ORDINANCES AS RELATED TO EMERGENCY POWER GENERATOR (EPG) LOCATIONS AND SCREENING; AMENDING CHAPTER 5 ENTITLED BUILDING AND CONSTRUCTION; AMENDING SECTION 5-19.3 OF ARTICLE 1 ENTITLED EMERGENCY POWER GENERATORS; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR CONFLICT AND REPEALER; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council periodically studies various land development trends and issues, and if felt to be appropriate amends the Town's Land Development Code regulations accordingly; and

WHEREAS, the Town Council has examined the current Building and Construction Code provisions of the Town and find that certain modifications are necessary and desirable to clarify acceptable installation locations, and acceptable types of screening requirements for emergency power generators, due to their noise and visual impacts, by modifying the existing criteria in the Town Code for emergency power generators during disasters and temporary power outages; and

WHEREAS, the Town retains the services of urban planning professionals to study land development activities and land development regulations and recommend strategies and Code modifications to address identified problems; and

WHEREAS, the Town recognizes that the current Building and Construction Code provisions are not clear to the public or staff and do not address various site conditions; and

WHEREAS, the Town Council has received input from Town residents, contractors and staff related to this matter to assist in the adoption of reasonable screening regulations; and

WHEREAS, the Town Council held duly advertised public meetings to consider the proposed modifications to the Town's Building and Construction Code regulations.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA:

Section 1: The foregoing recitals are adopted and hereby incorporated as if fully set forth herein.

Section 2: That the Town of Bay Harbor Islands Building and Construction Code is hereby amended to modify Section 5.19.3 related to the acceptable location and screening requirements for emergency power generators, as more fully set forth in the attached Exhibit "A", and by reference are made a part hereof.

Section 3: That is any section, paragraph, sentence or word of this Ordinance or the application thereof to any person or circumstance is held invalid, that the invalidity shall not affect the other sections, paragraphs, sentences, words or application of this Ordinance.

Section 4: That it is the intention of the Town Council of the Town of Bay Harbor Islands, and it is therefore ordained, that the provisions of the Ordinance shall become and be made a part of the Town of Bay Harbor Islands' Code of Ordinances, that sections of this Ordinance may be re-numbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5: That all Ordinances, parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith be and the same are hereby repealed to the extent of such conflict.

Section 6: That this Ordinance shall be in full force and take effect immediately upon its passage and adoption.

PASSED on First Reading this ____ day of _____, 2021.

PASSED on Second Reading this ____ day of _____, 2021.

JOSHUA D. FULLER
MAYOR

ATTEST:

ALBA L. CHANG, CMC
TOWN CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

JOSEPH S. GELLER, ESQ.
GREENSPOON MARDER, LLP
TOWN ATTORNEY

Exhibit "A"

Amendments to the Town of Bay Harbor Islands Buildings and Construction Code

Chapter 5 - BUILDINGS AND CONSTRUCTION

ARTICLE I. - IN GENERAL

Sec. 5-19.3. - Emergency power generators.

Emergency power generators (EPG). Emergency power generators may be permitted, subject to the following restrictions:

(a) Prior to installation, a property owner shall obtain a building permit from the town for the installation of a permanent unit. The town shall review all such permit applications to ensure such installations minimize the visual and acoustic impacts on adjacent properties.

(b) Special attention shall be paid to the placement of the generator, the use of sound attenuating materials and the reasonable containment of sounds and exhausts that will be created by the operation of any EPG. A permanent ground-mounted EPG must be placed only in a side or rear yard area with a minimum setback of five feet from the property line. Notwithstanding the above yard and setback provisions, the town may approve alternative yard locations such as front or street side yard areas if the EPG is properly screened. The EPG must be placed as close to the main building as possible allowing for service to the EPG. A temporary EPG shall be located on the property to minimize visual, noise, vibration and exhaust impacts on adjacent properties. No EPG may be permanently installed or temporarily placed on a balcony for operation. For those EPG installed inside a building or on a rooftop, adequate noise abatement, exhaust venting away from adjoining properties, and visual screening is required.

(c) The EPG maintenance cycle run shall be permitted a maximum of once per week between the hours of 10:00 a.m. and 5:00 p.m., Monday through Friday only, and shall continue for no more than the manufacturer's recommended duration, but not to exceed 30 minutes per cycle.

(d) Permanent and temporary EPG may only be operated for non-maintenance purposes when the town and/or county declare a state of emergency, or whenever there is a power outage. EPG shall not be used as a substitute for normal electrical power.

(e) In residential areas, All all permanent EPG shall be screened from view from adjoining properties and any street by the use of a wall, fence, landscaping, or a combination thereof, when seen by a person at ground level. as well as supplemental landscaping. Such screening shall be placed immediately around the EPG and any elevated platforms to meet flood criteria with an adequate design and separation for ventilation, and with access (gate / door / open facing rear). Alternatively, if there is a wall, fence, or landscaping of sufficient height and density to screen the EPG and any elevated platforms along an interior lot line or facing a street, this is acceptable. If any landscaping providing screening dies, is removed, or becomes ineffective for screening due to disease or thinning, replacement or supplemental landscaping may be required.

(f) EPG shall be deemed to emit an excessive and unusually loud noise when the sound pressure level measured at the property line or boundary nearest the unit exceeds the limits listed in [chapter 12](#), article II entitled Noises.

**TOWN OF BAY HARBOR ISLANDS
COMMUNITY DEVELOPMENT
MEMORANDUM**

To: Mayor and Town Councilmembers
Maria Lasday – Town Manager
Town of Bay Harbor Islands

From: Michael J. Miller, AICP 
Consultant Town Planner

Date: August 24th, 2021

Subject: Town of Bay Harbor Islands
Proposed Building and Construction Code Revision
Emergency Power Generators (EPG) Locations / Screening
MMPA Acct. No. 01-0702-0500A

ISSUE:

The Town has had LDRs for many years regulating the location / screening of all types of mechanical equipment (A/C units / pool equipment / Emergency Power Generators (EPG) / etc.) for visibility and noise. In 2000 the Town Council adopted amendments to its Building and Construction Code to address Emergency Power Generators (EPG) that were at that time new technology – now they are standard equipment. The Code reflects that some modifications were made to those original provisions in 2005, 2006 and finally in 2008. The current LDRs require physical screening of all mechanical equipment, and as related specifically to EPG units, a fence and/or wall, and supplemental landscaping is required. The Town recently modified (raised) the noise decibel limits for common EPG units installed at single-family homesites.

Similar high-end communities (BHV / Golden Beach / LHP / BC coastal cities) have almost the same exact LDRs. However, both Bal Harbour Village and Golden Beach now ban any mechanical equipment in minimum side yard setback due to noise, appearance and elevated flood criteria. Also, the Town bans any roof-mounted mechanical equipment in the single-family areas – where most cities allow this, including Bal Harbour Village and Golden Beach. This would make sense for a sloped roof house that was mandated up until to several years ago, but most new homes today have flat roofs with a raised parapet walls or separate screening panels around any roof-mounted mechanical equipment. EPG do not get “hot” as they seldom run as opposed to A/C units – so screening is not a problem provide some ventilation is used (louvers).

The Town receives lots of requests for new mechanical equipment (mostly A/C replacements), including a few EPGs, which is common in the summer months / hurricane season.

**Town of Bay Harbor Islands
Town Council Recommendation
Propose Building and Construction Code Revision
Emergency Power Generators (EPG) Locations / Screening
August 24th, 2021
Page 2**

The issue Town staff commonly encounters is - for new homes that are elevated to meet new BFE flood regulations they do not usually have an issue screening as the lots are typically filled and units are at "grade" but at elevated grades. However, on older sites that do not meet current FEMA BFE (3'+/- lower FFE) all new / replacement mechanical equipment must be elevated on a stand / platform to meet BFE - so they become very tall and hard to screen. At older sites ground landscaping can grow fairly tall but normally it is 4'+/- and the new equipment is often 6'- 8' tall or more. Some people have boundary fences / wall and a few substantial landscaping - but it really does not screen the newer tall equipment and does nothing for noise.

This is a struggle for everybody in older coastal lower elevation cities as newer FEMA / FBC rules mandate higher elevations for equipment, but many governmental rules are based on the old situation with equipment on slabs at 1950s grades (5' NGVD).

Some homeowners and their contractors eager to sell expensive EPG units, complain that the Town's screening requirements can be burdensome, expensive and do not take into account site conditions like a lot boundary fence, wall or dense landscaping. Typically, staff requires the screening to be next to the mechanical units with open space to the lot lines for drainage and aesthetics. Some owners desiring to install an EPG recognize they can be noisy / ugly and want to install them away from their homes and near their property lines next to neighbors - who then complain to the Town. Landscaping alone is not effective for noise and rarely visually as it can die or be removed - leaving little or no screening. But in some instances, a lot boundary landscaping barrier between homesites can be very substantial visually.

During a recent discussion between the Town staff and Councilman Yaffe, who was contacted by a few owners on this subject, MMPA was requested to review the current Code language and suggest possible Code modifications to make the LDRs clearer to owners, contractors and Town staff that have to review & issue building permits. One suggested change is to allow landscaping alone as a screening method, if it is dense enough to provide adequate screening to neighbors. If landscaping alone is allowed, properly maintained and replacement is a must.

In addition, MMPA believes the Town Code now focuses primarily on single-family home installations and does not adequately address multi-family or commercial developments. In many instances most new projects include a mechanical room inside the building to install an EPG unit. Based on an EPG room location and method of exhaust this has caused some problems with neighboring complexes. Extra insulation inside the EPG rooms, upgraded mufflers and redirecting exhaust pipes away from neighboring sites has helped. But there is a lack of adequate LDRs to address this issue in multi-family complexes or commercial buildings in our opinion. Therefore, MMPA has suggested some new Code text to address this too. If the Town feels the issues need to be separated, separate Ordinances can be easily prepared.

To address the Town's request MMPA has prepared a draft Ordinance for your consideration. Please see the attached draft Ordinance. We have also included a few photos of existing conditions and suggested screening methods seen in other similar communities.



12 Installing Mechanical Equipment and Utilities

This chapter provides guidance on design considerations for elevators, exterior-mounted and interior mechanical equipment, and utilities (electric, telephone, and cable TV systems and water and wastewater systems). Protecting mechanical equipment and utilities is a key component of successful building performance during and after a disaster event.



CROSS REFERENCE

For resources that augment the guidance and other information in this Manual, see the Residential Coastal Construction Web site (<http://www.fema.gov/rebuild/mat/fema55.shtm>).

12.1 Elevators

Elevators are being installed with increasing frequency in elevated, single-family homes in coastal areas. The elevators are generally smaller than elevators in non-residential buildings but are large enough to provide handicap accessibility and accommodate small household furniture and equipment.

Small (low-rise) residential elevators that are added as part of a post-construction retrofit are usually installed in a shaft independent of an outside wall. Residential elevators designed as part of new construction can be installed in a shaft in the interior of the structure. In either case, the elevator shaft must have a landing, which is usually at the ground level, and a cab platform near the top. The bottom or pit of an elevator with a landing at the lower level is almost always below the BFE.

Appendix H in NFIP Technical Bulletin 4, *Elevator Installation for Buildings Located in Special Flood Hazard Areas in Accordance with the National Flood Insurance Program* (FEMA 2010a), discusses the installation of elevator systems and equipment in the floodplain. As explained in the bulletin, elevator shafts and enclosures that extend below the BFE in coastal areas must be designed to resist hydrostatic, hydrodynamic, and wave forces as well as erosion and scour, but are not required to include hydrostatic openings or breakaway walls. In addition, elevator accessory equipment should be installed above the BFE, replaced with flood damage-resistant elements, or treated with flood damage-resistant paint or coatings to minimize flood damage.

For safety reasons, commercial and large (high-rise) elevators are designed with “fire recall” circuitry that sends the elevator to a designated floor during a fire so emergency services personnel can use the elevators. However, during flooding, this feature may expose the cab directly to floodwaters. Therefore, for elevators in coastal buildings, the elevator must be equipped with a float switch that sends the elevator cab to a level above the BFE. In addition, the design professional must ensure that the elevator stops at a level above the BFE when the power is lost. This can be accomplished by installing an emergency generator or a battery descent feature that is integrated into the float switch, as described in NFIP Technical Bulletin 4.

Finally, although elevators and elevator equipment are permitted for building access and may be covered by flood insurance, their presence, location, and size can affect flood insurance premiums. For buildings in Zone V, the NFIP considers an elevator enclosure a building enclosure or an obstruction, which may be subject to an insurance rate loading depending on:

- Square footage of the enclosure
- Value of the elevator equipment
- Location of the elevator equipment in relation to the BFE

12.2 Exterior-Mounted Mechanical Equipment

Exterior-mounted mechanical equipment can include exhaust fans, vent hoods, air conditioning units, duct work, pool motors, and well pumps. High winds, flooding, and seismic events are the natural hazards that can cause the greatest damage to exterior-mounted mechanical equipment.

12.2.1 High Winds

Equipment is typically damaged because it is not anchored or the anchorage is inadequate. Damage may also be caused by inadequate equipment strength or corrosion. Relatively light exhaust fans and vent hoods are commonly blown away during high winds. Air conditioning condensers, which are heavier than fans and vent hoods, can also be blown off of buildings.

Considering the small size of most exhaust fans, vent hoods, and air-conditioning units used on residential buildings, the following prescriptive attachment recommendations should be sufficient for most residences:

- For curb-mounted units, #14 screws with gasketed washers
- For curbs with sides smaller than 12 inches, one screw at each side of the curb

- For curbs between 12 and 24 inches, two screws per side
- For curbs between 24 and 36 inches, three screws per side
- For buildings within 3,000 feet of the ocean, stainless steel screws
- For units that have flanges attached directly to the roof, #14 pan-head screws, a minimum of two screws per side, and a maximum spacing of 12 inches o.c.
- Air conditioning condenser units, 1/2-inch bolts at the four corners of base of each unit

If the equipment is more than 30 inches above the curb, the attachment design should be based on calculated wind loads. ASCE 7-10 contains provisions for determining the horizontal and lateral force and the vertical uplift force on rooftop equipment for buildings with a mean roof height less than or equal to 60 feet. The lateral force is based on the vertical area of the equipment as projected on a vertical plane normal to the direction of the wind. The uplift force is based on the horizontal area of the equipment as projected on a horizontal plane above the equipment and parallel to the direction of the wind.

Until equipment manufacturers produce more wind-resistant equipment, job-site strengthening of vent hoods is recommended. One approach is to use 1/8-inch-diameter stainless steel cables. Two or four cables are recommended, depending on design wind conditions. Alternatively, additional heavy straps can be screwed to the hood and curb.

To avoid corrosion problems in equipment within 3,000 feet of the ocean shoreline (including sounds and backbays), nonferrous metal, such as aluminum, stainless steel, or steel with minimum G-90 hot-dip galvanized coating, is recommended for the equipment, equipment stands, and equipment anchors. Stainless steel fasteners are also recommended. See Section 11.6 for guidance regarding attic vents.

12.2.2 Flooding

Flood damage to mechanical equipment is typically caused by the failure to elevate equipment sufficiently, as shown in Figure 12-1. Figure 12-2 shows proper elevation of an air-conditioning condenser in a flood-prone area.

Exterior-mounted mechanical equipment in one- to four-family buildings is normally limited to the following:

- Air-conditioning condensers
- Ductwork (air supply and return)
- Exhaust fans
- Pool filter motors
- Submersible well pumps

Floodwaters can separate mechanical equipment from the supports and sever the connection to mechanical or electric



CROSS REFERENCE

For additional information, see FEMA 348, *Protecting Building Utilities From Flood Damage – Principles and Practices for the Design and Construction of Flood-Resistant Building Utility Systems* (FEMA 1999), and Fact Sheet 8.3, *Homebuilder's Guide to Coastal Construction*, in FEMA P-499 (FEMA 2010b).

Figure 12-1.
Condenser damaged as
a result of insufficient
elevation, Hurricane
Georges (U.S. Gulf Coast,
1998)



Figure 12-2.
Proper elevation of
an air-conditioning
condenser in a
floodprone area;
additional anchorage is
recommended



systems. Mechanical equipment can also be damaged or destroyed when inundated by floodwaters, especially saltwater. Although a short period of inundation may not destroy some types of mechanical equipment, any inundation of electric equipment causes, at a minimum, significant damage to wiring and other elements.

Minimizing flood damage to mechanical equipment requires elevating it above the DFE. Because of the uncertainty of wave heights and the probability of wave run-up, the designer should consider additional elevation above the DFE for this equipment.

In Zone V, mechanical equipment must be installed either on a cantilevered platform supported by the first floor framing system or on an open foundation. A cantilevered platform is recommended. However, if the platform is not cantilevered, it is strongly recommended that the size of the elements, depth, and structural integrity of the open foundation that is used to support mechanical equipment be the same as the primary building foundation. Although smaller diameter piles could be used because the platform load is minimal, the smaller piles are more susceptible to being broken by floodborne debris, as shown in Figure 12-3.

In Zone A, mechanical equipment must be elevated to the DFE on open or closed foundations or otherwise protected from floodwaters entering or accumulating in the equipment elements. For buildings constructed over crawlspaces, the ductwork of some heating, ventilation, and air-conditioning systems are routed through the crawlspace. The ductwork must be installed above the DFE or be made watertight in order to minimize flood damage. Many ductwork systems today are constructed with insulated board, which is destroyed by flood inundation.

**NOTE**

Although the 2012 IBC and 2012 IRC specify that flood damage-resistant materials be used below the BFE, in this Manual, flood damage-resistant materials are recommended below the DFE.



Figure 12-3.
Small piles supporting
a platform broken by
floodborne debris

12.2.3 Seismic Events

Residential mechanical equipment is normally fairly light. Therefore, with some care in the design of the attachment of the equipment for resistance to shear and overturning forces, these units should perform well during seismic events. Because air-conditioning units that are mounted on elevated platforms experience higher accelerations than ground-mounted units, extra attention should be given to attaching these units in areas that are prone to large ground accelerations.

12.3 Interior Mechanical Equipment

Interior mechanical equipment includes but is not limited to furnaces, boilers, water heaters, and distribution ductwork. High winds normally do not affect interior mechanical equipment. Floodwaters, however, can cause significant damage to furnaces, boilers, water heaters, and distribution ductwork. Floodwaters can extinguish gas-powered flames, short circuit the equipment's electric system, and inundate equipment and ductwork with sediment.

The following methods of reducing flood damage to interior equipment are recommended:

- Elevate the equipment and the ductwork above the DFE by hanging the equipment from the existing first floor or placing it in the attic or another location above the DFE.
- In areas other than Zone V (where enclosure of utilities below the BFE is not recommended), build a waterproof enclosure around the equipment, allowing access for maintenance and replacement of equipment parts.

12.4 Electric Utility, Telephone, and Cable TV Systems

Electric utilities serving residential buildings in coastal areas are frequently placed in harsh and corrosive environments. Such environments increase maintenance and shorten the lifespan of the equipment. Common electric elements of utilities in residential buildings that might be exposed to severe wind or flood events, which increase maintenance and shorten the lifespan further, are electric meters, electric service laterals and service drops from the utility company, electric panelboards, electric feeders, branch circuit wiring, receptacles, lights, security system wiring and equipment, and telephone and cable television wiring and equipment.

The primary method of protecting elements from flooding is to elevate them above the DFE, but elevation is not always possible. Floodplain management requirements and other code requirements sometimes conflict. One conflict that is difficult to fully resolve is the location of the electric meter. Figure 12-4 shows a bank of meters and electric feeds that failed during Hurricane Opal.

Utility companies typically require electric meters to be mounted where they can be easily read for billing purposes; meters are usually centered approximately 5 feet above grade. They are normally required by utility regulations to be no higher than eye level. However, this height is often below the DFE for coastal homes, and the placement therefore conflicts with floodplain management requirements that meters be installed above the DFE. Since meter sockets typically extend 12 inches below the center of the meter, design floods



Figure 12-4.
Electric service meters
and feeders that were
destroyed by floodwaters
during Hurricane Opal
(1995)

that produce 4 feet of flooding can cause water to enter the meter socket and disrupt the electric service. When a meter is below the flood level, electric service can be exposed to floodborne debris, wave action, and flood forces. Figure 12-5 shows an electric meter that is easily accessible by the utility company but is above the DFE.

Since many utility companies no longer manually read meters, there may be flexibility in meter socket mounting, preferably above the design flood. The use of automatic meter reading (“smart meters”) by electric utility companies is increasing. The designer should consult the utility to determine whether smart meters can be placed higher than meters that must be read manually.

Similar situations often exist with other electrical devices. For example, switches for controlling access and egress lighting and security sensors occasionally need to be placed below the DFE. The following methods are recommended when necessary to reduce the potential for damage to electric wiring and equipment and to facilitate recovery from a flood event:

- **Wiring methods.** Use conduit instead of cable. Placing insulated conductors in conduits allows flood-damaged wiring to be removed and replaced. The conduit, after being cleaned and dried, can typically be reused. In saltwater environments, non-metallic conduits should be used.
- **Routing and installation.** Install main electric feeders on piles or other vertical structural elements to help protect them from floating debris forces. Since flood damage is often more extensive on the seaward side of a building, routing feeders on the landward side of the structural elements of the building can further reduce the potential for damage. Do not install wiring or devices on breakaway walls. Figure 12-5 is an illustration of recommended installation techniques for electric lines, plumbing, and other utility elements.
- **Design approach.** Install the minimum number of electric devices below the DFE that will provide compliance with the electric code. Feed the branch circuit devices from wiring above the DFE to minimize the risk of flood inundation.

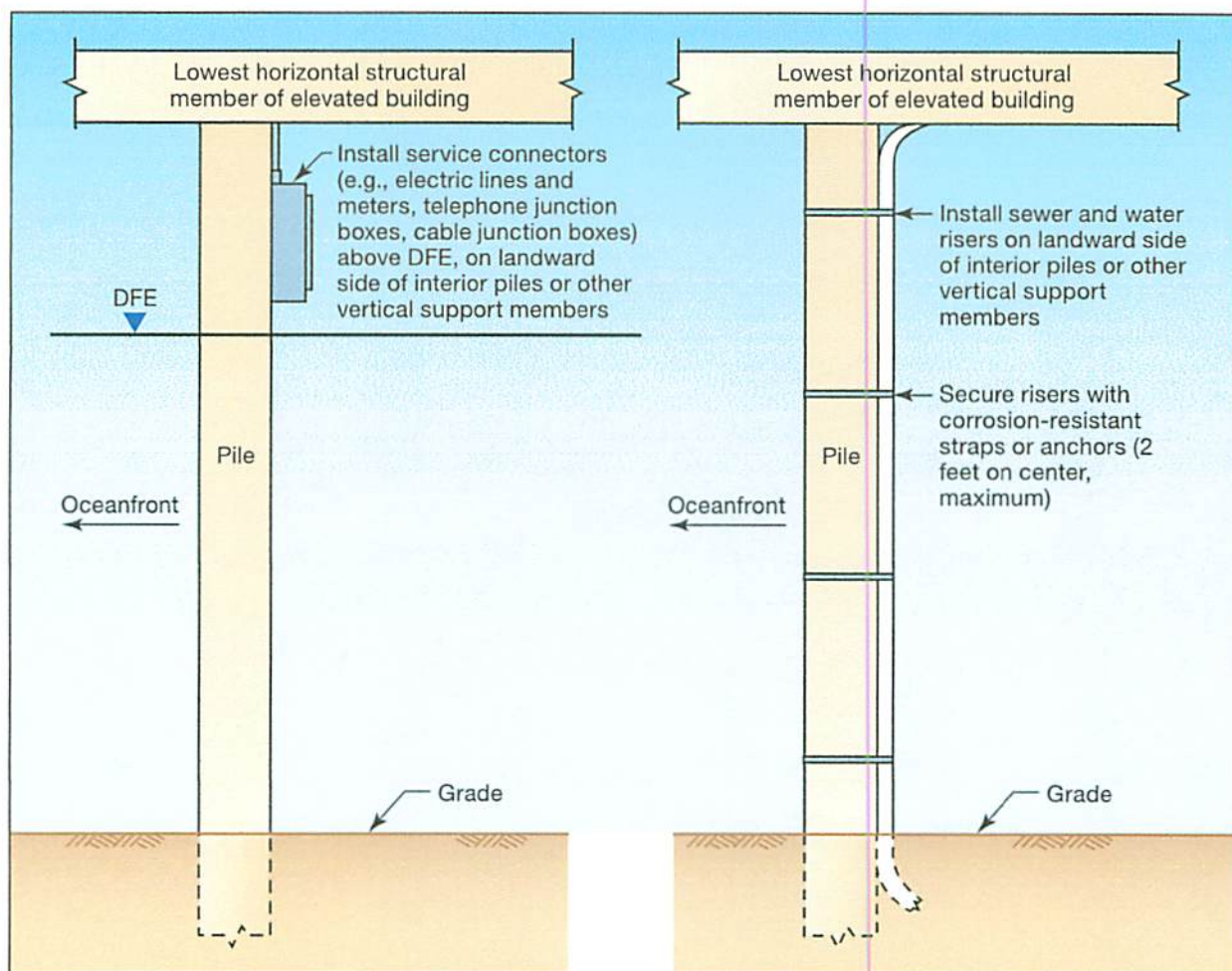


Figure 12-5.
Recommended installation techniques for electric and plumbing lines and utility elements

- **Service style.** Feed the building from underground service laterals instead of overhead electric service drops. When overhead services are needed, avoid penetrating the roof with the service mast to reduce the potential for roof damage and resulting water infiltration. Figure 12-6 illustrates the vulnerability of roof damage and resulting water infiltration when an electric service mast penetrates a roof.
- **Panel location.** Install branch circuit and service panelboards above the DFE. If required to meet utility National Electrical Code requirements, provide a separate service disconnect remote to the panel.

Fact Sheet 8.3, *Protecting Utilities*, in FEMA P-499 contains other recommendations for reducing the vulnerability of utilities that supply buildings.

Direct wind damage to exterior-mounted electric utility equipment (see Figure 12-6) is infrequent in part because of the small size of most equipment (e.g., disconnect switches, conduit). Exceptions are satellite dishes, photovoltaic panels, and electric service penetrations through the roof. Satellite dish and photovoltaic panel failures are typically caused by the design professional's failure to perform wind load calculations and provide for adequate anchorage.

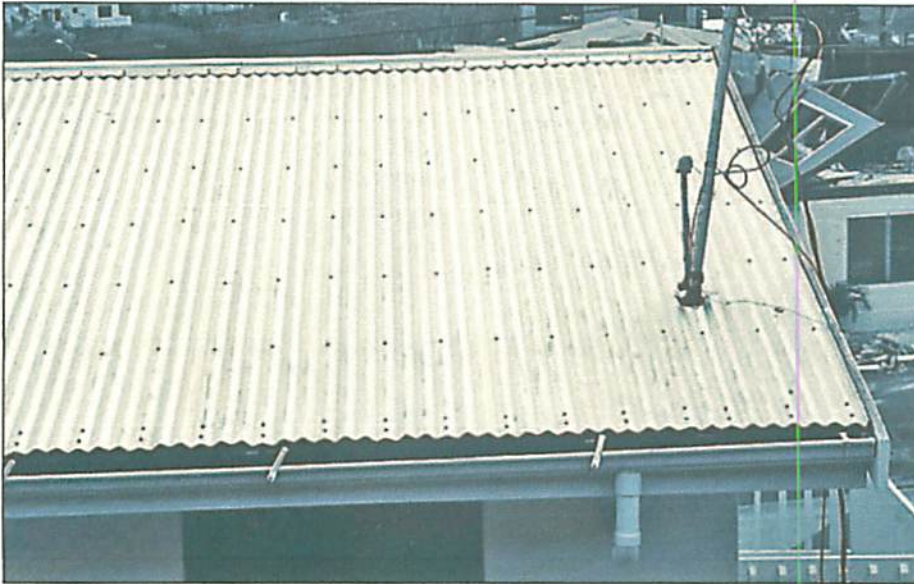


Figure 12-6.
Damage caused by
dropped overhead
service, Hurricane
Marilyn (U.S. Virgin
Islands, 1995)

12.4.1 Emergency Power

Because a severe wind event often interrupts electric service, designers and homeowners need to make a decision about the need for backup power.

Emergency power can be provided by permanently installed onsite generators or by temporary generators brought to the site after the event. For permanently installed units, the following is recommended:

- Locate the generator above the DFE.
- If located on the exterior of the building, place the unit to prevent engine exhaust fumes from being drawn into doors, windows, or any air intake louvers into the building. If located on the inside of the building, provide ventilation for combustion air and cooling air and provision for adequately discharging exhaust fumes.
- Locate the fuel source above the DFE and store an amount of fuel adequate for the length of time the generator is expected to operate.
- Install the generator where its noise and vibration will cause the least disruption.
- Determine the expected load (e.g., heat, refrigeration, lights, sump pumps, sewer ejector pumps). Non-fuel-fired heating systems and most cooling systems require large generators. Capacity considerations may limit the generator to providing only freeze protection and localized cooling.
- Install manual or automatic transfer switches that prevent backfeeding power from the generator into the utility's distribution system. Backfeeding power from generators into the utility's distribution system



CROSS REFERENCE

For guidance on determining the proper size of an emergency generator, see Section VI-D of FEMA 259, *Engineering Principles and Practices for Retrofitting Flood Prone Residential Buildings* (FEMA 2001).

can kill or injure workers attempting to repair damaged electrical lines.

**WARNING**

Do not “backfeed” emergency power through the service panel. Utility workers can be killed!

- Provide an “emergency load” subpanel to supply critical circuits. Do not rely on extension cords. Supply the emergency panel from the load side of a manual or automatic transfer switch.
- Determine whether operation of the generator will be manual or automatic. Manual operation is simpler and less expensive. However, a manual transfer switch requires human intervention. Owners should not avoid or delay evacuation to tend to an emergency power source.
- Size the generator, transfer switches, and interconnecting wiring for the expected load. The generator should be large enough to operate all continuous loads and have ample reserve capacity to start the largest motor load while maintaining adequate frequency and voltage control and maintaining power quality.

12.5 Water and Wastewater Systems

Water and wastewater systems include wells, septic systems, sanitary systems, municipal water connections, and fire sprinkler systems.

12.5.1 Wells

For protection of well systems from a severe event (primarily a flood), the design must include a consideration of the following, at a minimum:

- Floodwaters that enter aquifers or saturate the soil can contaminate the water supply. FEMA P-348, *Principles and Practices for Flood-Resistant Building Utilities* (FEMA 1999), recommends installing a watertight encasement that extends from at least 25 feet below grade to at least 1 foot above grade.
- Non-submersible well pumps must be above the DFE.
- If water is to be available following a disaster, an alternative power source must be provided.
- The water supply line riser must be protected from hydrodynamic and floodborne debris impact damage; the supply line must be on the landward side of a pile or other vertical structural member or inside an enclosure designed to withstand the forces from the event (see Figure 12-5).
- Backflow valves must be installed to prevent floodwaters from flowing into the water supply when water pressure in the supply system is lost.

12.5.2 Septic Systems

Leach fields and septic tanks, and the pipes that connect them, are highly susceptible to erosion and scour, particularly in Coastal A Zone and Zone V with velocity flow risks. The best way to protect leach fields and other onsite sewage management elements is to locate them outside the floodplain.

If septic systems cannot be located outside the floodplain, the design of septic systems for protection from severe events must include a consideration of the following, at a minimum:

- If the septic tank is dislodged from its position in the ground, the piping will be disconnected, releasing sewage into floodwaters. Also, the tank could damage the nearest structure. Therefore, bury the system below the expected depth of erosion and scour, if possible, and ensure the tank is anchored to prevent a buoyancy failure.
- The sewage riser lines and septic tank risers must be protected from water and debris flow damage; risers should be on the landward side of a pile or other vertical structural member or inside an enclosure designed to withstand the forces from the event (see Figure 12-5).

If leach fields, pipes, and tanks cannot be located outside the floodplain, one possible way to protect them is to bury them below the expected scour depth. However, many local health codes or ordinances restrict or even prohibit the placement of septic elements in the floodplain. In these cases, alternate sewage management systems must be used.

Because leach fields rely on soil to absorb moisture, saturated soil conditions can render leach fields inoperable. This problem and its potential mitigating measures depend on complex geotechnical considerations. Therefore, a geotechnical engineer and/or a qualified sewer designer should be consulted for the design and installation of leach fields.

12.5.3 Sanitary Systems

To protect sanitary systems from a severe event, the design must include a consideration of the following, at a minimum:

- Sanitary riser lines must be protected from water and debris flow damage; risers should be on the landward side of a pile or other vertical structural member or inside an enclosure designed to withstand the forces from the event (see Figure 12-5).
- When the line breaks at the connection of the building line and main sewer line, raw sewage can flow back out of the line, contaminating the soil near the building. A check valve in the line may help prevent this problem.



WARNING

In some areas, high groundwater levels may preclude the installation of septic tanks below the level of expected erosion and scour.

12.5.4 Municipal Water Connections

If water risers are severed during a coastal event, damage to the water supply system can include waste from flooded sewer or septic systems intruding into the water system, sediment filling some portion of the pipes, and breaks in the pipes at multiple locations. Protecting municipal water connections is accomplished primarily by protecting the water riser that enters the building from damage by debris. See Section 12.5.1 for more information.

12.5.5 Fire Sprinkler Systems

Protecting the fire sprinkler system is similar to protecting the other systems discussed in Section 12.5. The primary issue is to locate the sprinkler riser such that the location provides shielding from damage. In addition, there must be consideration to the location of shutoff valves and other elements so that if an unprotected portion of the fire water supply line is damaged, the damage is not unnecessarily added to the damage caused by the natural hazard event.

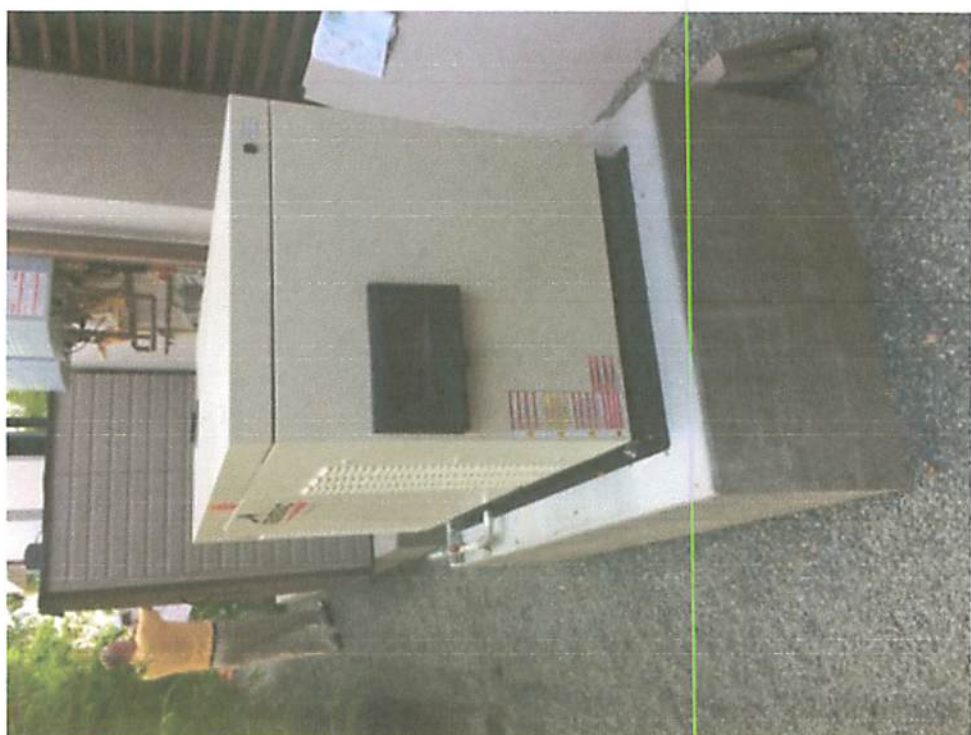
12.6 References

- ASCE (American Society of Civil Engineers). 2010. *Minimum Design Loads for Buildings and Other Structures*. ASCE Standard ASCE 7-10.
- FEMA (Federal Emergency Management Agency). 1999. *Principles and Practices for Flood-Resistant Building Utilities*. FEMA P-348.
- FEMA. 2001. *Engineering Principles and Practices for Retrofitting Flood Prone Residential Buildings*. FEMA 259.
- FEMA. 2010a. *Elevator Installation for Buildings Located in Special Flood Hazard Areas in Accordance with the National Flood Insurance Program*. FEMA NFIP Technical Bulletin 4.
- FEMA. 2010b. *Homebuilder's Guide to Coastal Construction*. FEMA P-499.
- FEMA. 2010c. *National Flood Insurance Program Flood Insurance Manual*.
- ICC (International Code Council). 2011a. *International Building Code*. 2012 IBC. Country Club Hills, IL: ICC.
- ICC. 2011b. *International Residential Code for One- and Two-Family Dwellings*. 2012 IRC. Country Club Hills, IL: ICC.















**TOWN OF GOLDEN BEACH
COMMUNITY DEVELOPMENT
MEMORANDUM**

*Sample
Golden Bch
Mechanical Equip*

To: Alex Diaz – Town Manager
Linda Epperson – Building and Zoning Director
Town of Golden Beach

From: Michael J. Miller, AICP *MJM*
Consultant Town Planner

Date: December 12th, 2018

Subject: Town of Golden Beach
Proposed Land Development Regulation Amendment
Mechanical Equipment Location / Screening
MMPA Acct. No. 04-0101-0003

ISSUE / BACKGROUND

Over the last few years the Town has embarked upon a review / updating many of its older Land Development Regulations (LDRs) covering many topics. A substantial number of LDR revisions have occurred to modernize the Code and add regulations for design details that were lacking or vague. The Town's LDRs, including the Zoning Code set forth in Chapter 66, set forth regulations for new homes and modifications to existing homes to ensure they are built in a manner that maintains the high quality appearance in the Town.

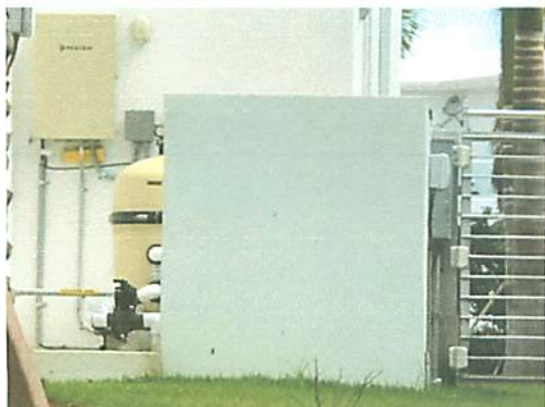
With most any construction a number of ancillary mechanical equipment structures (A/C units / pool equipment / water softeners / irrigation equipment / etc.), are necessary, and are viewed as desired amenities or enhancements. Typically, Codes provide exceptions to main building setbacks for mechanical equipment and other items that project from main structures. The current Town Code includes some basic provisions; however, a concern is that the existing regulations may not be adequate and need improvement. Required flood protection for mechanical equipment often involves raising the machines off of the ground – often negating normal screening methods (landscaping / short fences and walls) – as often the machines are unsightly. Noise from some types of units can be substantial – so just landscaping alone is not always effective. The BRAB has requested that research / possible Code amendments be considered to address this issue.

MMPA was requested to examine this issue, create a photographic backdrop to illustrate the problem, and suggest possible additional supplemental LDRs to address the issue. Following is our analysis and suggestions.

ANALYSIS

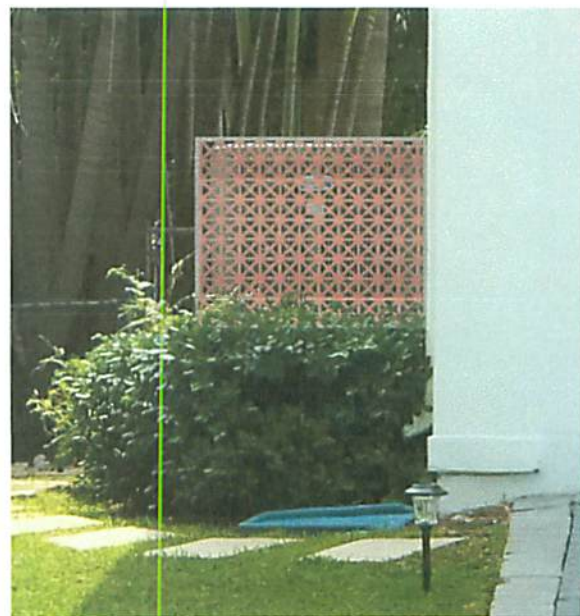
Mechanical Equipment:

Town Code Section 66-140 requires a 10' minimum setback for mechanical equipment that exceeds 36" in height above the crown of the road adjacent to the lot, but does not restrict in which setback it may be installed. This allows installations to take place in a front setback in front of a home, which can negatively affect appearance even with screening. Undersized lots have only a 7.5' minimum side setback for homes; therefore, no mechanical equipment that exceeds 36" in height above the crown of the road adjacent to the lot, may be placed in any side yards of undersized lots. The Code does require that all mechanical equipment be screened and provide noise abatement; but it is not specific as to how to accomplish either goal and does not apply to "existing" installations. Raising equipment to meet flood zone requirements also increases the visual impact. We have taken note of and have received comments regarding the negative appearance and noise emanating from air conditioning units throughout the Town. The following pictures are examples around Town.



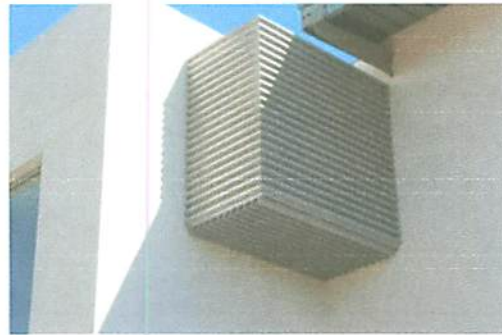
Town of Golden Beach - Staff Report
Proposed Land Development Regulation Amendment
Mechanical Equipment Location / Screening
December 12th, 2018
Page 3

To address the noise and screening issue, below are examples of air conditioners and mechanical equipment that are screened with covers such as cabinetry, lattice, louvers, and walls to consider. The following two (2) examples are properties in the Town as they existing and with screening applied.



The following are other examples of types of screening methods:

Town of Golden Beach - Staff Report
Proposed Land Development Regulation Amendment
Mechanical Equipment Location / Screening
December 12th, 2018
Page 4



**Town of Golden Beach - Staff Report
Proposed Land Development Regulation Amendment
Mechanical Equipment Location / Screening
December 12th, 2018
Page 5**



To address the noise and visual abatement concerns, MMPA believes that while prescribing that concrete block sound walls be installed around all units may seem to be a simple solution (as recommended by BRAB), we do not recommend that a blanket approach be taken, as there are many design / locational issues. The amount of noise depends on the type and age of the machine, the type of air conditioner or mechanical equipment and its condition. Generally, expect older machines to be noisier than newer machines. The decibel levels may go up as the older machines wear out, and newly designed air conditioners and mechanical equipment are built with noise

Michael Miller Planning Associates, Inc.

**Town of Golden Beach - Staff Report
Proposed Land Development Regulation Amendment
Mechanical Equipment Location / Screening
December 12th, 2018
Page 6**

reduction in mind. To address machines that produce excessive noise Code Enforcement action may be taken. The Town Code, Article III. Noise, Section 14-77(11) makes the operating of any air conditioning, mechanical, ventilating, or refrigerating equipment in such condition or in such a manner as to cause noises which disturb the peace and quiet of the neighborhood a violation.

MMPA suggests the following:

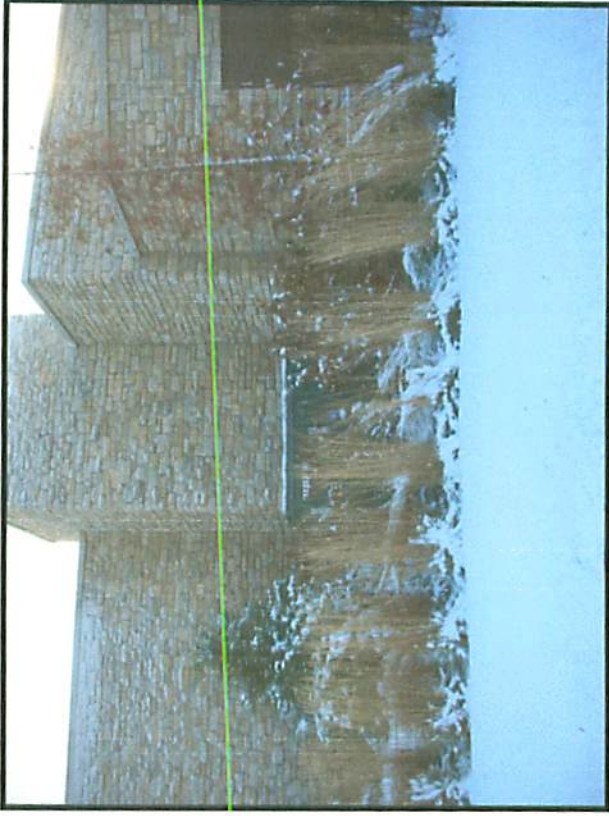
- Revise the Code to not allow installation of any mechanical equipment in the front or street side yards in Zones 2 and 3; and in Zone One allow them for the accessory garage / guest quarters only on the east or internal side of the structure (not visible from Ocean Blvd.).
- Clarify that the maximum of (4) distinct pieces of equipment allowed must be grouped together and screened.
- Require that wall mounted equipment to be screened along with any associated piping and / or conduit to be painted to match the main structure.
- Specify that screening be accomplished through the use of any of the following which compliments the home's architecture through the use of walls, or fencing, or louvers, or trellis that completely screen the equipment and stands on three (3) sides.
- Make the screening requirements retroactive based on a time schedule, or require screening when any new, including replacement, equipment is installed. Also allow existing equipment to be replaced in a previously permitted location subject to the new screening requirements.

RECOMMENDATION

MMPA recommends the Town discuss the proposed attached Ordinance, provide input on the proposed changes, and if desired direct that an Ordinance be brought forward for Public Hearings.

Mechanical Equipment Screening

Appearance Code and Design Guidelines



Mechanical Equipment Screening Design Guidelines

Intent

This document describes a user-friendly process for business and building owners to install well-screened, mechanical equipment and/or planting materials to screen mechanical equipment and other utility hardware.

Definition

Mechanical Equipment: Equipment, devices, and accessories, the use of which relates to water supply, drainage, heating, ventilating, air conditioning, and similar purposes. When mechanical equipment is located in the rear of a building, its visibility should be minimized where practical with a good faith effort to keep it out of the view of the public. However, when mechanical equipment is located in the public view, such as near a public sidewalk, the equipment must be hidden or screened from public view.

Process

Screening for generators and other types of mechanical equipment require:

- Building Permit (Inspectional Services)
- Certificate of Appropriateness (Planning Administrative Approval)

A Building Permit is reviewed, approved, issued and inspected by the Inspectional Services Division for all new mechanical equipment in the Village. Landscaping and screening is reviewed, approved and issued by the Planning Division. Approvals must be issued prior to the beginning of any work.

Applications and the design guidelines are available from the Planning & Economic Development Department, at 847-904-4340, or on the Village's website: www.glenview.il.us.

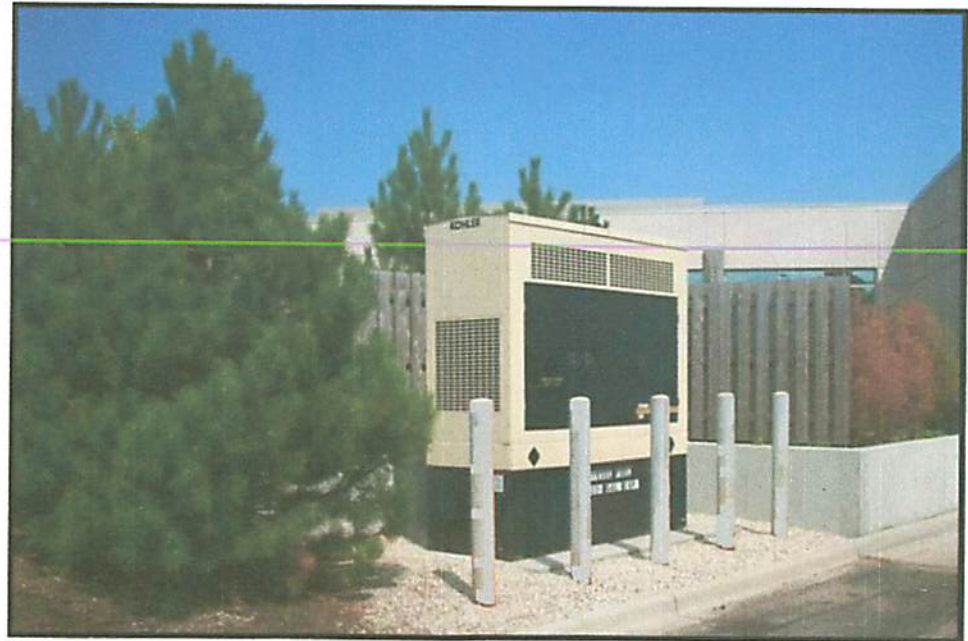
Telecommunications equipment are governed separately through Section 78-4 (c) *Appearance Commission* of the Municipal code.

Planning Approval Process - Design Guidelines

The design guidelines contained in this document provide guidance for the design of landscaping and screening. Staff will review the proposal for consistency with these design guidelines.

If staff does not find the proposal appropriate within the design guidelines, the petitioner can request approval from the Appearance Commission. The Appearance Commission would then review the proposal for consistency with the Design Guidelines and determine if a Certificate of Appropriateness should be issued. In order to vary from these Design Guidelines, the petitioner will need to demonstrate extraordinary circumstances.

Appearance Commission meetings are held the first and third Wednesdays of each month.



A good example of mechanical equipment being screened year-round by evergreen plantings and solid fencing. It is protected from vehicles by concrete bollards and vents away from the landscaping to protect the plants.

Appearance Code
Section 54-64

Mechanical Equipment

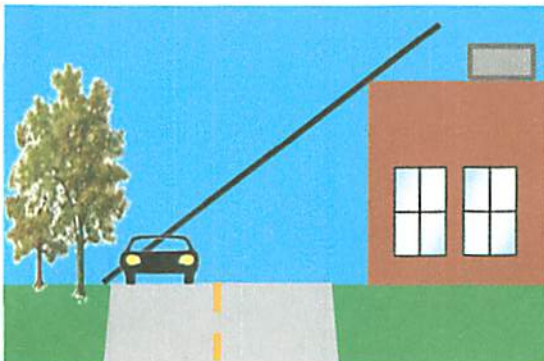
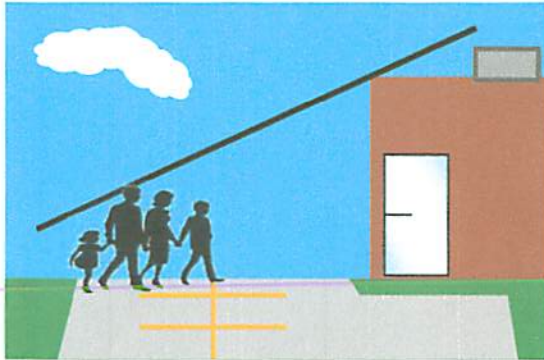
Mechanical equipment or other utility hardware on roofs, ground, or buildings shall be screened from public view with architectural and/or landscape materials harmonious with the building, or they shall be located so as not to be visible from any public ways.



With a properly designed screen, equipment can be well hidden in the winter months.



An appropriately designed screen hides roof-top mechanical units from the view of the parking lot and the public right-of-way.



Dumpsters and utilities are suitably screened in a parking lot with an architectural wall, solid metal gate and a mixture of landscaping materials.

Design Guidelines

Roof and Building-Mounted mechanical equipment

(1). Compatibility

The screening materials surrounding the equipment should be compatible with building architecture (materials, color, scale, etc.). When appropriate, live landscape materials can be used on the building, using the guidelines from the plant materials section, as detailed in page 4.

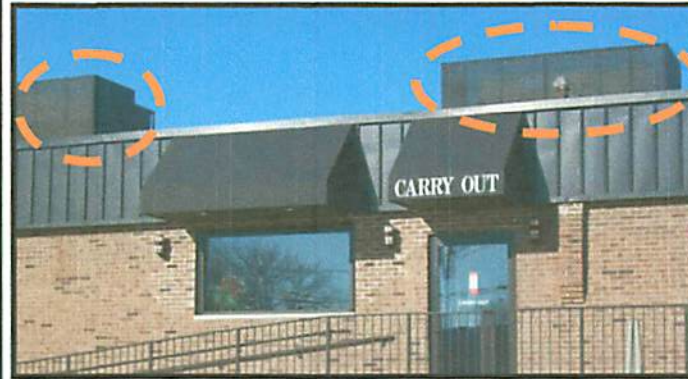
(2). Sight line visibility

The degree of visibility from all adjacent public ways will be evaluated. There should be minimal visibility of the equipment from a pedestrians' view. The effectiveness of the equipment screening should also take into consideration future development in the surrounding area.

(3). Utility hardware

All utility equipment (vents, stacks, gas and water meters, etc.) and associated protective materials (bollards, etc.) should be screened or painted so as to blend in with the roof or building. Fencing or screens must be a minimum of 5' from meters to allow for maintenance. Means should be taken to avoid highly visible roof venting equipment. Use of material screening in similar color to roof would be a good solution to comply with standards.

ok



(1). Mechanical units are screened from the view of the parking lot using awning fabric to blend with the mansard roof.



(2). Equipment is shielded from the right-of-way with a masonry structure attached to a parking garage.

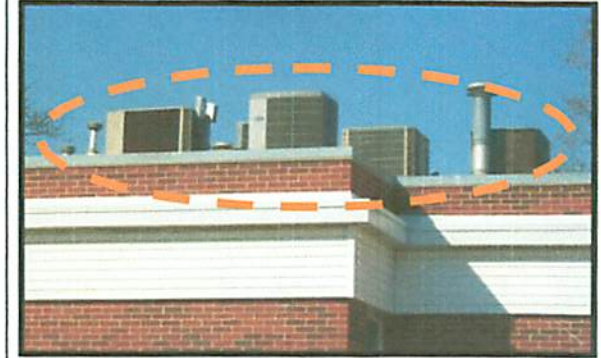


(3). Utility equipment is painted to blend with the building.

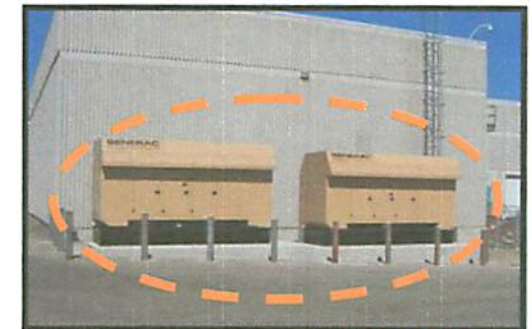


(2). Brick piers, evergreen screening and a decorative wood gate screen a large generator.

no



(1). These mechanical units could be blocked from public view with compatible architectural screening.



(1). Use of a screening wall in a similar color to the façade would better screen the generator.



(2 & 3). Roof-mounted vents are clearly visible to adjacent residences. Painting the vents to match the roof could be a possible solution.

Design Guidelines

Ground-mounted mechanical equipment

Architectural elements, year-round landscaping if appropriate, or a combination of both, may be used to screen ground mounted mechanical equipment.

(1). Compatibility

Screening materials should be compatible with the building architecture (materials, color, and scale) and with the surrounding landscape.

(2). Plantings

(a). Quality and maintenance.

Using a variety of year-round live plant species is ideal when screening equipment. Use plant species that are capable of withstanding northeastern Illinois climates. Maintenance of the plant materials used for screening is required. When landscaping is planted, there should be room provided for access to equipment and for plant maintenance, substrate should be included and the plants should not be in close proximity to exhaust.

(b). Size and scale. When using landscaping to screen equipment, plants should be arranged with a minimum of 50% opacity at the time of installation. Ideally, the installed plants should grow to fully screen or shield the equipment.

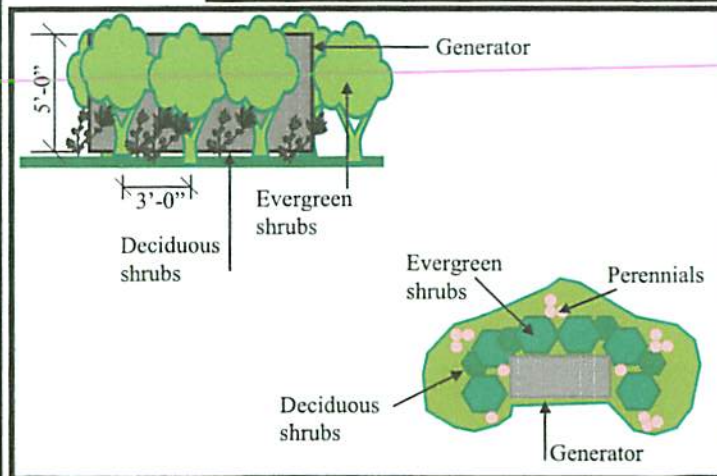
(c). Location

There should be little to no view of the equipment from pedestrians' view. The degree of visibility from all adjacent public ways will be evaluated. The existing view of equipment should also take into consideration future development in the surrounding area.

ok



(2). Evergreen screening surrounds mechanical equipment on a minimum of three sides.

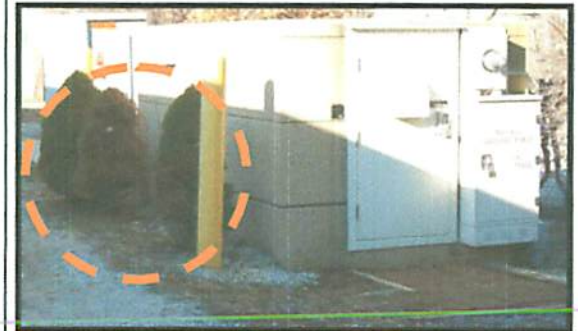


(2). Illustration of a mix of landscaping from an aerial view and an eye-level view to screen a generator located on the ground.

no



(1). Screening materials should be compatible with the building architecture, rather than draw pedestrians' attention to the screen.



(2). Landscape materials should screen the equipment and be planted to ensure their survival.

AGENDA ITEM REPORT

September 9, 2021

ITEM NUMBER: 8.

ITEM: Discussion and Possible Action requested by Mayor Fuller regarding the Planning and Zoning Board's scope and review process. Enclosed is a copy of Section 5-23.1 of the Town Code.

DESCRIPTION:

At the May 26, 2021 Special Council Meeting, discussion was held regarding the Planning & Zoning Board's scope and review process. The conversation initiated as a result of the ordinance that was considered for second reading to amend the building setbacks for the Gateway properties. The Council discussed the previous Planning & Zoning Board's approval for the Gateway property located at 9551 East Bay Harbor Drive; more specifically, approval of the rooftop trellis.

Enclosed are the meeting minutes, staff report and other documents as requested by the Council.

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba L. Chang, Town Clerk

ATTACHMENTS

1. Section 2-23.1 of the Town Code
2. HB 401 - 2021 amendments to FS 163.3202 and other bldg code statutes
3. PZB APPROVALS

Sec. 5-23.1. - Architectural and aesthetic review of plans; failure to comply with plans as agreed.

- (a) The planning and zoning board shall examine, approve, approve with conditions, or disapprove the issuance of a building permit in any matter subject to its jurisdiction after consideration of whether the following criteria are complied with:
 - (1) The plan for the proposed structure or project is in conformity with good taste, good design and in general, contributes to the image of the town as a place of beauty, spaciousness, harmony, taste, fitness, broad vistas and high quality.
 - (2) The proposed structure or project is not, in its exterior design and appearance, of inferior qualities such as to cause the nature of the local environment or evolving environment to materially depreciate in appearance and value.
 - (3) The proposed structure is in conformity with standards of this Code and other applicable ordinances insofar as the location and appearance of the buildings and structures are involved.
 - (4) The proposed structure or project is in harmony with other actual and proposed developments in the general area, considering the following additional criteria:
 - a. Site layout, orientation, location of structures and relationship to one another and to open spaces in topography.
 - b. Harmonious relationship with existing and proposed adjoining developments, avoiding both excessive variety and monotonous repetition, but allowing similarity of style, if warranted.
 - c. Maximum height, area, setbacks and overall masks as well as parts of any structure (buildings, walls, screens, towers or signs) and effective concealment of all mechanical equipment.
 - d. Building design, materials, and colors to be sympathetic with surroundings.
 - e. Harmony of materials, colors, and composition of low sides of a structure which are visible simultaneously.
 - f. Consistency of composition and treatment.
 - g. Location and type of planting with due regard for climatic conditions, preservation of specimen and landmark plantings upon a site, and proper irrigation to insure maintenance of all plant materials.
 - h. Design and appropriateness of signs, as well as interior and exterior lighting.
 - i. Graphics, as understood in architectural design.
- (b) If the above criteria are met, the application shall be approved. Conditions may be applied when the proposed building or structure does not comply with the above criteria and shall be such as to bring said structure or project into conformity. If any application is disapproved, the planning and zoning board shall detail in its findings the criterion or criteria that are not met. The action taken by

the board shall be reduced to writing, signed by the chairman, and a copy thereof made available to the applicant upon request. Any action taken by the planning and zoning board may be appealed to the town council, whose decision on appeal shall be final.

- (c) Subsequent to planning and zoning board approval, if the proposed structure or project is not constructed in accordance with the plan proposed and approved by the planning and zoning board, no certificate of occupancy shall be issued, and a fine may be levied against a real property owner in an amount not to exceed \$250.00 per day per unit for each day of continued violation. And in the event that a certificate of occupancy has been issued previously, it shall be revoked and no further occupancy shall be permitted until the proposed structure or project is brought into conformity with the plan approved by the planning and zoning board. Provided further, in the event that occupancy is not discontinued, then a fine shall be levied in the amount of \$250.00 per day per unit for each day of continued occupancy until the proposed structure or project is brought into conformity with the plan approved by the planning and zoning board.

(Ord. No. 363, §§ 1, 2, 2-11-80; Ord. No. 687, § 1, 8-13-01; Ord. No. 767, 4-11-05)

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

1
2 An act relating to the Florida Building Code; amending
3 s. 163.3202, F.S.; prohibiting certain regulations
4 relating to building design elements from being
5 applied to certain dwellings; providing exceptions;
6 defining terms; providing construction; amending s.
7 553.73, F.S.; authorizing a substantially affected
8 person to file a petition with the Florida Building
9 Commission to review certain local government
10 regulations, laws, ordinances, policies, amendments,
11 or land use or zoning provisions; defining the term
12 "local government"; providing requirements for the
13 petition and commission; requiring the commission to
14 issue a nonbinding advisory opinion within a specified
15 timeframe; prohibiting the use of preliminary maps
16 issued by the Federal Emergency Management Agency
17 under certain circumstances; authorizing the
18 commission to issue errata to the code; providing a
19 definition for the term "errata to the code"; making
20 technical changes; amending s. 553.79, F.S.;
21 prohibiting a local government from requiring certain
22 contracts for the issuance of a building permit;
23 amending s. 553.791, F.S.; revising and defining
24 terms; providing requirements for qualified private
25 providers; requiring local jurisdictions to reduce

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

26 permit fees under certain circumstances; deleting
27 legislative intent; specifying that contractors using
28 private providers to provide building code inspections
29 services must notify local building officials in
30 writing; revising notice requirements; deleting a
31 provision requiring fee owners or fee owners'
32 contractors to post certain information at a project
33 site before commencing construction; authorizing
34 certain affidavits to be signed with electronic
35 signatures and be submitted to local building
36 officials electronically; authorizing certain
37 inspections to be performed in-person or virtually;
38 authorizing certain reports to be signed with
39 electronic signatures; authorizing certain notices to
40 be electronically posted; authorizing private
41 providers to perform certain replacements and repairs
42 without first notifying local building officials under
43 certain circumstances; authorizing certain forms to be
44 signed with electronic signatures; authorizing certain
45 inspection records to be electronically posted and
46 electronically submitted to local building officials;
47 authorizing certificates of compliance to be
48 electronically transmitted to local building
49 officials; authorizing certain local entities to use a
50 private provider for code inspection services under

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

51 certain circumstances; conforming provisions to
52 changes made by the act; amending s. 553.80, F.S.;
53 revising how certain excess funds may be used by a
54 local government; amending s. 553.842, F.S.; requiring
55 evaluation entities that meet certain criteria to
56 comply with certain standards; authorizing the
57 commission to suspend or revoke certain approvals
58 under certain circumstances; amending ss. 125.01 and
59 125.56, F.S.; conforming cross-references to changes
60 made by the act; making technical changes; providing
61 effective dates.

62
63 Be It Enacted by the Legislature of the State of Florida:

64
65 Section 1. Present subsection (5) of section 163.3202,
66 Florida Statutes, is redesignated as subsection (6), and a new
67 subsection (5) is added to that section, to read:

68 163.3202 Land development regulations.—

69 (5) (a) Land development regulations relating to building
70 design elements may not be applied to a single-family or two-
71 family dwelling unless:

72 1. The dwelling is listed in the National Register of
73 Historic Places, as defined in s. 267.021(5); is located in a
74 National Register Historic District; or is designated as a
75 historic property or located in a historic district, under the

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

76 terms of a local preservation ordinance;

77 2. The regulations are adopted in order to implement the
78 National Flood Insurance Program;

79 3. The regulations are adopted pursuant to and in
80 compliance with chapter 553;

81 4. The dwelling is located in a community redevelopment
82 area, as defined in s. 163.340(10);

83 5. The regulations are required to ensure protection of
84 coastal wildlife in compliance with s. 161.052, s. 161.053, s.
85 161.0531, s. 161.085, s. 161.163, or chapter 373;

86 6. The dwelling is located in a planned unit development
87 or master planned community created pursuant to a local
88 ordinance, resolution, or other final action approved by the
89 local governing body; or

90 7. The dwelling is located within the jurisdiction of a
91 local government that has a design review board or architectural
92 review board.

93 (b) For purposes of this subsection, the term:

94 1. "Building design elements" means the external building
95 color; the type or style of exterior cladding material; the
96 style or material of roof structures or porches; the exterior
97 nonstructural architectural ornamentation; the location or
98 architectural styling of windows or doors; the location or
99 orientation of the garage; the number and type of rooms; and the
100 interior layout of rooms. The term does not include the height,

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

bulk, orientation, or location of a dwelling on a zoning lot; or
the use of buffering or screening to minimize potential adverse
physical or visual impacts or to protect the privacy of
neighbors.

2. "Planned unit development" or "master planned
community" means an area of land that is planned and developed
as a single entity or in approved stages with uses and
structures substantially related to the character of the entire
development, or a self-contained development in which the
subdivision and zoning controls are applied to the project as a
whole rather than to individual lots.

(c) This subsection does not affect the validity or
enforceability of private covenants or other contractual
agreements relating to building design elements.

Section 2. Subsections (4), (5), and (8) of section
553.73, Florida Statutes, are amended to read:

553.73 Florida Building Code.—

(4) (a) All entities authorized to enforce the Florida
Building Code under ~~pursuant to~~ s. 553.80 shall comply with
applicable standards for issuance of mandatory certificates of
occupancy, minimum types of inspections, and procedures for
plans review and inspections as established by the commission by
rule. Local governments may adopt amendments to the
administrative provisions of the Florida Building Code, subject
to the limitations in ~~of~~ this subsection ~~paragraph~~. Local

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

amendments must ~~shall~~ be more stringent than the minimum standards described in this section ~~herein~~ and must ~~shall~~ be transmitted to the commission within 30 days after enactment. The local government shall make such amendments available to the general public in a usable format. The State Fire Marshal is responsible for establishing the standards and procedures required in this subsection ~~paragraph~~ for governmental entities with respect to applying the Florida Fire Prevention Code and the Life Safety Code.

(b) Local governments may, subject to the limitations in ~~of~~ this section and not more than once every 6 months, adopt amendments to the technical provisions of the Florida Building Code that ~~which~~ apply solely within the jurisdiction of such government and that ~~which~~ provide for more stringent requirements than those specified in the Florida Building Code, ~~not more than once every 6 months~~. A local government may adopt technical amendments that address local needs if:

1. The local governing body determines, following a public hearing which has been advertised in a newspaper of general circulation at least 10 days before the hearing, that there is a need to strengthen the requirements of the Florida Building Code. The determination must be based upon a review of local conditions by the local governing body, which review demonstrates by evidence or data that the geographical jurisdiction governed by the local governing body exhibits a

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

local need to strengthen the Florida Building Code beyond the needs or regional variation addressed by the Florida Building Code, that the local need is addressed by the proposed local amendment, and that the amendment is no more stringent than necessary to address the local need.

2. Such additional requirements are not discriminatory against materials, products, or construction techniques of demonstrated capabilities.

3. Such additional requirements may not introduce a new subject not addressed in the Florida Building Code.

(c)4- The enforcing agency shall make readily available, in a usable format, all amendments adopted under ~~pursuant to~~ this section.

(d)5- Any amendment to the Florida Building Code shall be transmitted within 30 days after adoption by the ~~adopting~~ local government to the commission. The commission shall maintain copies of all such amendments in a format that is usable and obtainable by the public. Local technical amendments are ~~shall~~ not ~~become~~ effective until 30 days after the amendment has been received and published by the commission.

(e)6- ~~An~~ Any amendment to the Florida Building Code adopted by a local government under ~~pursuant to~~ this subsection ~~is paragraph shall be~~ effective only until the adoption ~~by the~~ ~~commission~~ of the new edition of the Florida Building Code by ~~the commission~~ every third year. At such time, the commission

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

176 shall review such amendment for consistency with the criteria in
177 paragraph (9) (a) and adopt such amendment as part of the Florida
178 Building Code or rescind the amendment. The commission shall
179 immediately notify the respective local government of the
180 rescission of any amendment. After receiving such notice, the
181 respective local government may readopt the rescinded amendment
182 under pursuant to the provisions of this subsection paragraph.

183 (f) 7- Each county and municipality desiring to make local
184 technical amendments to the Florida Building Code shall ~~by~~
185 ~~interlocal agreement~~ establish by interlocal agreement a
186 countywide compliance review board to review any amendment to
187 the Florida Building Code that is, adopted by a local government
188 within the county under pursuant to this subsection and
189 paragraph, that is challenged by a ~~any~~ substantially affected
190 party for purposes of determining the amendment's compliance
191 with this subsection paragraph. If challenged, the local
192 technical amendments are ~~shall~~ not ~~become~~ effective until the
193 time for filing an appeal under paragraph (g) pursuant to
194 ~~subparagraph 8-~~ has expired or, if there is an appeal, until the
195 commission issues its final order determining if the adopted
196 amendment is in compliance with this subsection.

197 (g) 8- If the compliance review board determines such
198 amendment is not in compliance with this subsection paragraph,
199 the compliance review board shall notify such local government
200 of the noncompliance and that the amendment is invalid and

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

201 unenforceable until the local government corrects the amendment
 202 to bring it into compliance. The local government may appeal the
 203 decision of the compliance review board to the commission. If
 204 the compliance review board determines that such amendment is ~~to~~
 205 ~~be~~ in compliance with this subsection ~~paragraph~~, any
 206 substantially affected party may appeal such determination to
 207 the commission. Any such appeal must ~~shall~~ be filed with the
 208 commission within 14 days after ~~of~~ the board's written
 209 determination. The commission shall promptly refer the appeal to
 210 the Division of Administrative Hearings by electronic means
 211 through the division's website for the assignment of an
 212 administrative law judge. The administrative law judge shall
 213 conduct the required hearing within 30 days after being assigned
 214 to the appeal, and shall enter a recommended order within 30
 215 days after ~~of~~ the conclusion of such hearing. The commission
 216 shall enter a final order within 30 days after an order is
 217 rendered ~~thereafter~~. ~~The provisions of~~ Chapter 120 and the
 218 uniform rules of procedure shall apply to such proceedings. The
 219 local government adopting the amendment that is subject to
 220 challenge has the burden of proving that the amendment complies
 221 with this subsection ~~paragraph~~ in proceedings before the
 222 compliance review board and the commission, as applicable.
 223 Actions of the commission are subject to judicial review under
 224 ~~pursuant to~~ s. 120.68. The compliance review board shall
 225 determine whether its decisions apply to a respective local

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

226 jurisdiction or apply countywide.

227 (h)9- An amendment adopted under this subsection ~~paragraph~~
228 must ~~shall~~ include a fiscal impact statement that ~~which~~
229 documents the costs and benefits of the proposed amendment.
230 Criteria for the fiscal impact statement shall include the
231 impact to local government relative to enforcement and, the
232 impact to property and building owners and, ~~as well as to~~
233 industry, relative to the cost of compliance. The fiscal impact
234 statement may not be used as a basis for challenging the
235 amendment for compliance.

236 (i)10- In addition to paragraphs (f) and (g) ~~subparagraphs~~
237 ~~7. and 9.~~, the commission may review any amendments adopted
238 under ~~pursuant to~~ this subsection and make nonbinding
239 recommendations related to compliance of such amendments with
240 this subsection.

241 (j)(e) Any amendment adopted by a local enforcing agency
242 under ~~pursuant to~~ this subsection may ~~shall~~ not apply to state
243 or school district owned buildings, manufactured buildings or
244 factory-built school buildings approved by the commission, or
245 prototype buildings approved under ~~pursuant to~~ s. 553.77(3). The
246 respective responsible entities shall consider the physical
247 performance parameters substantiating such amendments when
248 designing, specifying, and constructing such exempt buildings.

249 (k)(d) A technical amendment to the Florida Building Code
250 related to water conservation practices or design criteria

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

251 adopted by a local government under ~~pursuant to~~ this subsection
252 is not ~~rendered~~ void when the code is updated if the technical
253 amendment is necessary to protect or provide for more efficient
254 use of water resources as provided in s. 373.621. However, any
255 such technical amendment carried forward into the next edition
256 of the code under ~~pursuant to~~ this paragraph is subject to
257 review or modification as provided in this part.

258 (1) If a local government adopts a regulation, law,
259 ordinance, policy, amendment, or land use or zoning provision
260 without using the process established in this subsection, and a
261 substantially affected person considers such regulation, law,
262 ordinance, policy, amendment, or land use or zoning provision to
263 be a technical amendment to the Florida Building Code, then the
264 substantially affected person may submit a petition to the
265 commission for a nonbinding advisory opinion. If a substantially
266 affected person submits a request in accordance with this
267 paragraph, the commission shall issue a nonbinding advisory
268 opinion stating whether or not the commission interprets the
269 regulation, law, ordinance, policy, amendment, or land use or
270 zoning provision as a technical amendment to the Florida
271 Building Code. As used in this paragraph, the term "local
272 government" means a county, municipality, special district, or
273 political subdivision of the state.

274 1. Requests to review a local government regulation, law,
275 ordinance, policy, amendment, or land use or zoning provision

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

276 may be initiated by any substantially affected person. A
277 substantially affected person includes an owner or builder
278 subject to the regulation, law, ordinance, policy, amendment, or
279 land use or zoning provision, or an association of owners or
280 builders having members who are subject to the regulation, law,
281 ordinance, policy, amendment, or land use or zoning provision.

282 2. In order to initiate a review, a substantially affected
283 person must file a petition with the commission. The commission
284 shall adopt a form for the petition and directions for filing,
285 which shall be published on the Building Code Information
286 System. The form shall, at a minimum, require the following:

287 a. The name of the local government that enacted the
288 regulation, law, ordinance, policy, amendment, or land use or
289 zoning provision.

290 b. The name and address of the local government's general
291 counsel or administrator.

292 c. The name, address, and telephone number of the
293 petitioner; the name, address, and telephone number of the
294 petitioner's representative, if any; and an explanation of how
295 the petitioner's substantial interests are being affected by the
296 regulation, law, ordinance, policy, amendment, or land use or
297 zoning provision.

298 d. A statement explaining why the regulation, law,
299 ordinance, policy, amendment, or land use or zoning provision is
300 a technical amendment to the Florida Building Code, and which

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

301 provisions of the Florida Building Code, if any, are being
302 amended by the regulation, law, ordinance, policy, amendment, or
303 land use or zoning provision.

304 3. The petitioner shall serve the petition on the local
305 government's general counsel or administrator by certified mail,
306 return receipt requested, and send a copy of the petition to the
307 commission, in accordance with the commission's published
308 directions. The local government shall respond to the petition
309 in accordance with the form by certified mail, return receipt
310 requested, and send a copy of its response to the commission,
311 within 14 days after receipt of the petition, including
312 Saturdays, Sundays, and legal holidays.

313 4. Upon receipt of a petition that meets the requirements
314 of this paragraph, the commission shall publish the petition,
315 including any response submitted by the local government, on the
316 Building Code Information System in a manner that allows
317 interested persons to address the issues by posting comments.

318 5. Before issuing an advisory opinion, the commission
319 shall consider the petition, the response, and any comments
320 posted on the Building Code Information System. The commission
321 may also provide the petition, the response, and any comments
322 posted on the Building Code Information System to a technical
323 advisory committee, and may consider any recommendation provided
324 by the technical advisory committee. The commission shall issue
325 an advisory opinion stating whether the regulation, law,

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

326 ordinance, policy, amendment, or land use or zoning provision is
327 a technical amendment to the Florida Building Code within 30
328 days after the filing of the petition, including Saturdays,
329 Sundays, and legal holidays. The commission shall publish its
330 advisory opinion on the Building Code Information System and in
331 the Florida Administrative Register. The commission's advisory
332 opinion is nonbinding and is not a declaratory statement under
333 s. 120.565.

334 (5) Notwithstanding subsection (4), counties and
335 municipalities may adopt by ordinance an administrative or
336 technical amendment to the Florida Building Code relating to
337 flood resistance in order to implement the National Flood
338 Insurance Program or incentives. Specifically, an administrative
339 amendment may assign the duty to enforce all or portions of
340 flood-related code provisions to the appropriate agencies of the
341 local government and adopt procedures for variances and
342 exceptions from flood-related code provisions other than
343 provisions for structures seaward of the coastal construction
344 control line consistent with the requirements in 44 C.F.R. s.
345 60.6. A technical amendment is authorized to the extent it is
346 more stringent than the code. A technical amendment is not
347 subject to the requirements of subsection (4) and may not be
348 rendered void when the code is updated if the amendment is
349 adopted for the purpose of participating in the Community Rating
350 System promulgated pursuant to 42 U.S.C. s. 4022, the amendment

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

had already been adopted by local ordinance prior to July 1, 2010, or the amendment requires a design flood elevation above the base flood elevation. Any amendment adopted under ~~pursuant~~ ~~to~~ this subsection shall be transmitted to the commission within 30 days after being adopted. A municipality, county, or special district may not use preliminary maps issued by the Federal Emergency Management Agency for any law, ordinance, rule, or other measure that has the effect of imposing land use changes or permits.

(8) Notwithstanding subsection (3) or subsection (7), the commission may address issues identified in this subsection by amending the code under ~~pursuant to~~ the rule adoption procedures in chapter 120. Updates to the Florida Building Code, including provisions contained in referenced standards and criteria which relate to wind resistance or the prevention of water intrusion, may not be amended under ~~pursuant to~~ this subsection to diminish those standards; however, the commission may amend the Florida Building Code to enhance such standards. Following the approval of any amendments to the Florida Building Code by the commission and publication of the amendments on the commission's website, authorities having jurisdiction to enforce the Florida Building Code may enforce the amendments.

(a) The commission may approve amendments that are needed to address:

1. ~~(a)~~ Conflicts within the updated code;

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

376 ~~2.(b)~~ Conflicts between the updated code and the Florida
377 Fire Prevention Code adopted under ~~pursuant to~~ chapter 633;
378 ~~3.(e)~~ Unintended results from the integration of
379 previously adopted amendments with the model code;
380 ~~4.(d)~~ Equivalency of standards;
381 ~~5.(e)~~ Changes to or inconsistencies with federal or state
382 law; or
383 ~~6.(f)~~ Adoption of an updated edition of the National
384 Electrical Code if the commission finds that delay of
385 implementing the updated edition causes undue hardship to
386 stakeholders or otherwise threatens the public health, safety,
387 and welfare.
388 (b) The commission may issue errata to the code pursuant
389 to the rule adoption procedures in chapter 120 to list
390 demonstrated errors in provisions contained within the Florida
391 Building Code. The determination of such errors and the issuance
392 of errata to the code must be approved by a 75 percent
393 supermajority vote of the commission. For purposes of this
394 paragraph, "errata to the code" means a list of errors on
395 current and previous editions of the Florida Building Code.
396 Section 3. Paragraph (d) is added to subsection (1) of
397 section 553.79, Florida Statutes, to read:
398 553.79 Permits; applications; issuance; inspections.—
399 (1)
400 (d) A local government may not require a contract between

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

401 a builder and an owner for the issuance of a building permit or
402 as a requirement for the submission of a building permit
403 application.

404 Section 4. Present subsections (10) through (19) of
405 section 553.791, Florida Statutes, are redesignated as
406 subsections (11) through (20), respectively, a new subsection
407 (10) and subsection (21) are added to that section, and
408 subsection (1), paragraph (b) of subsection (2), subsections
409 (3), (4), and (6), paragraphs (b) and (d) of subsection (7),
410 subsections (8) and (9), and present subsections (10), (11),
411 (12), (14), and (15) are amended, to read:

412 553.791 Alternative plans review and inspection.—

413 (1) As used in this section, the term:

414 (a) "Applicable codes" means the Florida Building Code and
415 any local technical amendments to the Florida Building Code but
416 does not include the applicable minimum fire prevention and
417 firesafety codes adopted pursuant to chapter 633.

418 (b) "Audit" means the process to confirm that the building
419 code inspection services have been performed by the private
420 provider, including ensuring that the required affidavit for the
421 plan review has been properly completed and submitted with
422 ~~affixed to~~ the permit documents and that the minimum mandatory
423 inspections required under the building code have been performed
424 and properly recorded. The local building official may not
425 replicate the plan review or inspection being performed by the

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

private provider, unless expressly authorized by this section.

(c) "Building" means any construction, erection, alteration, demolition, or improvement of, or addition to, any structure or site work for which permitting by a local enforcement agency is required.

(d) "Building code inspection services" means those services described in s. 468.603(5) and (8) involving the review of building plans as well as those services involving the review of site plans and site work engineering plans or their functional equivalent, to determine compliance with applicable codes and those inspections required by law, conducted either in person or virtually, of each phase of construction for which permitting by a local enforcement agency is required to determine compliance with applicable codes.

(e) "Deliver" or "delivery" means any method of delivery used in conventional business or commercial practice, including delivery by electronic transmissions.

(f) "Duly authorized representative" means an agent of the private provider identified in the permit application who reviews plans or performs inspections as provided by this section and who is licensed as an engineer under chapter 471 or as an architect under chapter 481 or who holds a standard certificate under part XII of chapter 468.

(g) "Electronically posted" means providing notices of decisions, results, or records, including inspection records,

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

451 through the use of a website or other form of electronic
452 communication used to transmit or display information.

453 (h) "Electronic signature" means any letters, characters,
454 or symbols manifested by electronic or similar means which are
455 executed or adopted by a party with an intent to authenticate a
456 writing or record.

457 (i) "Electronic transmission" or "submitted
458 electronically" means any form or process of communication not
459 directly involving the physical transfer of paper or another
460 tangible medium which is suitable for the retention, retrieval,
461 and reproduction of information by the recipient and is
462 retrievable in paper form by the receipt through an automated
463 process. All notices provided for in this section may be
464 transmitted electronically and shall have the same legal effect
465 as if physically posted or mailed.

466 (j)-(f) "Immediate threat to public safety and welfare"
467 means a building code violation that, if allowed to persist,
468 constitutes an immediate hazard that could result in death,
469 serious bodily injury, or significant property damage. This
470 paragraph does not limit the authority of the local building
471 official to issue a Notice of Corrective Action at any time
472 during the construction of a building project or any portion of
473 such project if the official determines that a condition of the
474 building or portion thereof may constitute a hazard when the
475 building is put into use following completion as long as the

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

condition cited is shown to be in violation of the building code or approved plans.

(k)~~(g)~~ "Local building official" means the individual within the governing jurisdiction responsible for direct regulatory administration or supervision of plans review, enforcement, and inspection of any construction, erection, alteration, demolition, or substantial improvement of, or addition to, any structure for which permitting is required to indicate compliance with applicable codes and includes any duly authorized designee of such person.

(l)~~(h)~~ "Permit application" means a properly completed and submitted application for the requested building or construction permit, including:

1. The plans reviewed by the private provider.
2. The affidavit from the private provider required under subsection (6).
3. Any applicable fees.
4. Any documents required by the local building official to determine that the fee owner has secured all other government approvals required by law.

(m)~~(i)~~ "Plans" means building plans, site engineering plans, or site plans, or their functional equivalent, submitted by a fee owner or fee owner's contractor to a private provider or duly authorized representative for review.

(n)~~(j)~~ "Private provider" means a person licensed as a

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

501 building code administrator under part XII of chapter 468, as an
502 engineer under chapter 471, or as an architect under chapter
503 481. For purposes of performing inspections under this section
504 for additions and alterations that are limited to 1,000 square
505 feet or less to residential buildings, the term "private
506 provider" also includes a person who holds a standard
507 certificate under part XII of chapter 468.

508 (o) ~~(k)~~ "Request for certificate of occupancy or
509 certificate of completion" means a properly completed and
510 executed application for:

511 1. A certificate of occupancy or certificate of
512 completion.

513 2. A certificate of compliance from the private provider
514 required under subsection (12) ~~(11)~~.

515 3. Any applicable fees.

516 4. Any documents required by the local building official
517 to determine that the fee owner has secured all other government
518 approvals required by law.

519 (p) "Single-trade inspection" means any inspection focused
520 on a single construction trade, such as plumbing, mechanical, or
521 electrical. The term includes, but is not limited to,
522 inspections of door or window replacements; fences and block
523 walls more than 6 feet high from the top of the wall to the
524 bottom of the footing; stucco or plastering; reroofing with no
525 structural alteration; HVAC replacements; ductwork or fan

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

replacements; alteration or installation of wiring, lighting,
and service panels; water heater changeouts; sink replacements;
and repiping.

(q)~~(l)~~ "Site work" means the portion of a construction
project that is not part of the building structure, including,
but not limited to, grading, excavation, landscape irrigation,
and installation of driveways.

(r)~~(m)~~ "Stop-work order" means the issuance of any written
statement, written directive, or written order which states the
reason for the order and the conditions under which the cited
work will be permitted to resume.

(2)

(b) If an owner or contractor retains a private provider
for purposes of plans review or building inspection services,
the local jurisdiction must reduce the permit fee by the amount
of cost savings realized by the local enforcement agency for not
having to perform such services. Such reduction may be
calculated on a flat fee or percentage basis, or any other
reasonable means by which a local enforcement agency assesses
the cost for its plans review or inspection services ~~It is the~~
~~intent of the Legislature that owners and contractors pay~~
~~reduced fees related to building permitting requirements when~~
~~hiring a private provider for plans review and building~~
~~inspections. A local jurisdiction must calculate the cost~~
~~savings to the local enforcement agency, based on a fee owner or~~

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

551 ~~contractor hiring a private provider to perform plans reviews~~
552 ~~and building inspections in lieu of the local building official,~~
553 ~~and reduce the permit fees accordingly.~~ The local jurisdiction
554 may not charge fees for building inspections if the fee owner or
555 contractor hires a private provider to perform such services;
556 however, the local jurisdiction may charge a reasonable
557 administrative fee.

558 (3) A private provider and any duly authorized
559 representative may only perform building code inspection
560 services that are within the disciplines covered by that
561 person's licensure or certification under chapter 468, chapter
562 471, or chapter 481, including single-trade inspections. A
563 private provider may not provide building code inspection
564 services pursuant to this section upon any building designed or
565 constructed by the private provider or the private provider's
566 firm.

567 (4) A fee owner or the fee owner's contractor using a
568 private provider to provide building code inspection services
569 shall notify the local building official in writing at the time
570 of permit application, or by 2 p.m. local time, 2 business days
571 before the first scheduled inspection by the local building
572 official or building code enforcement agency that ~~for~~ a private
573 provider has been contracted to perform the ~~performing~~ required
574 inspections of construction under this section, including
575 single-trade inspections, on a form to be adopted by the

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

commission. This notice shall include the following information:

(a) The services to be performed by the private provider.

(b) The name, firm, address, telephone number, and e-mail address ~~facsimile number~~ of each private provider who is performing or will perform such services, his or her professional license or certification number, qualification statements or resumes, and, if required by the local building official, a certificate of insurance demonstrating that professional liability insurance coverage is in place for the private provider's firm, the private provider, and any duly authorized representative in the amounts required by this section.

(c) An acknowledgment from the fee owner in substantially the following form:

I have elected to use one or more private providers to provide building code plans review and/or inspection services on the building or structure that is the subject of the enclosed permit application, as authorized by s. 553.791, Florida Statutes. I understand that the local building official may not review the plans submitted or perform the required building inspections to determine compliance with the applicable codes, except to the extent specified in said law. Instead, plans review and/or required

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

building inspections will be performed by licensed or certified personnel identified in the application. The law requires minimum insurance requirements for such personnel, but I understand that I may require more insurance to protect my interests. By executing this form, I acknowledge that I have made inquiry regarding the competence of the licensed or certified personnel and the level of their insurance and am satisfied that my interests are adequately protected. I agree to indemnify, defend, and hold harmless the local government, the local building official, and their building code enforcement personnel from any and all claims arising from my use of these licensed or certified personnel to perform building code inspection services with respect to the building or structure that is the subject of the enclosed permit application.

If the fee owner or the fee owner's contractor makes any changes to the listed private providers or the services to be provided by those private providers, the fee owner or the fee owner's contractor shall, within 1 business day after any change or within 2 business days before the next scheduled inspection, update the notice to reflect such changes. A change of a duly authorized representative named in the permit application does

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

not require a revision of the permit, and the building code enforcement agency shall not charge a fee for making the change. ~~In addition, the fee owner or the fee owner's contractor shall post at the project site, before the commencement of construction and updated within 1 business day after any change, on a form to be adopted by the commission, the name, firm, address, telephone number, and facsimile number of each private provider who is performing or will perform building code inspection services, the type of service being performed, and similar information for the primary contact of the private provider on the project.~~

(6) A private provider performing plans review under this section shall review the plans to determine compliance with the applicable codes. Upon determining that the plans reviewed comply with the applicable codes, the private provider shall prepare an affidavit or affidavits ~~on a form reasonably acceptable to the commission~~ certifying, under oath, that the following is true and correct to the best of the private provider's knowledge and belief:

(a) The plans were reviewed by the affiant, who is duly authorized to perform plans review pursuant to this section and holds the appropriate license or certificate.

(b) The plans comply with the applicable codes.

Such affidavit may bear a written or electronic signature and

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

651 may be submitted electronically to the local building official.

652 (7)

653 (b) If the local building official provides a written
654 notice of plan deficiencies to the permit applicant within the
655 prescribed 20-day period, the 20-day period shall be tolled
656 pending resolution of the matter. To resolve the plan
657 deficiencies, the permit applicant may elect to dispute the
658 deficiencies pursuant to subsection (14) ~~(13)~~ or to submit
659 revisions to correct the deficiencies.

660 (d) If the local building official provides a second
661 written notice of plan deficiencies to the permit applicant
662 within the prescribed time period, the permit applicant may
663 elect to dispute the deficiencies pursuant to subsection (14)
664 ~~(13)~~ or to submit additional revisions to correct the
665 deficiencies. For all revisions submitted after the first
666 revision, the local building official has an additional 5
667 business days from the date of resubmittal to issue the
668 requested permit or to provide a written notice to the permit
669 applicant stating which of the previously identified plan
670 features remain in noncompliance with the applicable codes, with
671 specific reference to the relevant code chapters and sections.

672 (8) A private provider performing required inspections
673 under this section shall inspect each phase of construction as
674 required by the applicable codes. Such inspection may be
675 performed in-person or virtually. The private provider may have

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

676 ~~shall be permitted to send~~ a duly authorized representative ~~to~~
677 ~~the building site to~~ perform the required inspections, provided
678 all required reports are prepared by and bear the written or
679 electronic signature of the private provider or the private
680 provider's duly authorized representative. The duly authorized
681 representative must be an employee of the private provider
682 entitled to receive reemployment assistance benefits under
683 chapter 443. The contractor's contractual or legal obligations
684 are not relieved by any action of the private provider.

685 (9) A private provider performing required inspections
686 under this section shall provide notice to the local building
687 official of the date and approximate time of any such inspection
688 no later than the prior business day by 2 p.m. local time or by
689 any later time permitted by the local building official in that
690 jurisdiction. The local building official may not prohibit the
691 private provider from performing any inspection outside the
692 local building official's normal operating hours, including
693 after hours, weekends, or holidays. The local building official
694 may visit the building site as often as necessary to verify that
695 the private provider is performing all required inspections. A
696 deficiency notice must be posted ~~at the job site~~ by the private
697 provider, the duly authorized representative of the private
698 provider, or the building department whenever a noncomplying
699 item related to the building code or the permitted documents is
700 found. Such notice may be physically posted at the job site or

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

electronically posted. After corrections are made, the item must be reinspected by the private provider or representative before being concealed. Reinspection or reaudit fees shall not be charged by the local jurisdiction as a result of the local jurisdiction's audit inspection occurring before the performance of the private provider's inspection or for any other administrative matter not involving the detection of a violation of the building code or a permit requirement.

(10) If equipment replacements and repairs must be performed in an emergency situation, subject to the emergency permitting provisions of the Florida Building Code, a private provider may perform emergency inspection services without first notifying the local building official pursuant to subsection (9). A private provider must conduct the inspection within 3 business days after being contacted to conduct an emergency inspection and must submit the inspection report to the local building official within 1 day after the inspection is completed.

(11)~~(10)~~ Upon completing the required inspections at each applicable phase of construction, the private provider shall record such inspections on a form acceptable to the local building official. The form must bear the written or electronic signature of ~~be signed by~~ the provider or the provider's duly authorized representative. These inspection records shall reflect those inspections required by the applicable codes of

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

726 each phase of construction for which permitting by a local
727 enforcement agency is required. The private provider, upon
728 completion of the required inspection ~~before leaving the project~~
729 ~~site~~, shall post each completed inspection record, indicating
730 pass or fail, ~~at the site~~ and provide the record to the local
731 building official within 2 business days. Such inspection record
732 may be electronically posted by the private provider or the
733 private provider may post such inspection record physically at
734 the project site. The private provider may electronically
735 transmit the record to the local building official. The local
736 building official may waive the requirement to provide a record
737 of each inspection within 2 business days if the record is
738 electronically posted or posted at the project site and all such
739 inspection records are submitted with the certificate of
740 compliance. Unless the records have been electronically posted,
741 records of all required and completed inspections shall be
742 maintained at the building site at all times and made available
743 for review by the local building official. The private provider
744 shall report to the local enforcement agency any condition that
745 poses an immediate threat to public safety and welfare.

746 (12)-(11) Upon completion of all required inspections, the
747 private provider shall prepare a certificate of compliance, on a
748 form acceptable to the local building official, summarizing the
749 inspections performed and including a written representation,
750 under oath, that the stated inspections have been performed and

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

751 that, to the best of the private provider's knowledge and
752 belief, the building construction inspected complies with the
753 approved plans and applicable codes. The statement required of
754 the private provider shall be substantially in the following
755 form and shall be signed and sealed by a private provider as
756 established in subsection (1) or may be electronically
757 transmitted to the local building official:

758
759 To the best of my knowledge and belief, the building
760 components and site improvements outlined herein and
761 inspected under my authority have been completed in
762 conformance with the approved plans and the applicable
763 codes.

764
765 (13)~~(12)~~ No more than 2 business days after receipt of a
766 request for a certificate of occupancy or certificate of
767 completion and the applicant's presentation of a certificate of
768 compliance and approval of all other government approvals
769 required by law, the local building official shall issue the
770 certificate of occupancy or certificate of completion or provide
771 a notice to the applicant identifying the specific deficiencies,
772 as well as the specific code chapters and sections. If the local
773 building official does not provide notice of the deficiencies
774 within the prescribed 2-day period, the request for a
775 certificate of occupancy or certificate of completion shall be

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

deemed granted and the certificate of occupancy or certificate of completion shall be issued by the local building official on the next business day. To resolve any identified deficiencies, the applicant may elect to dispute the deficiencies pursuant to subsection (14) ~~(13)~~ or to submit a corrected request for a certificate of occupancy or certificate of completion.

(15) ~~(14)~~ For the purposes of this section, any notice to be provided by the local building official shall be deemed to be provided to the person or entity when successfully transmitted to the e-mail address ~~facsimile number~~ listed for that person or entity in the permit application or revised permit application, or, if no e-mail address ~~facsimile number~~ is stated, when actually received by that person or entity.

(16) (a) ~~(15) (a)~~ A local enforcement agency, local building official, or local government may not adopt or enforce any laws, rules, procedures, policies, qualifications, or standards more stringent than those prescribed by this section.

(b) A local enforcement agency, local building official, or local government may establish, for private providers and duly authorized representatives working within that jurisdiction, a system of registration to verify compliance with the licensure requirements of paragraph (1) (n) ~~(1) (j)~~ and the insurance requirements of subsection (17) ~~(16)~~.

(c) This section does not limit the authority of the local building official to issue a stop-work order for a building

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

801 project or any portion of the project, as provided by law, if
802 the official determines that a condition on the building site
803 constitutes an immediate threat to public safety and welfare.

804 (21) Notwithstanding any other law, a county, a
805 municipality, a school district, or an independent special
806 district may use a private provider to provide building code
807 inspection services for a public works project, an improvement,
808 a building, or any other structure that is owned by the county,
809 municipality, school district, or independent special district.

810 Section 5. Paragraph (a) of subsection (7) of section
811 553.80, Florida Statutes, is amended to read:

812 553.80 Enforcement.—

813 (7) (a) The governing bodies of local governments may
814 provide a schedule of reasonable fees, as authorized by s.
815 125.56(2) or s. 166.222 and this section, for enforcing this
816 part. These fees, and any fines or investment earnings related
817 to the fees, shall be used solely for carrying out the local
818 government's responsibilities in enforcing the Florida Building
819 Code. When providing a schedule of reasonable fees, the total
820 estimated annual revenue derived from fees, and the fines and
821 investment earnings related to the fees, may not exceed the
822 total estimated annual costs of allowable activities. Any
823 unexpended balances shall be carried forward to future years for
824 allowable activities or shall be refunded at the discretion of
825 the local government. A local government may not carry forward

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

826 an amount exceeding the average of its operating budget for
 827 enforcing the Florida Building Code for the previous 4 fiscal
 828 years. For purposes of this subsection, the term "operating
 829 budget" does not include reserve amounts. Any amount exceeding
 830 this limit must be used as authorized in subparagraph 2.
 831 However, a local government which established, as of January 1,
 832 2019, a Building Inspections Fund Advisory Board consisting of
 833 five members from the construction stakeholder community and
 834 carries an unexpended balance in excess of the average of its
 835 operating budget for the previous 4 fiscal years may continue to
 836 carry such excess funds forward upon the recommendation of the
 837 advisory board. The basis for a fee structure for allowable
 838 activities shall relate to the level of service provided by the
 839 local government and shall include consideration for refunding
 840 fees due to reduced services based on services provided as
 841 prescribed by s. 553.791, but not provided by the local
 842 government. Fees charged shall be consistently applied.

843 1. As used in this subsection, the phrase "enforcing the
 844 Florida Building Code" includes the direct costs and reasonable
 845 indirect costs associated with review of building plans,
 846 building inspections, reinspections, and building permit
 847 processing; building code enforcement; and fire inspections
 848 associated with new construction. The phrase may also include
 849 training costs associated with the enforcement of the Florida
 850 Building Code and enforcement action pertaining to unlicensed

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

contractor activity to the extent not funded by other user fees.

2. A local government must use any excess funds that it is prohibited from carrying forward to rebate and reduce fees, or to pay for the construction of a building or structure that houses a local government's building code enforcement agency or the training programs for building officials, inspectors, or plans examiners associated with the enforcement of the Florida Building Code. Excess funds used to construct such a building or structure must be designated for such purpose by the local government and may not be carried forward for more than 4 consecutive years.

3. The following activities may not be funded with fees adopted for enforcing the Florida Building Code:

a. Planning and zoning or other general government activities.

b. Inspections of public buildings for a reduced fee or no fee.

c. Public information requests, community functions, boards, and any program not directly related to enforcement of the Florida Building Code.

d. Enforcement and implementation of any other local ordinance, excluding validly adopted local amendments to the Florida Building Code and excluding any local ordinance directly related to enforcing the Florida Building Code as defined in subparagraph 1.

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

876 4. A local government shall use recognized management,
877 accounting, and oversight practices to ensure that fees, fines,
878 and investment earnings generated under this subsection are
879 maintained and allocated or used solely for the purposes
880 described in subparagraph 1.

881 5. The local enforcement agency, independent district, or
882 special district may not require at any time, including at the
883 time of application for a permit, the payment of any additional
884 fees, charges, or expenses associated with:

885 a. Providing proof of licensure pursuant to chapter 489;

886 b. Recording or filing a license issued pursuant to this
887 chapter;

888 c. Providing, recording, or filing evidence of workers'
889 compensation insurance coverage as required by chapter 440; or

890 d. Charging surcharges or other similar fees not directly
891 related to enforcing the Florida Building Code.

892 Section 6. Paragraph (a) of subsection (8) and subsection
893 (14) of section 553.842, Florida Statutes, are amended to read:

894 553.842 Product evaluation and approval.—

895 (8) The commission may adopt rules to approve the
896 following types of entities that produce information on which
897 product approvals are based. All of the following entities,
898 including engineers and architects, must comply with a
899 nationally recognized standard demonstrating independence or no
900 conflict of interest:

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

(a) Evaluation entities approved under ~~pursuant to~~ this paragraph or that meet the criteria for approval adopted by the commission by rule. The commission shall specifically approve the National Evaluation Service, the International Association of Plumbing and Mechanical Officials Evaluation Service, the International Code Council Evaluation Services, Underwriters Laboratories, LLC, Intertek Testing Services NA, Inc., and the Miami-Dade County Building Code Compliance Office Product Control Division. Architects and engineers licensed in this state are also approved to conduct product evaluations as provided in subsection (5).

(14) The commission shall by rule establish criteria for revocation of product approvals as well as suspension ~~revocation~~ of approvals of product evaluation entities, including those approved in accordance with paragraph (8) (a), and suspension or revocation of approvals of testing laboratories, quality assurance entities, certification agencies, and validation entities. Suspension and revocation is governed by s. 120.60 and the uniform rules of procedure.

Section 7. Paragraph (bb) of subsection (1) of section 125.01, Florida Statutes, is amended to read:

125.01 Powers and duties.—

(1) The legislative and governing body of a county shall have the power to carry on county government. To the extent not inconsistent with general or special law, this power includes,

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

926 but is not restricted to, the power to:

927 (bb) Enforce the Florida Building Code~~7~~ as provided in s.
928 553.80~~7~~ and adopt and enforce local technical amendments to the
929 Florida Building Code as provided in s. 553.73(4)~~7~~, ~~pursuant to~~
930 ~~s. 553.73(4)(b) and (c)~~.

931 Section 8. Subsection (1) of section 125.56, Florida
932 Statutes, is amended to read:

933 125.56 Enforcement and amendment of the Florida Building
934 Code and the Florida Fire Prevention Code; inspection fees;
935 inspectors; etc.—

936 (1) The board of county commissioners of each of the
937 several counties of the state may enforce the Florida Building
938 Code and the Florida Fire Prevention Code~~7~~ as provided in ss.
939 553.80, 633.206, and 633.208~~7~~ and, at its discretion, adopt
940 local technical amendments to the Florida Building Code as
941 provided in s. 553.73(4)~~7~~, ~~pursuant to s. 553.73(4)(b) and (c)~~
942 and local technical amendments to the Florida Fire Prevention
943 Code as provided in~~7~~, ~~pursuant to~~ s. 633.202~~7~~, to provide for the
944 safe construction, erection, alteration, repair, securing, and
945 demolition of any building within its territory outside the
946 corporate limits of any municipality. Upon a determination to
947 consider amending the Florida Building Code or the Florida Fire
948 Prevention Code by a majority of the members of the board of
949 county commissioners of such county, the board shall call a
950 public hearing and comply with the public notice requirements of

ENROLLED

CS/CS/HB 401, Engrossed 1

2021 Legislature

s. 125.66(2). The board shall hear all interested parties at the public hearing and may then amend the building code or the fire code consistent with the terms and purposes of this act. Upon adoption, an amendment to the code shall be in full force and effect throughout the unincorporated area of such county until otherwise notified by the Florida Building Commission under ~~pursuant to~~ s. 553.73 or the State Fire Marshal under ~~pursuant to~~ s. 633.202. This subsection does not ~~Nothing herein contained shall be construed to~~ prevent the board of county commissioners from repealing such amendment to the building code or the fire code at any regular meeting of such board.

Section 9. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2021.

PLANNING & ZONING BOARD

OCTOBER 18, 2011

- MINUTES

**MINUTES OF A QUASI-JUDICIAL PUBLIC HEARING
OF THE PLANNING AND ZONING BOARD
TOWN OF BAY HARBOR ISLANDS**

A meeting of the Planning and Zoning Board of the Town of Bay Harbor Islands was held on Tuesday, October 18, 2011 at 7:00 p.m. in the Council Chambers. The meeting was opened with the Pledge of Allegiance. Upon roll call, the following Board members responded:

Nina Gladstone, Chair
Roberto Gambach
Oscar Sklar

Jerome Gavcovich, Vice Chair
Howard Hollander
Jaime Schapiro

Assistant Town Attorney Simone swore in those who would be testifying at the meeting. He stated that Markus Frankel had recused himself from the meeting because his firm was presenting item 2.

- Item 1.** Request for approval of changes to a previously approved townhouse development for **"The Villas at Bay Harbor Islands"** located at 1135 & 1145 97 Street, Lots 13 and 14 of Block 22. The proposed (10) unit townhouse is 3 stories. The Board approved the project on August 2, 2011 with some corrections. The Developer has made the revisions to the plans. Enclosed please find the site plan and elevations. (Item #1A)
* *Staff Review:* Design meets Town Code and was approved by the Development Review Committee.

Town Clerk Marante stated that she and staff had looked at the changes to the previously approved townhouse project and preferred the balconies and windows over the planters.

Carlos Bravo, Project Representative, came forward and stated that two options were presented; one with balconies and the other with planter boxes. He also stated that the gutters running down the building were removed. There was a brief discussion regarding the changes and the consensus of the Board was they preferred the balconies.

ACTION: Board Member Hollander made a motion to approve the change with the balconies. Board Member Sklar seconded the motion and it passed unanimously.

- Item 2.** Request for approval for a new commercial building for **"Taubco Developers"** located at 9551 E. Bay Harbor Drive, Lots 1-2 of Block 1. The developers are proposing a new 61,856 square foot commercial building. The new proposed structure is a 6 story building over one level of partial subterranean parking garage. The height of the building (roof deck) is noted to be 82.2 feet above grade / 75 feet above base flood elevation. Enclosed please find pictures of the existing and neighboring properties, the site plan and elevations. (Item #2A) The sample board will be presented at the meeting.
* *Staff Review:* Design meets Town Code and was approved by the Development Review Committee.

Jeffery Bercow, Representative, came forward to present the project to the Board. He introduced the owners, architect, and others in attendance. He stated that this was a mixed use project with offices, a bank, and a restaurant. It would also be a green building that would achieve LEED certification. He stated that the project had been to the Staff DRC committee three times and they addressed staff concerns to satisfy Code requirements and agreed to the conditions set by staff. He asked the architect to come forward to present the project.

Ifhat Benayoun, Frankel & Benayoun Architects, came forward to provide information to the Board. She stated that their firm was grateful to be doing this project and thanked Mr. Tauber for his confidence in them. The Taubers, along with Town staff, helped to shape the project. Mr. Tauber wanted the design to make a statement, be inviting and friendly, be functional and assessable, be a green building, and be built without any variances. She stated that they were seeking approval from the Board so they could present the project at the next Council meeting for approval. Referring to the plans and presentation boards, she pointed out the landscaping, water features, locations of the restaurant and the bank and the roof top amenities.

PUBLIC COMMENT - for the purpose of hearing any public comment with respect to an application for site plan approval at 9551 E. Bay Harbor Drive.

Abbi Eisenstadt, owner adjacent to the property of the proposed project, came forward to address the Board. He felt that the building was a beautiful design, but had a few items to question. One, the area between the South walkway looked raised and he wanted to know if that met Town Code; two, wanted to know if the waste being handled on the Southwest part of the property was in an air conditioned room; and three, wanted to know what the roof would really be used for and what hours it would be used.

Ms. Benayoun stated that the entire building was raised 4 feet and the south walkway is 6 inches below the building and met Code requirements. Mr. Tauber came forward to address the trash area issue. He stated that the trash service was already on the south side of the existing building and would remain there for the new building because there was no other place to put it. Mrs. Tauber came forward to give more information on the green roof. She stated that it would be energy efficient with quiet water noise and would take advantage of the natural elements. It would be for the use of the residents and the purpose would not be for a party place.

Consensus of the Board was it was a beautifully designed building. There was continued discussion regarding the roof top, the turbines proposed for the roof top, trellises, water features, valet parking, color of the glass, depth of the garage, the driveway, the trellises, landscaping, and the garbage location/trash room. Discussion continued regarding enclosing the trash in a corridor to contain the noise and smell from the adjoining property.

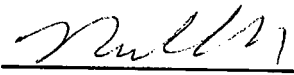
ACTION: Board Member Gavcovich made a motion to approve the project with a trash corridor added to internalize the trash, including staff recommendations #1 and #2 only, and with the approval of the turbines subject to the Town Council approval of the specifics. Board Member Hollander seconded the motion and it passed unanimously.

Mr. Berkow thanked the Board and stated that they were in agreement with the suggestions of the Board. He also stated that he would like the Board to look at a rendering for the trellis that Ms. Benayoun had prepared. Town Clerk Marante stated that item was not on the agenda and they had not presented it before the meeting. She cautioned the Board on discussing it at that time because she was concerned that there had been no public notice. Chair Gladstone stated that due to the Town Clerk's recommendation they would not discuss it at the meeting.

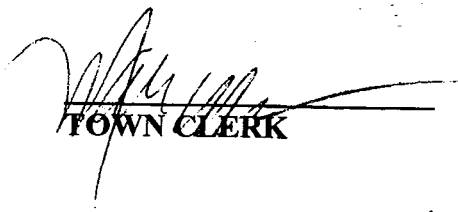
Item 3. Any other matters concerning the Board.

There being no further business the meeting was adjourned at 8:33 p.m.

ATTEST:



CHAIR



TOWN CLERK

PLANNING & ZONING BOARD

JANUARY 17, 2012

- MINUTES

**MINUTES OF THE PLANNING AND ZONING BOARD
TOWN OF BAY HARBOR ISLANDS**

A meeting of the Planning and Zoning Board of the Town of Bay Harbor Islands was held on Tuesday, January 17, 2012 at 7:22 p.m. in the Council Chambers. The meeting was opened with the Pledge of Allegiance. Upon roll call, the following Board members responded:

Nina Gladstone, Chair
Jerome Gavcovich, Vice Chair Roberto Gambach
Oscar Sklar Jaime Schapiro

Board Member Hollandar was not in attendance because he was in the hospital.

Item 1. Request for approval for a revision for "One Kane Concourse, LLC" located at 9551 E. Bay Harbor Drive, Lots 1-2 of Block 1. The owner is proposing to add a trellis on the rooftop to the previously approved project approved on October 4, 2011 by the Board. Enclosed please find copies of the revised site plan and elevations. (Item #1A)

** Staff Review:*

Design meets Town Code and was approved by Michael Miller, from Michael Miller Planning Associates with conditions. See the attached staff report.

Iphat Benayoun Fishman came forward representing the Irwin Tauber project for Frankel Benayoun Architects because Mr. Frankel was a Board member. She presented the revised site plan and elevations to the Board. She stated that having the concrete trellis 15 feet from the edge of the roof would not add to the look of height of the building when looking from the street. She stated that after meetings with staff they contacted their structural engineer and they were assured the placement was achievable and safe. They were asking approval of the revision and felt it would enhance the look of the building from the pedestrian walkway.

Town Planner Miller came forward to address the Board. He stated that the Board had reviewed this project several times and the Council approved the project on November 14, 2011. He gave a brief background and stated that the Code contained the requirement of 75 feet and there had to be some structures necessary for the function of the building, but there are height limits and they have to be set back. Working through this project there had been some discussion regarding changing the Code. He recommended approval with the following conditions:

1. The revised site development plans dated December 27, 2011
2. The proposed roof-mounted trellis structures modified to not cantilever more than 5 feet from the support columns to any edge of the highest roof deck.
3. The proposed trellis structures shall not be covered or closed in on the top or sides.

There was continued discussion regarding the placement and size of the trellises. Architect Benayoun and owner Irwin Tauber were in agreement with the conditions presented by Town Planner Miller.

ACTION: Board Member Gambach made a motion to approve the proposed trellis on the roof top conditional upon the recommendations stated above from Town Planner Miller. Board Member Sklar seconded the motion and it passed unanimously.

Item 2. Any other matters concerning the Board.

There being no further business the meeting was adjourned at 7:50 p.m.

ATTEST:


TOWN CLERK


CHAIR

TOWN COUNCIL

MARCH 12, 2012

- MINUTES

- STAFF REPORT

FINAL CONDITIONS OF APPROVAL

he thought would be a great idea to implement. Town Manager Wasson stated that part of the project that was underway was to replace the outfall structures, due to federal requirements.

ACTION: Vice Mayor Ruder made a motion to approve the ordinance as presented on second reading. Councilman Yaffe seconded the motion and it passed unanimously.

Item 8. **Discussion and approval of the proposed revisions to Condition #4 for the Roof Top Uses at the Taubco Commercial/Office Building located at 9551 East Bay Harbor Drive, which was previously discussed at the November Council meeting and deferred from the February Council meeting. Enclosed is a memorandum of explanation and the revisions updated February 22nd from Michael Miller Planning Associates.**

Councilman Leonard pointed out an error on page four and five, it should read am and midnight. Town Planner Miller stated that he had noticed that and would make the changes. Mr. Berkow felt this was a fair and reasonable for everyone.

ACTION: Vice Mayor Ruder made a motion to approve the revisions with the corrections on page 4. Councilman Weinstein seconded the motion and it passed unanimously.

Item 9. **Discussion and approval , at the request of Councilman Leonard, of the replacement of the sod to be installed by Brickman at the 98th Street Park at a cost of \$9,450. Enclosed is a memorandum of explanation from Town Manager Wasson. Approval would need an appropriation of \$9,450 from General Fund Reserves because this expense was not budgeted.**

Town Manager Wasson stated that they spoke about this item 2 months earlier. He talked with Brickman about the condition at the park. They had been treating the park and needed a little time, as the growing season had just begun. There was a water break underneath the newly installed walkway, which caused the problem, not over use or disease. It was the sand from the construction got washed out during the repair work. He researched the cost to sod the park and it would be around \$10,000.

Mayor Wallace asked if there was a motion to appropriate \$9,450 from the General Fund to replace the grass.

ACTION: Councilman Leonard made a motion to appropriate \$9,450 from the General Fund to replace the sod at the park. Councilman Salver seconded the motion for discussion purposes.

Councilman Weinstein stated that \$9,000 was excessive and he suggested to commit \$1,000 to restore the one spot that looks bad and not do the entire park. Vice Mayor Ruder agreed with Councilman Weinstein. He did not feel the problem would be there if there had not been a water break. He felt that with a little extra work on the part of Brickman the grass would come back and they did not have to do the entire park. Mayor Wallace agreed with both of them.

Councilman Leonard felt the sand had been there way too long and this had been an issue since mid last year. He felt that there had been around \$3.7 million dollars appropriated from funds for trees, shrubs in other parts of the Town and \$10,000 for the sod in the park was not that much. There was continued discussion regarding the irrigation, timing, lack of money, and the cost to repair the bad spot in the grass

Councilman Yaffe stated that he felt it was good that the Town was outsourcing the landscaping and they should be relied upon to repair the area. He would rely on them to give good advice. Vice Mayor Ruder agreed with him. In the parks business, where he worked before, he had to patch sod areas and wait a few months, with irrigation, special fertilizer and top dressing, it would come back. He felt Brickman's advise made sense. Vice Mayor Ruder stated that he was in favor of patch sodding the area affected, not the whole park. Mayor Wallace stated that she also agreed.

**TAUBCO COMMERCIAL / OFFICE COMPLEX
ONE KANE CONCOURSE
9551 EAST BAY HARBOR DRIVE
GATEWAY SITE DEVELOPMENT PLAN APPROVAL
FINAL CONDITIONS OF APPROVAL**

The Town Commission of the Town of Bay Harbor Islands approved the "Gateway" Site Development Plan application for the above development on November 14th, 2011 subject to the conditions listed hereinafter (includes revisions to condition #4 approved March 12th, 2012).

- 1) Approval of the Site Development Plan is based upon the plans prepared by Frankel Benayoun Architects, Inc. (Architecture) dated / signed October 31st, 2011, Holland Engineering (Civil Engineering) dated October 26th, 2011 and Geomantics (Landscape Architecture) dated October 26th, 2011 to allow for the construction of a multi-use 61,865 sq. ft. commercial complex. The exact square footage can be adjusted by staff at the time of building permit based on working drawings.
- 2) The Cover Sheet includes a rendering that includes large wind turbines on the elevated center roof. While such structures are permitted they are limited to a maximum of 20 feet in height above the roof deck (75-foot limit). The detailed plan sheets show smaller wind turbines that comply with the Town Code requirements and shall take precedence.
- 3) Certain design features are contingent on the Town Council modifying the Zoning Code. No assurances are given by the Town that the modifications will be adopted. If they are not adopted by the Town the plans must be modified to comply with the current Code requirements prior to the issuance of building permits.
- 4) Activities occurring on the rooftop of the building shall be subject to the following restrictions:

Uses and facilities shall be limited to recreational facilities for the building tenants, such as jogging / walking paths, swimming pool and/or spa, sun decks, seating areas, food preparation and/or serving areas (barbecue grill / sink / storage) and similar facilities.

Passive recreational activities, such as jogging, walking, conversation, eating, meditation, and similar passive recreational activities shall be permitted, provided no such rooftop activities shall occur prior to 8:00 AM or after 11:00 PM from Sunday through Thursday, and prior to 8:00 AM or after 12:00 AM (midnight) on Friday and Saturday.

No commercial business activities shall operate on the building rooftop, unless specifically approved by the Town Council at an advertised public meeting. A commercial business is one holding a valid Town Business Tax Receipt (formerly known as Occupational License) or Certificate of Use.

All electrical loudspeakers, amplifiers or musical instruments shall limit sound emission for background music or entertainment purposes, regardless of whether it is "live" or recorded. Such sound emissions shall not exceed 70 decibels at any time at its source, in accordance with the Town's noise ordinance (Article II of Chapter 12).

In addition, certain limited events and/or functions such as charity events, fundraising receptions, cocktail parties and the like may be permitted for the building owner or tenants, their guests and invitees, if approved in writing by the Town Manager, prior to the event and/or function occurring. All such requests shall be submitted to the Town Manager's office, on a form provided by the Town, at least 24 hours in advance of the event /function,

except that the Town Manager may approve, but is not required to approve, an event / function on short-term notice based on special circumstances. At a minimum, the application form information shall include:

- (a) The name, address, telephone number and E-mail address of the tenant/sponsor,
- (b) The name, address, telephone number, E-mail address and signature of the building/property owner and any designated property manager,
- (c) The estimated number of persons attending,
- (d) A description of the purpose of the event/function,
- (e) The hours of the event/function,
- (f) A description of any planned beverage / food or entertainment, and
- (g) An off-street parking plan to accommodate the attendees (if required).

All events and/or functions must be sponsored or hosted by the building owner or a building tenant, with the building owner's written consent. The building owner shall sign the Town's request form or submit a separate written consent letter to the Town with the request. No such limited rooftop event/ function activities shall occur prior to 9:00 AM or after 11:00 PM on Sunday through Thursday and prior to 6:00 PM or after 12:00 AM (midnight) on Friday or Saturday.

No bright lights, globes, strobes or flashing lights shall be permitted.

The Town reserves the right to order that any activities causing a nuisance must be altered immediately to comply with Town Code provisions, or to close any activity immediately that is deemed to be in violation of this criteria that negatively affects properties both within the Town and within adjoining communities.

Should the Town Council adopt uniform land development regulations for rooftop activities within the B-1 Business District that conflict with the provisions set forth herein, the Code provisions shall take precedence.

- 5) The applicant / property owner shall assure the Town Manager that adequate on-site and off-site parking spaces are or will be available for any events planned for the building rooftop area.
- 6) All solid waste refuse shall be transferred from internal building spaces to the refuse room via the internal building service corridors. No solid waste shall be transferred to the refuse room via the walkway on the south side of the building.

MINUTES OF A
PLANNING & ZONING BOARD MEETING
APRIL 19, 2016

**MINUTES OF A PLANNING & ZONING BOARD MEETING
TOWN OF BAY HARBOR ISLANDS**

A Planning & Zoning Board Meeting was held Tuesday April 19, 2016 at 7:02 p.m. in the Council Chambers. The meeting was opened with the Pledge of Allegiance. Upon roll call, the following Board Members responded:

Chair Steven Hurwitz
Board Member Alan Bebchik
Board Member Oscar Sklar

Vice Chair Jerome Gavcovich
Board Member Jed Frankel
Board Member Thomas Telesco

QUASI-JUDICIAL PUBLIC HEARING

Item 1. Administration of oath of office to newly appointed Board members. The oath will be administered by Town Clerk Marlene Siegel.

Town Clerk Siegel swore the Planning & Zoning Board Members for the 2016-2018 term.

Item 2. Election of a Chair by the Planning & Zoning Board Members.

ACTION: Board Member Sklar made a motion to re-appoint Steve Hurwitz as Chairperson. Vice Chair Gavcovich seconded the motion and it passed unanimously.

Item 3. Election of a Vice Chair by the Planning & Zoning Board Members.

ACTION: Board Member Telesco made a motion to re-appoint Jerome Gavcovich as Vice Chair. Board Member Sklar seconded the motion and it passed unanimously.

Item 4. Request for approval for a new commercial property for "One Kane Concourse" located at 9551 E. Bay Harbor Drive, Lots 1-2 of Block 1. The owner is proposing to construct a 52,184+/- square foot commercial property. The proposed building is six stories in height over two stories of below grade parking garage @ 75'0" above BFE (maximum of 75' permitted).

At this time Town Clerk Siegel swore in all the individuals speaking at the Public Hearing.

Attorney, Matthew Amster, 200 S. Biscayne Blvd., came forward to address the Board. He stated that the applicant received approval for the project a few years ago and has since made significant enhancement to provide a better quality project. He stated that among the changes were the modifications to the structure; flex setbacks and landscaping plan.

Architect Alex Druet & Luis Revuelta from Revuelta & Associates, came forward and presented the proposed changes. They explained the intent was to maximize the views and the layout of the spaces. The applicant was attempting gold, if not a silver LEED certification for the proposed project. The project would consist of commercial space, with a proposed restaurant on the ground floor and partial below grade parking garage.

There was a detailed discussion from the Board on the below grade parking; proposed materials; traffic study; seawall; valet parking service; waterproofing; width of the parking ramps; ceiling heights and the traffic effect that the proposed restaurant could have.

PUBLIC COMMENT

Paul Basile, 9240 W. Bay Harbor Drive, came forward and supported the proposed project and felt that the traffic would not be an issue at the location.

Victor Maya, 1155 103 St., came forward and urged the Board to look at the project overall. He felt that there was a lot of activity on the roof and added that there was an increase in density at this location.

Frances Neuhut, 1060 Kane Concourse, came forward and felt that the public hearing was not properly notice.

Teri D'amico, 9101 W. Bay Harbor Drive, came forward to address the Board and felt that the proposed project would impact the Town's character.

CLOSED PUBLIC COMMENT

There was a detailed discussion from the Board on the hours of operation of the proposed restaurant; parking requirements; project approval expired July of 2016; traffic circulation; base flood elevation; parking ramp; backflow preventers; staircases; landscaped area; exhaust fans for the parking garage; vertical design; railings; and the need for architectural enhancements.

Consensus was for the applicant to come back to the Board and provide more architectural details; parking study; provide better copies of drawing and a larger scale; landscaping elevations; show the backflow preventers on the plans; and to incorporate horizontal lines in the design.

CONCLUSION OF QUASI-JUDICIAL PUBLIC HEARING

Item 5. Request for approval for a new single family home for the "Shapiro Residence" located at 9430 W. Broadview Drive, Lot 81 of Block 23. The owner is proposing to construct a new single family residence on a waterfront lot. The proposed two story home will have approximately 6,844 square feet of a/c living space with a two car garage a pool and pool deck. The residence will have six bedrooms, 6 full bathrooms and two half bathrooms.

Architect, Cesar Molina, came forward to address the Board. He presented the proposed project as a tropical modern home with simple materials such as key stone, wood, light colors and aluminum windows. The home would have a entrance water garden with a skirt of landscaping on the second floor. He presented the renderings to the board and explained the property elevation; proposed retaining wall; green area and the motor port.

ACTION: Board Member Sklar made a motion to approve the proposed home. Board Member Frankel seconded the motion and it passed unanimously.

Item 6. Request for approval for a new single family home for the "Bay Hill Capital Group, Inc" located at 1311 100 Street, Lot 13 of Block 26. The Developer is proposing to construct a new single family residence. The proposed two story home will have approximately 5,430 square feet of a/c living space with a two car garage. The residence will have six bedrooms, 7 full bathrooms and one half bathroom.

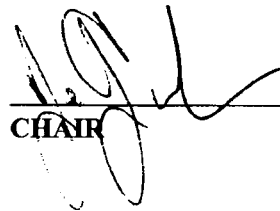
BRG Homes Representative, Mattias Alamos, came forward to address the Board. He explained the project was previously approved by the Board by the approval expired. He clarified that there were significant changes to the site plans and respectfully asked for the Board approval.

ACTION: Board Member Telesco made a motion to approve the proposed single family home. Board Member Frankel seconded the motion and it passed 5-1, with Vice Chair Gavcovich opposed.

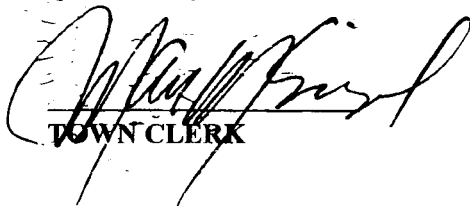
Item 7. Approval of the minutes held on February 2, 2016.

ACTION: Vice Chair Gavcovich made a motion to approve the Minutes. Board Member Telesco seconded the motion and it passed unanimously.

There being no further business to discuss meeting was adjourned at 9:38 p.m.



CHAIR

ATTEST


TOWN CLERK

PLANNING & ZONING BOARD

JANUARY 17, 2017

- MINUTES
- STAFF REPORT
- RESOLUTION NO. 2112

TOWN OF BAY HARBOR ISLANDS
MINUTES OF PLANNING & ZONING BOARD MEETING

A Planning & Zoning Board Meeting was held Tuesday January 17, 2017 at 7:00 p.m. in the Council Chambers. The meeting was opened with the Pledge of Allegiance. Upon roll call, the following Board Members responded:

Vice Chair Jerome Gavcovich

Board Member Alan Bebchik

Board Member Robert Saland

Board Member Thomas Telesco

QUASI-JUDICIAL PUBLIC HEARING

At this time Town Clerk Siegel swore in all the individuals speaking at the Public Hearing.

Item 1. Request for approval for a new commercial property for "One Kane Concourse" located at 9551 E. Bay Harbor Drive, Lots 1-2 of Block 1. On April 19, 2016 the Board discussed and deferred the application and instructed the applicant to make several changes. The owner is proposing to construct a 52,184+/- square foot commercial property. The proposed building is six stories in height over two stories of below grade parking garage @ 75'0" above BFE (maximum of 75' permitted). The owner has made the corrections as requested by the Board. Enclosed please find the site plan and elevations.(Item #1A)

She also clarified that this was a gateway property and it would require the Town Council approval.

Attorney, Matt Amster, 200 S Biscayne Blvd, came forward to address the Board. He was representing the applicant and owner of said project. He provided the Board with comments sheets that explained the Board's recommendations from the April Meeting. The applicant was proposing a newly improved 6 story office building with restaurant use on the ground floor. He felt that the project could become the signature building on the East Island.

Architects, Luis Revuelta, and Alex Drovet, came forward to address the Board. He believed the team had addressed all of the Board's comments. Architect Revuelta presented the Board with enlarge plans and elevations and explained the 13 comments that were recommended by the Board at the last meeting. He provided a detail overview of the comments that included East and front façade; the service walkway on the south was reduced in length and a ramp was added; addressed the horizontal exhaust to the garage and added aluminum slats to the garage door; additional handicap spaces on the renderings; and made the drop off driveway wider to accommodate car stacking.

Traffic Engineer, Joaquin Vargas, came forward to address the modified drop off driveway for the valet parking that would secure adequate car stacking. He stated that the results of the analysis indicated that the intersection had a lot of surplus and has excess capacity for development in that area.

Attorney Amster felt that the proposed project was compatible to the surrounding building and added that the applicant has added a resident promenade for the residents to enjoy.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and was opposed to the proposed project.

CLOSED PUBLIC COMMENT

There was a brief discussion on the traffic study; the surrounding projects impact; south side driveway parking spaces; landscaping plan; location of the fountain feature and the vertical fence on the east façade.

ACTION: Board Member Telesco made a motion to approve the proposed development. Board Member Saland seconded the motion and it passed unanimously.

CONCLUSION OF QUASI-JUDICIAL PUBLIC HEARING

~~2. Request for approval for revisions for "Sawmill LLC" located at 9420 W. Broadview Drive, Lots 83-84 of Block 23. On August 4, 2015 the Board approved the addition and renovations as proposed. The owner is now proposing a few modifications to the previously approved plan. Some of the revisions consist of enclosing the existing two car garage, modify the front entry design and add a portico. Enclosed please find the site plan and elevations. (Item #2A)~~

~~* Staff Review: Design meets Town Code and was approved by Michael Miller Planning Associates Representative, Mr. Scott Marks, Community Planner.~~

~~Item 3. Request for approval for an addition and garage enclosure for "Sholom D. Lipskar & Chana Lipskar and Zulman Lipskar" located at 1311 Kane Concourse, Lot 13 of Block 34. On November 15, 2016 the Board discussed but deferred the application and advised the applicant to make several changes. The applicant has addressed all the comments requested by Board. Enclosed please find the revised site plan and elevations.~~

Item 4. Request for approval for a new single family home for "1350 97 Street, LLC" located at 1350 97 Street, Lot 4 of Block 34. The proposed 2-story home has approximately 7,437 square feet of living space with a two-car garage. The residence will have seven (7) bedrooms, ten (10) full bathrooms, one (1) half bathroom and a studio. Enclosed please find the site plan and elevations.

Architect, Martin Whitman came forward and presented the Board with the proposed renderings. The applicant was proposing a modern residence with a portico design and additional windows. The residence would have the same concept in the rear as the front façade and the landscaping on the side yard have would be remove. The home would include a large cover terrace area with a hiding bbq; large kitchen; family room and bedrooms on the second floor.

There was a detail discussion on the driveway pavers; proposed colors; wood fence; rear yard; square footage; landscaping plan; and window dimensions.

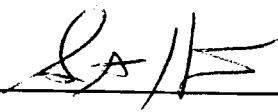
Consensus was for the applicant to come with the following board recommendations:

1. Relocate the palms in the rear closer to the deck or change to a shorter species.
2. Further articulation to the two small windows mention on the elevations on L1 and L3.
3. Add wood panels to the side yard.
4. Reduce the footprint, the bedrooms are too big.
5. Needs more architectural enhancements such as banding to add a curve appeal.
6. Remove the wall in the balcony on the west façade.

Item 5. Approval of the minutes held on September 20, 2016, October 19, 2016, November 1, 2016 and November 15, 2016.

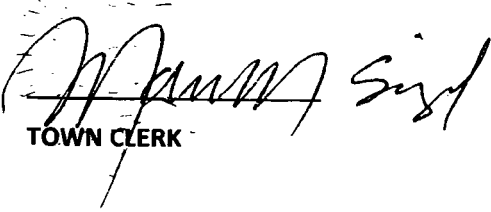
ACTION: Board Member Bebchik made a motion to approve the proposed minutes. Board Member Telesco seconded the motion and it passed unanimously.

There being no further business to discuss meeting was adjourned at 8:36 p.m.



CHAIR

ATTEST


TOWN CLERK

AGENDA ITEM REPORT

January 17, 2017

ITEM NUMBER: 1.

ITEM: Request for approval for a new commercial property for "One Kane Concourse" located at 9551 E. Bay Harbor Drive, Lots 1-2 of Block 1. On April 19, 2016 the Board discussed and deferred the application and instructed the applicant to make several changes. The owner is proposing to construct a 52,184+/- square foot commercial property. The proposed building is six stories in height over two stories of below grade parking garage @ 75'0" above BFE (maximum of 75' permitted). The owner has made the corrections as requested by the Board. Enclosed please find the site plan and elevations.(Item #1A)

DESCRIPTION:

for the purpose of hearing any public comment with respect to an application for site plan approval at 9551 E. Bay Harbor Drive.

RECOMMENDED ACTION:

Design meets Town Code and was approved by the Development Review Committee.

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Ayanidys Martinez

ATTACHMENTS

1.	Staff Report	BHI PZB Staff Report Tauber Comm Rev Jan 9 2017 (2).pdf
2.	Site Plan & Elevations	OneKaneConcourse1.17.17.pdf
3.	Traffic Study	One Kane Concourse - Traffic Study (October 31 2016).pdf

**TOWN OF BAY HARBOR ISLANDS
COMMUNITY DEVELOPMENT
MEMORANDUM**

To: Planning and Zoning Board
 Town of Bay Harbor Islands

From: Michael J. Miller, AICP 
 Consultant Town Planner

Date: January 9th, 2017

Subject: Site Development Plan Application
 One Kane Concourse - Tauber Commercial / Office Building
 9551 East Bay Harbor Drive
 Revisions to 2011-12 Original Town Approval
 Bay Harbor Islands Acct. No. BP2016-88
 MMPA Acct. No. 01-0702-946B

RECOMMENDED ACTION

MMPA recommends the Planning and Zoning Board review the most recent revised plans dated October 11th, 2016 and, if found acceptable, **APPROVE** the proposed Gateway Site Development Plan application subject to the following:

- (1) The Board finds the proposed plan "fits" within the building envelope without alterations or variances;
 - (2) The Board finds the same reduced interior driveway widths acceptable;
 - (3) Subject to any staff recommended conditions listed herein.
-

HISTORY OF PRIOR DEVELOPMENT REQUESTS FOR THE SITE

Between 2005 and early 2011 various re-development plans were submitted to the Town for a mixed-use commercial / office building with 84,312 square feet of floor area. However, those plans were abandoned due to numerous Code-related problems that would have required zoning variances and/or Code amendments. In addition, those plans were predicated on the Town allowing the developer to build a multi-story parking garage on the existing Town-owned surface parking lot on 95th Street near East Bay Harbor Drive. The Town Council discussed

this concept but denied the off-site parking garage request, as the Town's Zoning Code does not allow such freestanding structures in residential areas, nor was any developer agreement discussed. The developer subsequently abandoned that design and revised their request. From late 2011 into early 2012 the Town PZB / TC reviewed and approved a Gateway Site Development Plan for this site. The Town Council approved the Site Development Plan on 11/14/11 (Res. No. 1121-A). The status of the 2011 Town Council site plan approval is that through Town Code provisions (6-month ext.) and state law provisions, several time extensions have been requested / granted by the Town. These state law provisions include Legislative Bills as well as Governor Declarations. The current expiration date is 7/13/17.

CURRENT PROJECT REVIEW HISTORY

In April 2015, the Town received a set of revised Site Development Plans from a new architectural firm for a new design for pre-DRC review for the above referenced property. Subsequently the Town's DRC met several times and recommended approval of the application, subject to the architect making a few minor revisions discussed at the meetings, and submitting a plan revision check-set to staff for final sign-off prior to scheduling the matter for Planning and Zoning Board meeting. MMPA received several revised sets of plans from the architect and found that all previous DRC issues had been addressed. On April 19th, 2016, the Planning and Zoning Board discussed the item at a public meeting but deferred the application and instructed the applicant to make several changes. In July 2016, the applicant submitted a revised set of plans attempting to address the Planning and Zoning Board concerns; however, MMPA found the revised plans did not fully address the Board's comments. The most recent plans (10/11/16) appear to address all previous Planning and Zoning Board issues. An updated Traffic Study was also submitted.

GENERAL PROJECT INFORMATION

Land Use Designation:	Commercial (C) District
Zoning District:	Gateway (G) District
General Location:	9551 East Bay Harbor Drive
Legal Description:	Lots 1 & 2 of Block 1 "Bay Harbor Island" according to the plat thereof, as recorded in Plat Book 46, at Page 5 of the Public Records of Miami-Dade County, Florida.

PROJECT DESCRIPTION

The current project architect, Revuelta Architecture International, as agent for the property owner, One Kane Concourse, LLC, has submitted a revised Site Development Plan application to allow for the construction of a proposed 98,000+/- gross sq. ft. commercial building located at 9551 East Bay Harbor Drive. The proposed building includes a 5,298+/- sq. ft. ground floor restaurant (indoor sq. ft.) with an additional 745 sq. ft. of outdoor seating area, approximately 42,302+/- sq. ft. of office use, 2 levels of parking garages and other areas. As was requested previously the roof of the building is proposed to be used for limited recreation.

Michael Miller Planning Associates, Inc.

**Planning and Zoning Board Staff Report
One Kane Concourse / Tauber Commercial Development
9551 East Bay Harbor Drive
Site Development Plan Application – 2015/16 Revisions
January 9th, 2017
Page 3**

The proposed revised commercial building is 6-stories in height over two stories of below grade parking garage @ 75'-0" above BFE (maximum of 75-feet permitted). The Site Development Plan depicts access to the site through three (3) driveway connections to East Bay Harbor Drive, as well as a service area near the southern edge of the site, as was envisioned in 2012. The southernmost driveway will be a 23-foot wide two-way entrance / exit to the below grade parking garage. The northern driveways comprise a one-way circular drop-off driveway at the lobby area. The plans indicate that 141 parking spaces are required and 156 parking spaces are provided through the use of vertical lifts, tandem parking spaces and standard parking spaces. The submission proposes to utilize Section 23-24(e) of the Town's Code, which provides that if a restaurant is open only in evenings from 6:00 PM – 2:00 AM no parking spaces are required, as it is inferred that other commercial uses would be closed and parking spaces would be available for restaurant patrons. The use of Section 23-24(e) significantly decreases the required number of parking spaces, as the restaurant use would require 97 parking spaces alone. If a parking study is submitted in the future in accordance with Section 23-11(C)(15) and the Town approves the study, the restaurant could possibly operate during the day and quantity of parking spaces could be adjusted further.

According to the land survey, the lots are currently developed with a one-story building and a surface parking lot and existing landscaping. The subject property was formerly used as a restaurant for many years but was converted an office building about 10 years ago.

As stated above the Town approved a Site Development Plan for this site in late 2011. The status of the previous Town approval is that through Town Code provisions / state law provisions several extensions have been requested / granted by the Town. The current expiration date is July 13th, 2017. The developer is now seeking revisions to the design, either to improve the project design or extend the development approval further.

The adjoining / nearby development sites currently include the Town of Surfside's Surfside Park to the east across the Indian Creek Canal. To the north across Kane Concourse are vacant lots, now approved for the proposed 7-story Grand Beach Hotel @ 96 hotel rooms. To the west across East Bay Harbor Drive is the current Ocean Cadillac vehicle dealership complex. The Town has finalized its review of a Site Development Plan application to demolish the Cadillac dealership and construct a mixed-use complex including retail uses / parking garage on the first floor with a two-story religious establishment (Church-by-the-Sea) above. Zoning appeals were filed against the new complex and the Town Council has denied one appeal to date – the other appeal was deferred pending a possible court challenge. To the immediate south are vacant lots approved for the La Boutique MFR complex @ 23 DU (formerly Riviera Apts. @ 20 DU / 38.5 DUA). This area of the Town is predominated by a mixture of older low-rise commercial complexes (2 stories) and mid-rise residential complexes (5-7 stories). The Town's 2002 Community Vision Master Plan identifies this area as being preferred for mid-rise residential and commercial complexes (5-7+/- stories). Therefore, the proposed development is deemed generally consistent with the Town's future vision for this area.

BACKGROUND INFORMATION

The Town of Bay Harbor Islands completed major amendments to the Town's adopted Comprehensive Plan and Land Development Regulations (LDRs) in the past 13+ years. In November 2004 the Town created the "G" Gateway Zoning District. This zoning classification was originally applied to only the lots on the East Island adjoining Kane Concourse at the two waterways. This included only Lot 1 of the subject site. In 2005 when the Town updated the B-1 Business Zoning District LDRs a proposal was made to increase the allowable building height in the B-1 Business District to 75 feet BFE as per the B&A Downtown Study; however, the Town Council decided to keep the allowable height limit at 65 feet per the Community Visioning recommendations. Subsequently, in early 2008, at the request of the property owner (Tauber), the Town rezoned Lot 2 from the B-1 (formerly BAA) Zoning District to the "G" Gateway Zoning District. The property owner desired to have one common set of development regulations on the site, and be permitted to build to 75 feet in lieu of the 65 feet maximum height allowed in the B-1 District at this location. However, there is a progressive step-back setback in the Gateway District for taller portions of buildings adjoining Kane Concourse.

The intention of the Gateway District was to establish special development criteria to limit the large vertical massing of buildings near Kane Concourse at the edges of the East Island. Also, the Town adopted modifications to several other code provisions that affect yard encroachments, parking lot designs, building height limits and exceptions as well as other building design standards.

COMPREHENSIVE PLAN / ZONING

Comprehensive Plan – The subject site has a Future Land Use Map (FLUM) designation of "Commercial." The proposed use of the commercial property would be consistent with the applicable FLUM designation of the property.

Land Development Regulations / Zoning Code – The subject site has a Zoning classification of "G" Gateway District. The applicable permitted uses listed in the Gateway District refer to the Town's B-1 Business District in Section 23-5. The proposed use of the commercial property is consistent with this zoning classification.

PLATTING

The site will not require re-platting, as the site is currently platted as described above. If there is no existing Unity of Title at present this will be required as part of the redevelopment to legally tie the lots together.

RIGHT-OF-WAY AND ACCESS DESCRIPTION

As was depicted on the 2012 approved plans, the revised Site Development Plan depicts access to the site through three (3) driveway connections to East Bay Harbor Drive, as well as a service area near the southern edge of the site. The southernmost driveway is a 23-foot wide two-way entrance / exit to the below grade parking garage. To the north is a one-way circular drop-off

driveway near the lobby area. The Town Code requires that two-way driveways be a minimum of 23 feet in width, while one-way driveways must be a minimum of 12 feet in width. The one-way driveways meet the minimum driveway width requirement; however, the interior driveways in the parking garage are shown at 22 feet in width. The PZ Board has the ability to approve variations in driveway width dimensions based on site features and design. In this instance, the lot shape is not exactly rectangular and the off-street parking spaces will be by valet service. Therefore, MMPA is not opposed to this waiver request. The Town has approved several similar waivers for similar situations. The Town approved this same request in 2012.

BUILDING DESIGN / BUILDING LENGTH / BREEZEWAY

The new revised building design could best be defined as “2016 Miami Modern” with strong decorative vertical window separations and both horizontal and vertical trellis design elements, as compared to the 2012 design.

The building elevations are significantly different than the 2011-12 approved plans. For example, the new “flex” building massing facing Kane Concourse is proposed near the roadway intersection versus the waterfront. This changes the bulk massing appearance from Kane Concourse. The new architectural design has numerous vertical components on the building façade presenting a “busier” appearance, while the previous plan had long horizontal elements with few vertical architectural breaks giving a “softer” appearance. Also the accessory rooftop structures (elevator shafts / stairs / bathrooms / mechanical rooms) are much larger / taller than the currently approved design. These modified building design features should be considered carefully by the PZB / TC. The Town Code states the Town “may” approve flex building features if deemed acceptable (not mandatory).

Building Length / Breezeway – As the building is less than 205 feet in length (118+/- feet) no building angulations are required. The Gateway District does not require a breezeway.

Gateway Promenade Walkway - The current design extends the parking garage structure near the Kane Concourse Bridge as is desired by the Town to provide a common pedestrian promenade as envisioned in the Community Visioning / Gateway discussions. Along the eastern waterfront, a landscaped plaza is proposed with landscaping / walkways.

SUGGESTED CONDITIONS OF APPROVAL / SITE PLAN COMMENTS

MMPA recommends **APPROVAL** of the revised Gateway / Site Development Plan. Following are suggested conditions of approval and/or comments on the latest revised plans dated October 11th, 2016 submitted to the Town for consideration:

- 1) This approval is based on the Site Development Plans prepared by Revuelta Architecture International, dated October 11th, 2016. Any substantial changes requested after the PZB approval may require a separate approval from staff / Planning and Zoning Board / Town Council, as specified in the Town Code.

- 2) The Town Code requires that two-way driveway widths be 23-feet in width unless the PZB approves otherwise. The interior driveways in the parking garage are shown at 22 feet in width. The PZB has the ability to approve variations in driveway width dimensions based on site features and design. In this instance, the lot shape is not exactly rectangular and the off-street parking spaces will be by valet service. The Town has approved several similar waivers for similar situations. The Town approved this same request in 2011. Therefore, MMPA is in support of this waiver request. Specific PZB approval is required for the reduction of the driveway widths.
- 3) MMPA notes that the building elevations are significantly different than the 2011-12 approved plans. For example, the new “flex” building massing facing Kane Concourse is proposed near the roadway intersection versus the waterfront. This changes the building massing appearance along Kane Concourse. The new architectural design has numerous vertical components on the building façade presenting a much “busier” appearance, while the previous plan had long horizontal elements with few vertical architectural breaks giving a “softer” appearance. The proposed accessory rooftop structures (elevator shafts / stairs / bathrooms / mechanical rooms) are much larger / taller than the current design. MMPA does not normally comment on architectural design features, as that is primarily the purview of the PZB / TC; however, this is a community entranceway “Gateway” site, so extra design attention is warranted. The Town Code states the Town “may” approve certain building design features, such as building flex areas, if deemed acceptable.
- 4) A Unity of Title document acceptable to the Town Attorney’s Office is necessary to legally bind the two (2) lots together. This must be accomplished prior to the issuance of building permits.
- 5) Payment of all required County / Town impact fees and connection fees prior to issuance of building permits.
- 6) Changes required by the Miami-Dade County Fire Department, Building Codes or owner / architect desired refinements subsequent to the Town’s site plan approval may cause the plans to be resubmitted to the DRC / PZB / TC in accordance with Section 5-23.1(c).

RESOLUTION NO. 2112

A RESOLUTION OF THE PLANNING AND ZONING BOARD OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, APPROVING THE SITE DEVELOPMENT PLAN APPLICATION FOR THE ONE KANE CONCOURSE PROJECT.

WHEREAS, on October 11, 2016, One Kane Concourse, LLC (hereinafter the “Applicant”), filed a revised site plan for a property on Lots 1 and 2 zoned Gateway. Applicant’s site plan requests approval for a commercial building, consisting of six (6) stories and two (2) levels of below grade parking located thereupon at 9551 East Bay Harbor Drive, Bay Harbor Islands, Florida, and legally described as:

Lots 1 & 2 of Block 1 “Bay Harbor Island” according to the plat thereof, as recorded in Plat Book 46, at Page 5 of the Public Records of Miami-Dade County, Florida;

(hereinafter the “Project” or “Site Plan”); and

WHEREAS, a site plan for new construction requires approval by the Planning and Zoning Board pursuant to Section 5-23.1(a) of the Town of Bay Harbor Islands’ Code of Ordinances (hereinafter the “Code”); and

WHEREAS, on January 18, 2017, the Town’s Planning and Zoning Board, after Notice of the Public Meeting was properly provided, approved the Site Plan, pursuant to Section 5-23.1(a) of the Code, with the conditions set forth below.

NOW THEREFORE, be it resolved that:

1. **Recitals.** The foregoing recitals are hereby ratified as true and correct and incorporated herein by reference.
2. **Finding.** The Planning and Zoning Board finds that the Site Plan is consistent with the criteria set forth in Section of 5-23.1 of the Code and approves the Site Plan dated October 11, 2016, subject to the below conditions for approval.
3. **Effective Date.** This Resolution shall take effect upon the date of its adoption (the “Effective Date”).
4. **Conditions of Approval.**
 - A. This approval is based on the Site Plan, dated October 11, 2016. Any modifications thereto shall require separate approvals from either staff, the Planning and Zoning Board, or the Town Council as specified in the Code.
 - B. A Unity of Title acceptable to the Town Attorney’s Office shall be recorded prior to the issuance of building permits.

- C. When the Miami-Dade Fire Department formally reviews the Project, if any material site design changes are required, a re-approval of the Site Plan shall be required by staff, the Planning and Zoning Board, or the Town Council, as specified in the Code.
- D. The existing overhead power lines shall be relocated underground during the redevelopment of the site at the sole expense of the Applicant. If undergrounding is not permitted by FPL prior to the issuance of a certificate of occupancy, Applicant shall install electric service entrance facilities to accommodate an underground service lateral pursuant to Section 18-22 of the Code.
- E. Applicant shall submit final working plans within 365 days after the Effective date of this Resolution, unless extended by the Town Manager, or his designee, for up to 180 days. Applicant shall obtain a building permit within 90 days after the approval of final working plans, unless extended by the Town Manager, or his designee, for up to 90 days. Failure to obtain a building permit within the prescribed time shall result in the invalidation of the Site Plan, except and unless this Resolution is extended pursuant to the Code or other valid extension as prescribed by Florida law.
- F. Prior to the issuance of a building permit, Applicant shall pay all required impact fees including, but not limited to, those payable to the Town, County, and School Board.
- G. All prior Site Plan approvals for Lots 1 and 2, including Resolution 1121-A, are hereby revoked.
- H. This Site Plan approval is subject to the Town Council's approval of the Applicant's Gateway application.
- I. The space on the first floor of the Site Plan designated as the restaurant, (approximately 5,298 square feet (indoor) and 745 square feet (outdoor)), may only operate the restaurant during the hours of 6:00 p.m. and 2:00 a.m., pursuant to Section 23-24(e) of the Code. If Applicant seeks to operate the restaurant earlier than 6:00 p.m., Applicant shall provide additional parking as required by the Code.
- J. The roof recreational area shall be for the use of tenants and their invited guests only. The roof recreational area shall not have any table service from the restaurant. No live music or amplified recorded music shall be played on the roof recreational area in a manner that is inconsistent with the Town's noise ordinances, as it may be amended. Use of the roof recreational area shall close at a time that shall be determined by the Town Council or the Town Manager.

5. **Severability.** If any provision, section, phrase or word of this Resolution is declared invalid or unenforceable by a court of competent jurisdiction, the remaining provisions, sections, phrases or words of this Resolution shall remain in full force and effect.

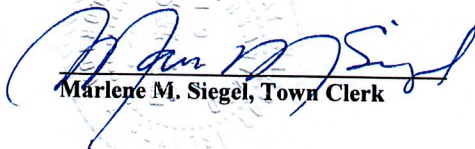
6. This Resolution shall become effective immediately upon its adoption, unless a timely appeal is filed with the Town Council.

PASSED this 17th day of January, 2017.

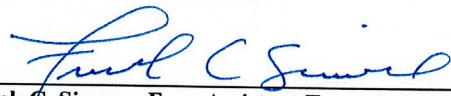
**PLANNING AND ZONING BOARD
TOWN OF BAY HARBOR ISLANDS**

By: 
Steven Hurwitz, Chair Person

ATTEST:


Marlene M. Siegel, Town Clerk

APPROVED AS TO FORM:


Frank C. Simone, Esq., Assistant Town Attorney

APRIL 19, 2017

TOWN COUNCIL – PUBLIC HEARING

- MINUTES
- STAFF REPORT
- RESOLUTION NO. 2119

**TOWN OF BAY HARBOR ISLANDS
MINUTES OF PUBLIC HEARING**

A Public Hearing of the Town Council was held Monday, April 19th, 2017 at 6:49 p.m. in the Council Chambers. Upon roll call the following Council Members responded:

Mayor Jordan Leonard

Vice Mayor Stephanie Bruder

Council Member Joshua Fuller

Council Member Kelly Reid

Council Member Isaac Salver

Council Member Tricoche

QUASI-JUDICIAL PUBLIC HEARING

Town Attorney Sherman swore in all the individuals speaking at the Public Hearing.

Item 1. Public Comment with respect to an application for a proposed six (6) story building at the property located at 9551 East Bay Harbor Drive, Lots 1 and 2 of Block 1. The application is being made for site plan approval of the Gateway properties.

Attorney, Mathew Amster, 200 S Biscayne Blvd., represented the applicant and owner of the subject property. The subject property was located on the east Gateway of the Town, south of the Grant Beach Hotel. He explained that the applicant revised the project for a more attractive commercial building. The masse of the east side has been moved to the east with added energy efficient features. He stated that the building would be LEED certified. The developer was proposing a restaurant use on the ground floor with valet services. The applicant has expressed commitment to building a high caliber project.

There was a brief discussion from the Council on the proposed restaurant hours of operations; parking regulations; driveways; setbacks; traffic analysis; seawall cap; ground floor use; concerns on the dewatering phase; time for construction from approval; the LEED certification for the building; applicant shall submit for a Building Permit within 1 year or they shall come back to the Town Council for approval.

PUBLIC COMMENT

Kathleen Kennedy, 9180 W. Bay Harbor Drive, came forward in support of the proposed project and suggested a bar or lounge.

Dr. Denis Neuhut, 1048 Kane Concourse, came forward and stated that he welcomed any new development that could revitalize the Business District, but was concerned with the parking and roof top use.

Frances Neuhut, 1060 Kane Concourse, came forward and was concerned with possible excess noise and parking issues.

John Corral, 9650 W. Bay Harbor Drive, came forward and was concerned with the traffic and asked if the proposed Church was taken into consideration when the traffic study was performed for this project.

John Vetter, 10301 W. Bay Harbor Drive, came forward and was concerned with the traffic. He did not agree with the underground parking and proposed parking lifts.

Victor Maya, 1155 103 Street, was concerned with the proposed restaurant and parking.

Linda Zilber, 1231 95 Street, came forward and liked the current design on the proposed project.

CLOSED PUBLIC COMMENT

Item 2. Approval or denial of the above application for site plan approval of the Gateway property located at 9551 East Bay Harbor Drive.

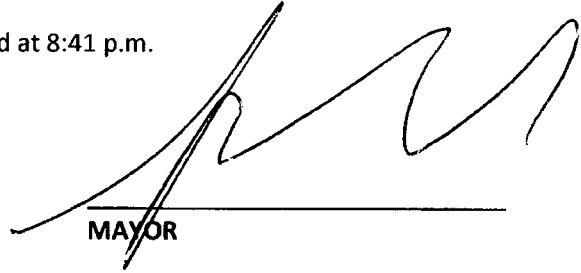
ACTION: Vice Mayor Bruder made a motion for the site plan approval of the Gateway property subject to the following conditions:

1. Applicant shall build the building to be LEED certified or equivalent.
2. Applicant shall have one (1) year to submit for a Building Permit. Any request for an extension shall come back before the Town Council for approval.
3. Applicant shall not demolish the existing building until the applicant receives a Building Permit.

4. The ground floor shall have a restaurant or non-professional office use.
(Professional office uses is defined as and not limited to physicians, attorneys, real estate offices, medical offices and clinics and stock and commodity broker offices.
5. Applicant shall maintain adequate valet attendants at all times and be subject to the requirements of the Town Manager.

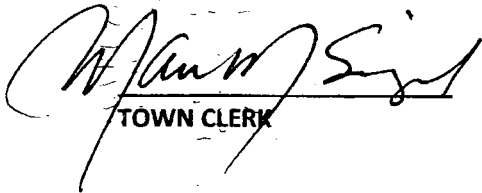
Council Member Tricoche seconded the motion and it passed 5-1, with Council Member Reid opposed.

There being no further discussion meeting was adjourned at 8:41 p.m.



MAYOR

ATTEST



TOWN CLERK

**TOWN OF BAY HARBOR ISLANDS
COMMUNITY DEVELOPMENT
MEMORANDUM**

To: Mayor and Town Councilmembers
Town of Bay Harbor Islands, Florida

From: Michael J. Miller, AICP 
Consultant Town Planner

Date: February 24th, 2017

Subject: Site Development Plan Application - Revision
One Kane Concourse - Tauber Commercial / Office Building
9551 East Bay Harbor Drive
Revisions to 2011-12 Original Town Approval
Gateway District – Required Town Council Site Plan Approval
Bay Harbor Islands Acct. No. BP2016-88
MMPA Acct. No. 01-0702-946B

RECOMMENDED ACTION

MMPA recommends the Town Council review this staff report, the latest revised Site Development Plans dated January 28th, 2017 and, if found acceptable, **APPROVE** the proposed Gateway Site Development Plan application, subject to the plans being further modified as required by the Town Council and/or subject to any conditions listed herein and/or imposed by the Town.

HISTORY OF PRIOR DEVELOPMENT REQUESTS FOR THE SITE

Between 2005 and early 2011 various re-development plans were submitted to the Town for a mixed-use commercial / office building with 84,300+/- square feet of floor area. However, those plans were abandoned due to numerous Code-related problems that would have required zoning variances and/or Code amendments. In addition, those plans were predicated on the Town allowing the developer to build a multi-story parking garage on the existing Town-owned surface parking lot on 95th Street near East Bay Harbor Drive. The Town Council discussed that concept but denied the off-site parking garage request, as the Town's Zoning Code does not allow such freestanding structures in residential areas, nor was any developer agreement discussed. The developer subsequently abandoned those designs and revised their request to comply with existing Town Codes. During 2011 the Town PZB / TC reviewed and approved a Gateway Site Development Plan for the site. The Town Council approved the Site Development Plan on 11/14/11 (Res. No. 1121-A). The status of the 2011 Town Council site

**Town Council Staff Report
One Kane Concourse / Tauber Commercial Development
9551 East Bay Harbor Drive
Site Development Plan Application – 2016-17 Revisions
February 24th, 2017
Page 2**

plan approval is that through Town Code provisions (6-month ext.) and state law provisions, several time extensions have been requested / granted by the Town. These state law provisions include Legislative Bills as well as Governor Declarations. The current expiration date is 7/13/17.

CURRENT PROJECT REVIEW HISTORY

In April 2015, the Town received a set of revised Site Development Plans from a new architectural firm for a new design for pre-DRC review for the above referenced property. Subsequently the Town's DRC met several times and recommended approval of the application, subject to the architect making a few minor revisions discussed at the meetings, and submitting a plan revision check-set to staff for final sign-off prior to scheduling the matter for Planning and Zoning Board meeting. MMPA received several revised sets of plans from the architect and found that all previous DRC issues had been addressed. On April 19th, 2016, the Planning and Zoning Board discussed the item at a public meeting but deferred the application and instructed the applicant to make several changes. In July 2016, the applicant submitted a revised set of plans attempting to address the Planning and Zoning Board concerns. On January 17th, 2017, the Planning and Zoning Board reviewed the modifications and recommended approval of the application with no conditions of approval noted.

GENERAL PROJECT INFORMATION

Land Use Designation:	Commercial (C) District
Zoning District:	Gateway (G) District
General Location:	9551 East Bay Harbor Drive
Legal Description:	Lots 1 & 2 of Block 1 "Bay Harbor Island", according to the plat thereof, as recorded in Plat Book 46, at Page 5 of the Public Records of Miami-Dade County, Florida.

PROJECT DESCRIPTION

The new project architect, Revuelta Architecture International, as agent for the property owner, One Kane Concourse, LLC, has submitted a revised Site Development Plan application to allow for the construction of a proposed 98,000+/- gross sq. ft. commercial building located at 9551 East Bay Harbor Drive. The proposed building includes a 5,298+/- sq. ft. ground floor restaurant (indoor sq. ft.) with an additional 745 sq. ft. of outdoor seating area, approximately 42,302+/- sq. ft. of office use, 2 levels of parking garages and other areas. As was requested previously the roof of the building is proposed to be used for limited recreation.

The revised commercial building is 6-stories in height over two stories of below grade parking garage @ 75'-0" above BFE (maximum of 75-feet permitted). The revised Site Development Plan depicts access to the site through three (3) driveway connections to East Bay Harbor Drive, as well as a service area near the southern edge of the site, as was envisioned in 2011. The

Michael Miller Planning Associates, Inc.

**Town Council Staff Report
One Kane Concourse / Tauber Commercial Development
9551 East Bay Harbor Drive
Site Development Plan Application – 2016-17 Revisions
February 24th, 2017
Page 3**

southernmost driveway will be a 23-foot wide two-way entrance / exit to the below grade parking garage. The northern driveways comprise a one-way circular drop-off driveway at the lobby area. The plans indicate that 141 parking spaces are required and 156 parking spaces are provided through the use of vertical lifts, tandem parking spaces and standard parking spaces. Parking will be handled through a full-time valet system. The submission proposes to utilize Section 23-24(e) of the Town's Code, which provides that if a restaurant is open only in evenings from 6:00 PM – 2:00 AM no parking spaces are required, as it is inferred that other commercial uses would be closed and parking spaces would be available for restaurant patrons. The use of Section 23-24(e) significantly decreases the required number of parking spaces, as the restaurant use would require 97 parking spaces alone. If a parking study is submitted in the future in accordance with Section 23-11(C)(15) and the Town approves the study, the restaurant could possibly operate during the day and quantity of parking spaces could be adjusted further.

According to the survey submitted, the site is currently developed with a one-story building and a surface parking lot and existing landscaping. The subject property was formerly used as a restaurant for many years but was converted an office building about 10 years ago.

As stated above the Town approved a Site Development Plan for this site in late 2011. The status of the previous Town approval is that through Town Code provisions / state law provisions several extensions have been requested / granted by the Town. The current expiration date is July 13th, 2017. The developer is now seeking revisions to the design, either to improve the project design or extend the development approval further.

The adjoining / nearby development sites currently include the Town of Surfside's Surfside Park to the east across the Indian Creek Canal. To the north across Kane Concourse is the Grand Beach Hotel @ 96 hotel rooms (currently under construction). To the west across East Bay Harbor Drive is the current Ocean Cadillac vehicle dealership complex. The Town has finalized its review of a Site Development Plan application to demolish the Cadillac dealership and construct a mixed-use complex including retail uses / parking garage on the first floor with a two-story religious establishment (Church-by-the-Sea) above. To the immediate south are vacant lots approved for the La Boutique MFR complex @ 23 DU (formerly Riviera Apts. @ 20 DU / 38.5 DUA). This area of the Town is predominated by a mixture of older low-rise commercial complexes (2 stories) and mid-rise residential complexes (5-7 stories). The Town's 2002 Community Vision Master Plan identifies this area as being preferred for mid-rise residential and commercial complexes (5-7+/- stories). Therefore, the proposed development is deemed generally consistent with the Town's future vision for this area.

BACKGROUND INFORMATION

The Town of Bay Harbor Islands completed major amendments to the Town's adopted Comprehensive Plan and Land Development Regulations (LDRs) in the past 13+ years. In November 2004 the Town created the "G" Gateway Zoning District. This zoning classification was originally applied to only the lots on the East Island adjoining Kane Concourse at the two waterways. This included only Lot 1 of the subject site. In 2005 when the Town updated the B-1 Business Zoning District LDRs a proposal was made to increase the allowable building height in the B-1 Business District to 75 feet BFE as per the B&A Downtown Study; however, the Town

Michael Miller Planning Associates, Inc.

**Town Council Staff Report
One Kane Concourse / Tauber Commercial Development
9551 East Bay Harbor Drive
Site Development Plan Application – 2016-17 Revisions
February 24th, 2017
Page 4**

Council decided to keep the allowable height limit at 65 feet per the Community Visioning recommendations. Subsequently, in early 2008, at the request of the property owner (Tauber), the Town rezoned Lot 2 from the B-1 (formerly BAA) Zoning District to the "G" Gateway Zoning District. The property owner desired to have one common set of development regulations on the site, and be permitted to build to 75 feet in lieu of the 65 feet maximum height allowed in the B-1 District at this location. However, there is a progressive step-back setback in the Gateway District for taller portions of buildings adjoining Kane Concourse.

The intention of the Gateway District was to establish special development criteria to limit the large vertical massing of buildings near Kane Concourse at the edges of the East Island. Also, the Town adopted modifications to several other code provisions that affect yard encroachments, parking lot designs, building height limits and exceptions as well as other building design standards.

COMPREHENSIVE PLAN / ZONING

Comprehensive Plan – The subject site has a Future Land Use Map (FLUM) designation of "Commercial." The proposed use of the commercial property would be consistent with the applicable FLUM designation of the property.

Land Development Regulations / Zoning Code –The subject site has a Zoning classification of "G" Gateway District. The applicable permitted uses listed in the Gateway District refer to the Town's B-1 Business District in Section 23-5. The proposed use of the commercial property is consistent with this zoning classification.

PLATTING

The site will not require re-platting, as the site is currently platted as described above. If there is no existing Unity of Title at present this will be required as part of the redevelopment to legally tie the lots together.

RIGHT-OF-WAY AND ACCESS DESCRIPTION

As was depicted on the 2011 approved plans, the revised Site Development Plan depicts access to the site through three (3) driveway connections to East Bay Harbor Drive, as well as a service area near the southern edge of the site. The southernmost driveway is a 23-foot wide two-way entrance / exit to the below grade parking garage. To the north is a one-way circular drop-off driveway near the lobby area. The Town Code requires that two-way driveways be a minimum of 23 feet in width, while one-way driveways must be a minimum of 12 feet in width. The one-way driveways meet the minimum driveway width requirement; however, the interior driveways in the parking garage are shown at 22 feet in width. The PZ Board has the ability to approve variations in driveway width dimensions based on site features and design. In this instance, the lot shape is not exactly rectangular and the off-street parking spaces will be by valet service. Therefore, MMPA was not opposed to this waiver request. The Town has approved several similar waivers for similar situations. The Town approved this same request in 2011.

Michael Miller Planning Associates, Inc.

BUILDING DESIGN / BUILDING LENGTH / BREEZEWAY

The revised building design could best be defined as “2016 Miami Modern” with strong decorative vertical window separations and both horizontal / vertical trellis design elements (compared to the 2011 design).

The building elevations are significantly different than the 2011 approved plans. For example, the new “flex” building massing facing Kane Concourse is proposed near the roadway intersection versus the waterfront. This changes the bulk massing appearance from Kane Concourse. The new architectural design has numerous vertical components on the building façade presenting a “busier” appearance, while the previous plan had long horizontal elements with few vertical architectural breaks giving a “softer” appearance. Also, the accessory rooftop structures (elevator shafts / stairs / bathrooms / mechanical rooms) are larger / taller than the 2011 design. These modified building design features should be considered carefully by the Town. The Code states the Town “may” approve flex building features if deemed acceptable (not mandatory).

Building Length / Breezeway – As the building is less than 205 feet in length (118+/- feet) no building angulations are required. The Gateway District does not require a breezeway.

Gateway Promenade Walkway - The current design extends the parking garage structure near the Kane Concourse Bridge as is desired by the Town to provide a common pedestrian promenade as envisioned in the Community Visioning / Gateway discussions. Along the eastern waterfront, a landscaped plaza is proposed with landscaping / walkways.

CONCURRENCY ISSUES

Traffic Impacts - Kane Concourse is a 4-lane divided roadway. According to FDOT guidelines, such a roadway can handle up to 34,700 trips per day at LOS E, which is FDOT’s adopted LOS for this roadway (10/16 applicant study states LOS D @ 32,400 TPD but not correct). For many years (5+ years now), this location has experienced on average about 25,000 vehicles per day / 2,250 trips in the PM Peak Hour. This equates to a V/C ratio of .72 or LOS C. The 10/16 study reports the latest traffic volume is about 25,500 TPD so the V/C would be .79 or LOS C. East Bay Harbor Drive is a 60-foot wide local collector roadway with two (2) travel lanes, except at the intersection with Kane Concourse, which includes turn lanes. According to the applicant’s 2016 study update the roadway now carries about 269 PM Peak Hour trips (3,000 TPD) just south of Kane Concourse (2011 traffic was slightly higher at 3,500 TPD / 315 PMPH trips). The roadway capacity at LOS “D” is 10,000 TPD / 450 PMPH trips. This results in a V/C of .60 or LOS C (B). The Town adopted a preferred LOS “B” for all local roadways in 1989, unless another jurisdiction had precedent. The EBHD roadway operating characteristics still meet the higher LOS B criteria. However, FDOT and Miami-Dade County have adopted more precise traffic engineering criteria since 1989 and adopted lower LOS that supersede the Town’s jurisdiction in some cases.

For example, LOS “E” is the FDOT adopted LOS on Kane Concourse and Miami-Dade County adopted LOS “D” for local roadways. LOS “B” was mathematically determined by FDOT to be non-achievable based on the computer model utilized – refer to a roadway as LOS C or above. The traffic volumes on Kane Concourse and East Bay Harbor Drive have remained fairly constant

**Town Council Staff Report
One Kane Concourse / Tauber Commercial Development
9551 East Bay Harbor Drive
Site Development Plan Application – 2016-17 Revisions
February 24th, 2017
Page 6**

over the last 5+/- years, as this area of the Town was almost completely built-out; however, some sites have been demolished in anticipation of newer developments, which decreased the traffic volumes temporarily on EBHD. In summary EBHD is operating at about 60% of design capacity. Observations of this roadway traffic volumes notes generally good traffic flow and minimal delays, except at peak hours. Occasionally the intersection experiences traffic delays at the traffic signal at Kane Concourse.

At the request of Town staff, in 2011 and again in 2016, the applicant / owner retained a Traffic Engineering Consultant (Joaquin Vargas, P.E. @ Traf Tech Engineering) to study the project's expected traffic impacts on Kane Concourse and East Bay Harbor Drive, including the signalized intersection and valet operations. The studies concluded that all roadway segments and the intersection of Kane Concourse and East Bay Harbor Drive will operate at an acceptable Level of Service (LOS) in compliance with adopted standards. Since all parking will be by valet, there should be minimal conflicts by motorists unaware of the traffic flow patterns. If the commercial complex maintains adequate valet personnel parking should not be an issue. The traffic consultant recommends that once the project is built, Miami-Dade County perform a traffic signal optimization study and re-time the traffic signal, if necessary. This was also recommended recently on both the Monarch Hotel and Grand Beach Hotel projects. Since there is already a 6,572 sq. ft. office use on the site generating traffic, the net increase in potential traffic was adjusted accordingly by the traffic consultant.

Staff believes that all Town concurrency LOS standards can be met when adding the impact of the new development to existing conditions. An updated concurrency Impact Analysis Report was submitted by the applicant demonstrating compliance with the Town's adopted LOS standards. Based on the land use mix this project it should generate about 890 TPD per day / 139 PMPH trips. Since the bar / restaurant use will occur during evening hours only no trips occur in the PM Peak Hour. Adding the new traffic that would be generated by this project would not significantly impact the operating LOS of the roadways using the applicable adopted LOS standards. All potable water, wastewater, storm water and solid waste impacts can be accommodated.

SUGGESTED CONDITIONS OF APPROVAL / SITE PLAN COMMENTS

MMPA recommends **APPROVAL** of the revised Gateway Site Development Plan. Following are suggested conditions of approval and/or comments on the latest revised plans dated January 28th, 2017 submitted to the Town for consideration:

- 1) This approval is based on the Site Development Plans prepared by Revuelta Architecture International, dated January 28th, 2017. Any substantial changes requested after the PZB approval may require a separate approval from staff / Planning and Zoning Board / Town Council, as specified in the Town Code.
- 2) The Town Code requires that two-way driveway widths be 23-feet in width unless the PZB approves otherwise. The interior driveways in the parking garage are shown at 22 feet in width. The PZB has the ability to approve variations in driveway width dimensions based on site features and design. In this instance, the lot shape is not exactly rectangular and the off-street parking spaces will be by valet service. The Town has approved several

Michael Miller Planning Associates, Inc.

similar waivers for similar situations. The Town approved this same request in 2011. Therefore, MMPA is in support of this waiver request. At their January 17th, 2017 meeting, the PZB re-approved the reduction of the driveway widths.

- 3) MMPA notes that the building elevations are significantly different than the 2011 approved plans. For example, the new “flex” building massing facing Kane Concourse is proposed near the roadway intersection versus the waterfront. This changes the building massing appearance along Kane Concourse. The new architectural design has numerous vertical components on the building façade presenting a much “busier” appearance, while the previous plan had long horizontal elements with few vertical architectural breaks giving a “softer” appearance. The proposed accessory rooftop structures (elevator shafts / stairs / bathrooms / mechanical rooms) are larger / taller than the current design. MMPA does not normally comment on architectural design features, as that is primarily the purview of the PZB / TC; however, this is a community entranceway “Gateway” site, so extra design attention is warranted. The Town Code states the Town “may” approve certain building design features, such as building flex areas, if deemed acceptable.
- 4) A Unity of Title document acceptable to the Town Attorney’s Office is necessary to legally bind the two (2) lots together. This must be accomplished prior to the issuance of building permits.
- 5) Payment of all required County / Town impact fees and connection fees prior to issuance of building permits.
- 6) Changes required by the Miami-Dade County Fire Department, Building Codes or owner / architect desired refinements subsequent to the Town’s site plan approval may cause the plans to be resubmitted to the DRC / PZB / TC in accordance with Section 5-23.1(c).

RESOLUTION NO. 2119

**A RESOLUTION OF THE TOWN COUNCIL OF THE
TOWN OF BAY HARBOR ISLANDS, FLORIDA,
APPROVING THE GATEWAY ZONING SITE
DEVELOPMENT PLAN APPLICATION FOR THE
ONE KANE CONCOURSE PROJECT.**

WHEREAS, on October 11, 2016, One Kane Concourse, LLC (hereinafter the “Applicant”), filed a revised site plan for a property on Lots 1 and 2 zoned Gateway. Applicant’s site plan requests approval for a commercial building, consisting of six (6) stories and two (2) levels of below grade parking located thereupon at 9551 East Bay Harbor Drive, Bay Harbor Islands, Florida, and legally described as:

Lots 1 & 2 of Block 1 “Bay Harbor Island” according to the plat thereof, as recorded in Plat Book 46, at Page 5 of the Public Records of Miami-Dade County, Florida;

(hereinafter the “Project” or “Site Plan”); and

WHEREAS, a site plan for new construction requires approval by the Planning and Zoning Board pursuant to Section 5-23.1(a) of the Town of Bay Harbor Islands’ Code of Ordinances (hereinafter the “Code”); and

WHEREAS, on January 18, 2017, the Town’s Planning and Zoning Board, after Notice of the Public Meeting was properly provided, approved the Site Plan, pursuant to Section 5-23.1(a) of the Code, with the conditions set forth in Resolution No. 2112.

WHEREAS, on February 2, 2017, Applicant filed an Application for Gateway Zoning Site Plan Approval pursuant to the requirements set forth in Section 23-21(i) of the Code, along with a traffic study, as requested by the Town Manager (“Gateway Application”).

WHEREAS, on April 19, 2017, the Town Council, after Notice of the Public Meeting was properly provided, approved the Gateway Application and Site Plan pursuant to Section 23-21(g) of the Code, with the conditions set forth below.

NOW THEREFORE, be it resolved that:

1. Recitals. The foregoing recitals are hereby ratified as true and correct and incorporated herein by reference.

2. Findings. The Town Council finds that the Applicant has met its burden of proof. The Gateway Application and the Site Plan are consistent with the criteria set forth in Section of 23-21(g)(1) through (7) of the Code. Specifically, the Town Council finds that:

- a. The Site Plan complies with the standards contained in 23-21(g);
- b. The Application will have a favorable effect on the economy of the Town;
- c. The Application will not generate or result in excessive noise or traffic congestion;

- d. The Application will not cause an undue or excessive burden on public facilities which have been constructed or which are planned and budgeted for construction;
- e. The Application will not cause excessive overcrowding or concentration of people or population;
- f. The Application will be compatible with the surrounding area and its development in scale; and
- g. The Application is a reasonable use of property and results in a public benefit.

The Town Council therefore approves the Application and Site Plan dated October 11, 2016, pursuant to Section 21-21(g) of the Code, subject to the below conditions.

3. Effective Date. This Resolution shall take effect upon the date of its adoption (the "Effective Date").

4. Conditions of Approval.

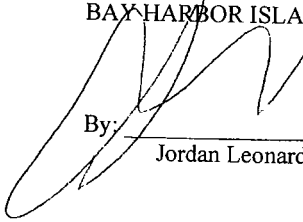
- A. This approval is based on the Gateway Application and Site Plan dated October 11, 2016 that was approved by the Planning and Zoning Board on January 18, 2017, and incorporates conditions A-D, F-G, and I-J set forth in Resolution No. 2112. Any modifications thereto shall require separate approvals from either staff, the Planning and Zoning Board, or the Town Council as specified in the Code.
- B. Applicant shall have one (1) year to submit a building permit. Any request for an extension shall come before the Town Council, regardless of any other legal basis available for an extension.
- C. The building shall be LEED certified.
- D. Applicant shall not demolish the existing building until it receives a building permit.
- E. The First floor shall have a restaurant or non professional office use, unless otherwise approved by the Town Council.
- F. Applicant shall have an adequate amount of valet attendants at all times, and subject to the requirements of the Town Manager.
- G. All conditions shall constitute covenants running with the land and shall be obligations of the present and all future owners of the building.

5. Severability. If any provision, section, phrase or word of this Resolution is declared invalid or unenforceable by a court of competent jurisdiction, the remaining provisions, sections, phrases or words of this Resolution shall remain in full force and effect.

6. This Resolution shall become effective immediately upon its adoption, unless a timely appeal is filed with the Town Council.

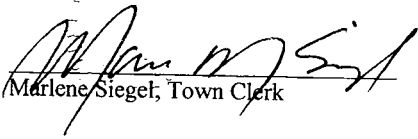
PASSED this 19th day of April, 2017.

TOWN COUNCIL OF THE TOWN OF
BAY HARBOR ISLANDS

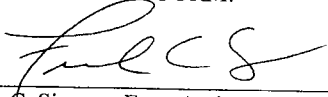
By: 

Jordan Leonard, Mayor

ATTEST:


Marlene Siegel, Town Clerk

APPROVED AS TO FORM:


Frank C. Simone, Esq., Assistant Town Attorney

AGENDA ITEM REPORT

September 9, 2021

ITEM NUMBER: 9.

ITEM: Discussion requested by Council Member Salver regarding the Town's policy on charitable donations and contributions. Enclosed is a copy of Resolution No. 981 as it relates to this matter.

DESCRIPTION:

At the August 10th Regular Council Meeting, Council Member Salver requested an item for discussion on the Town's policy on charitable donations and contributions. The Town existing policy allows for donations and contributions to entities and causes that have a direct impact / benefit to the Town and its citizens.

Enclosed is a copy of Resolution No. 981.

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba L. Chang, Town Clerk
Isaac Salver, Council Member

ATTACHMENTS

1. Resolution981 policy for donations

**RESOLUTION OF THE TOWN OF BAY HARBOR ISLANDS
ESTABLISHING A POLICY FOR CHARITABLE
DONATIONS AND CONTRIBUTIONS.**

WHEREAS, the Town Council of the Town of Bay Harbor Islands is charged with preserving and protecting the public health, safety, and welfare of its citizens; and

WHEREAS, establishing a policy for charitable donations and contributions is essential to preserving and protecting the health, safety, and welfare of the citizens of the Town of Bay Harbor Islands; and

WHEREAS, the Town receives numerous requests from various sources for donations and contributions; and

WHEREAS, it is desirable to have an established policy to provide guidance to the Town and to those seeking charitable donations and contributions; and

WHEREAS, the granting of charitable donations and contributions pursuant to an established policy is a benefit to the citizens of Bay Harbor Islands and to the public at large;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Bay Harbor Islands as follows:

Section 1. The Town of Bay Harbor Islands hereby establishes a policy that charitable donations and contributions shall be made from time to time at the discretion of the Town Council; provided however, any such charitable donations and contributions (except for those relating to major catastrophes and acts of God such as a tsunami or hurricane) shall be to entities and causes which provide a direct impact and direct benefit to the Town of Bay Harbor Islands and its citizens.

Section 2. This Resolution shall become effective upon adoption.

PASSED AND ADOPTED this 11th day of April, 2005.

TOWN OF BAY HARBOR ISLANDS

BY: 

MAYOR

ATTEST:


TOWN CLERK

H:\A-TOWN\CLERK\Resolutions\policy for donations.wpd

AGENDA ITEM REPORT

September 9, 2021

ITEM NUMBER: 10.

ITEM: Discussion and possible action requested by Council Member Leonard regarding the Town's After School Sports / Activities Program. Enclosed is a list of the After School / Activities Program.

DESCRIPTION:

Council Member Leonard is requesting that the Town Council discuss the Town's After School Sports / Activities Program. Due to COVID-19 health safety concerns, the After School Sports / Activities Program is currently open to Town residents only.

On August 24th, the Town received a request from Ms. Julissa Perez, a teacher and parent at the Ruth K. Broad K-8 Center, for the Town Council to consider allowing students who attend the Ruth K. Broad to participate in the After School Sports / Activities Program.

Enclose is a copy of the existing activities currently being offered by the Town.

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba L. Chang, Town Clerk
Jordan W. Leonard, Council Member

ATTACHMENTS

1. After School Program

TOWN OF BAY HARBOR ISLANDS
AFTER SCHOOL SPORTS / ACTIVITIES PROGRAM

AFTER SCHOOL PROGRAMS

Flag Football After School

×

Learn the basics of catching, passing, running with the ball, and defensive skills.

Instructional Flag Fo...	Location TBD	5-10	TU, F	09/09-06/09	3:30pm-5pm	\$250
--------------------------	--------------	------	-------	-------------	------------	--------------

Kung Fu After School

×

Learn beginner self-defense, health, and enlightenment through Kung Fu!

Kung Fu Ages 11 to 13	Location TBD	All Ages	M, W	09/08/21	4:30pm-5:30pm	\$625
-----------------------	--------------	----------	------	----------	---------------	--------------

Kung Fu Ages 5 to 10...	Location TBD	5-12	M, W	09/08-06/08	3:30pm-4:30pm	\$625
-------------------------	--------------	------	------	-------------	---------------	--------------

Soccer After School

×

Participants will learn dribbling, passing, kicking, and ball control. Participants must bring and wear shin guards, cleats, and a water bottle.

Soccer 10 and Under ...	Location TBD	5-10	M, W	09/08-06/08	3:30pm-5:30pm	\$525
-------------------------	--------------	------	------	-------------	---------------	--------------

Soccer 13 and Under ...	Location TBD	5-13	M, W	09/08-06/08	3:30pm-5:30pm	\$525
-------------------------	--------------	------	------	-------------	---------------	--------------

Soccer 6 and Under (...)	Location TBD	5-10	M, W	09/08-06/08	3:30pm-3:30pm	\$525
--------------------------	--------------	------	------	-------------	---------------	--------------

Soccer 8 and Under (...)	Location TBD	5-10	M, W	09/08-06/08	2:30pm-4:30pm	\$525
--------------------------	--------------	------	------	-------------	---------------	--------------

Art After School



Learn how to draw, paint, and create art using different techniques and mediums.

Art Elementary Scho...

Location TBD

5-12

TU, TH

09/07-06/07

3:30pm-4:30pm

\$550

At this time, programs are for residents only.

Activity Art After School

Session Art Elementary School

Location Location TBD

Date Range 09/07-06/07

Schedule Details 3:30p-4:30p every Tue/Thu from Sep 7 to Jun 7

Age/Gender 5-12

Activity Code 21-22-AFSC-ARTEL

Fee \$550.00

Registration Aug 18 9a-Jun 9

Max Participants 8

An account is required to register for this program or activity.

 [CREATE ACCOUNT](#)

 [LOG IN](#)

Language After School



Portuguese - 2nd to 5th

Location TBD

All Ages

TU, F

09/07-06/07

3:30pm-4:30pm

\$525

Portuguese - Kinderg...

Location TBD

All Ages

TU, F

09/07-06/07

2:30pm-3:30pm

\$525

Tutoring After School



Elementary/ Middle S...

Location TBD

5-13

Fri

09/07-06/09

3:30pm-4:30pm

\$200

Elementary/ Middle S...

Location TBD

5-13

M, W

09/07-06/09

3:30pm-4:30pm

\$400

Elementary/Middle Sc...

Location TBD

5-13

M, W, F

09/07-06/09

3:30pm-4:30pm

\$600

AGENDA ITEM REPORT

September 9, 2021

ITEM NUMBER: 11.

ITEM: Discussion and direction regarding the Town's policy on Water and Sewer deposits for condominiums. Enclosed is a copy of Chapter 20 of the Town Code and other supporting documents.

DESCRIPTION:

The purpose of the proposed discussion is for the Town Council to consider revising the Water/Sewer/Sanitation deposit policy and to release partial deposits held by the Town for condominium buildings.

Staff conducted a survey of the surrounding municipalities and found that no other neighboring cities have been refunding security deposits for condominium buildings. The Town could accept a policy to refund partial security deposit to the Condominiums providing that the condominium is in compliance with the Town's rules and regulations, including but not limited to the 40 year re-certification and that the structure does not have any open / pending code violations.

Staff recommends release of 25-50% of the security deposit after 5 to 10 years of established good payment history, when there is no outstanding balance due to the Town.

Enclosed is a copy of the Town Code and other supporting documents provided by Finance Director Peter Kajokas.

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba L. Chang, Town Clerk
 Peter Kajokas, Finance Director

ATTACHMENTS

1. Chapter 20 - Utilities, Water and Sewer Service
2. Water Sewer Sanitation Deposit Refund Survey
3. Water Sewer Sanitation Past Due Accounts

Chapter 20 - UTILITIES

*Footnotes:**— (1) —***Cross reference**— *Cable television, Ch. 5½; private utilities franchises, Ch. 8; underground utilities, § 18-21 et seq.***State Law reference**— *Public utilities, F.S. ch. 366.*

ARTICLE I. - WATER AND SEWER SERVICE

Secs. 20-1, 20-2. - Reserved.

Note— See editor's note, § 20-3.

Sec. 20-3. - Water service—Charges for tapping mains; deposits; installations of meters.

The charge for tapping of mains, deposits for water service and installations of water meters shall be left to the discretion of the town manager, providing that such charge and deposits shall bear a reasonable relationship to costs thereof.

(Ord. No. 343, § 1, 1-8-79)

Editor's note— Ord. No. 343, § 1, adopted Jan. 8, 1979, amended §§ 20-1—20-3 by providing that the charge for tapping of mains, deposits for service, and installations of water meters be left to the discretion of the town manager. For purposes of conforming to Code format, the editor has designated said provisions as § 20-3, reserving §§ 20-1 and 20-2 for future use. Former §§ 20-1—20-3 pertained to the same subject matter and were derived from Ord. No. 59, adopted Jan. 12, 1953. Ord. No. 254, § 2—4, adopted June 12, 1972; and Ord. No. 316, § 1, adopted May 9, 1977.

Sec. 20-4. - Same—Determining size of service.

The water department shall have full authority to determine the size of service that shall be installed.

(Ord. No. 59, 1-12-53; Ord. No. 254, § 5, 6-12-72)

Sec. 20-5. - Water service charges—Rate.

The charges for water service in the town shall be at the rate of \$4.81 per 1,000 gallons plus that percent of such charges as determined from time to time by Miami-Dade County to compensate for the Miami-Dade County Water and Sewer utility charges to finance the environmental resources management department's water protection and utility regulation program.

(Ord. No. 84, § 1, 5-9-55; Ord. No. 173, § 1, 10-14-63; Ord. No. 263, § 1, 6-11-73; Ord. No. 295, § 1, 11-10-75; Ord. No. 312, §§ 1, 2, 11-8-76; Ord. No. 382, § 1, 10-13-80; Ord. No. 398, § 1, 3-8-82; Ord. No. 461, § 1, 1-11-88; Ord. No. 480, § 1, 5-8-89; Ord. No. 510, § 1, 2-10-92; Ord. No. 527, § 1, 9-14-92; Ord. No. 556, § 1, 9-12-94; Ord. No. 729, § 1, 10-13-03; Ord. No. 795, § 1, 4-10-06; Ord. No. 823, § 1, 9-10-07; Ord. No. 860, § 1, 10-13-08; Ord. No. 878, § 1, 3-9-09; Ord. No. 887, § 1, 9-14-09; Ord. No. 970, § 1, 10-13-14; Ord. No. 1015, § 1, 11-13-17; Ord. No. 1052, § 1, 10-28-20)

Sec. 20-6. - Same—Minimum.

There shall be a minimum water service charge for each water meter in the amount of \$22.38.

(Ord. No. 84, § 2, 5-9-55; Ord. No. 280, § 1, 8-12-74; Ord. No. 316, § 2, 5-9-77; Ord. No. 398, § 2, 3-8-82; Ord. No. 461, § 2, 1-11-88; Ord. No. 480, § 2, 5-8-89; Ord. No. 510, § 2, 2-10-92; Ord. No. 527, § 2, 9-14-92; Ord. No. 556, § 2, 9-12-94; Ord. No. 729, § 2, 10-13-03; Ord. No. 734, § 1, 11-13-03; Ord. No. 795, § 2, 4-10-06; Ord. No. 823, § 1, 9-10-07; Ord. No. 860, § 2, 10-13-08; Ord. No. 878, § 2, 3-9-09; Ord. No. 887, § 2, 9-14-09; Ord. No. 970, § 2, 10-13-14; Ord. No. 1015, § 2, 11-13-17; Ord. No. 1052, § 2, 10-28-20)

Sec. 20-7. - Same—Billing for water services, sewer services, and storm water fees; discontinuance of service.

Charges for water service, sewer services (as set forth in section 20-11, below), and storm water fees (as set forth in Section 20-11.1, below) shall be billed to each property owner monthly. Any payment that is not made within 30 days from the due date shall be assessed a three-percent late charge. If full payment, including the late charge, is not made within 60 days from the due date of the bill, the Town Manager shall have the authority to discontinue service upon written notice to the property owner. Written notice shall be sent by certified mail and First Class U.S. Mail and shall specify the date that the service will be discontinued, and the outstanding balance. The outstanding balance shall also include all costs of notice, including costs of mailing. Such charges, costs, and late fees shall constitute a tax and shall be a lien against the property for which the charges are due and unpaid. The lien will be effective from the due date of the charges and will remain as long as the charges are unpaid. The lien may be recorded in the public records and interest shall accrue at the legal rate set forth in Section 55.03, Florida Statutes. The Town Manager shall have the discretion to enter into installment plans, waive any late fee(s), lien recording fee(s), and accrued interest in connection with any property owner's payment of their outstanding balance.

(Ord. No. 84, § 3, 5-9-55; Ord. No. 316, § 3, 5-9-77; Ord. No. 341, § 1, 12-11-78; Ord. No. 367, § 1, 4-14-80; Ord. No. 1027, § 1(Exh. A), 10-10-18)

Sec. 20-8. - Same—Reconnection of terminated service.

In such cases where service has been terminated, either by the town for nonpayment of bills due, or at the request of the customer, reconnection of service will be made upon application of the customer, and upon payment of all outstanding bills, and a connection charge of \$35.00.

(Ord. No. 84, § 4, 5-9-55; Ord. No. 448, § 1, 5-11-87; Ord. No. 859, § 1, 10-13-08; Ord. No. 886, § 1, 9-14-09)

Sec. 20-9. - Sewer service—Rates.

The schedule of rates for service supplied by the sewer system, which schedule shall be subject to such increase, decrease or revision from time to time as may be necessary to carry out the provisions of this section, shall be as follows:

Residential users. Sewage charges shall be based upon water usage (excluding water usage through meters used exclusively for irrigation) at a rate of \$7.96 per thousand gallons. In addition, there shall be a monthly base charge of \$20.92 per living unit regardless of usage.

Non-residential users. Sewage charges shall be based upon water usage (excluding water usage through meters used exclusively for irrigation) at a rate of \$7.96 per thousand gallons. In addition, there shall be a monthly base charge regardless of usage depending upon the size of the water meter as follows:

Water Meter Size	Monthly Base Charge
1"	\$87.07
1.5"	\$174.15
2"	\$278.64
3"	\$522.38
4"	\$790.78

An initial deposit of \$50.00 per water closet to ensure payment of the sewer charge.

A tapping charge of \$250.00 for each service connection made to any single-family dwelling unit and \$650.00 for each service connection made to any multiple-family dwelling or commercial establishment. To the charges set forth above shall be added that percent of such charges as determined from time to time by Miami-Dade County to compensate for the Miami-Dade County Water and Sewer utility services charge to finance the environmental resources management department's water protection and utility regulation program.

(Ord. No. 135, § 3, 2-8-60; Ord. No. 372, § 1, 7-14-80; Ord. No. 382, § 2, 10-13-80; Ord. No. 388, § 1, 8-10-81; Ord. No. 432, § 1, 11-11-85; Ord. No. 445, § 1, 10-6-86; Ord. No. 448, § 2, 5-11-87; Ord. No. 460, § 1, 1-11-88; Ord. No. 500, § 1, 3-11-91; Ord. No. 511, § 1, 2-10-92; Ord. No. 528, § 1, 9-14-92; Ord. No. 548, § 1, 3-14-94;

Ord. No. 557, § 1, 9-12-94; Ord. No. 577, § 1, 9-11-95; Ord. No. 616, § 1, 4-14-97; Ord. No. 674, § 1, 10-10-00; Ord. No. 706, § 1, 9-9-02; Ord. No. 728, § 1, 10-13-03; Ord. No. 729, § 2, 10-13-03; Ord. No. 773, § 1, 5-9-05; Ord. No. 800, § 1, 7-10-06; Ord. No. 824, § 1, 9-10-07; Ord. No. 859, § 1, 10-13-08; Ord. No. 886, § 1, 9-14-09; Ord. No. 924, § 1, 10-10-2011; Ord. No. 955, § 1, 10-14-13; Ord. No. 969, § 1, 10-13-14; Ord. No. 985, § 1, 10-13-15; Ord. No. 999, § 1, 10-17-16; Ord. No. 1010, § 1, 6-12-17; Ord. No. 1014, § 1, 11-13-17; Ord. No. 1039, § 1, 10-7-19; Ord. No. 1053, § 2, 10-28-2020)

Sec. 20-10. - Same—Payment of tapping charges before issuance of building permit.

Tapping charges shall be collected simultaneously with the building permit for the structure involved, and payment of such tapping charges shall be a condition precedent to issuing the building permit.

(Ord. No. 135, § 4, 2-8-60)

Sec. 20-11. - Same—Billing; discontinuance of service.

The charges for sewer service shall be billed, noticed, collected, and lienied as set forth in section 20-7, above.

(Ord. No. 135, § 5, 2-8-60; Ord. No. 1027, § 1(Exh. A), 10-10-18)

Sec. 20-12. - Same—Privies and cesspools prohibited.

No privy vault or cesspool shall be used in the town at any time.

(Ord. No. 135, § 6, 2-8-60)

ARTICLE II. - STORMWATER UTILITY

Sec. 20-13. - Stormwater utility.

This article shall be know as the Bay Harbor Islands Stormwater Utility Ordinance.

(Ord. No. 594, § 1, 8-12-96)

Sec. 20-13.1. - Legislative intent.

It is the intent of this ordinance to implement the provisions of F.S. § 403.0893(1) by creating a stormwater utility and adopting utility fees sufficient to plan, construct, operate and maintain a local stormwater management system pursuant to F.S. § 403.0891(3).

(Ord. No. 594, § 1, 8-12-96)

Sec. 20-14. - Creation; governing body; organization.

- (a) There is hereby created and established by the authority of F.S. § 403.0893(1) and the Charter of the town a stormwater utility implementing the provisions of F.S. § 403.0893(1) which shall be named and known as the "Bay Harbor Islands Stormwater Utility" (hereafter referred to as "utility"). The utility shall be a public body corporate and politic which, through its governing body, the town council may exercise all those powers granted by law and those powers necessary in the exercise of those powers herein enumerated.
- (b) The governing body of the utility shall be the town council.
- (c) The utility, acting through its governing body, shall be responsible for the operation, maintenance, and governance of a local stormwater utility to plan, construct, operate and maintain a stormwater management system pursuant to F.S. § 403.0893(3). The governing body may create by ordinance one or more districts or subdistricts within the service area of the utility.
- (d) The town manager or his/her designee shall be the director of the utility.
- (e) The organization and operating procedures of the utility shall be prescribed by the town manager or designee. The town manager shall staff the utility in accordance with the provisions of the town charter.

(Ord. No. 594, § 1, 8-12-96)

Sec. 20-14.1. - Definitions.

For the purpose of this article, the following words and phrases shall have the meanings respectively ascribed to them in this section:

Developed property. Any parcel of land which contains an impervious area.

Dwelling. Any building which is wholly or partly used or intended to be used for living, sleeping, cooking and eating.

Dwelling unit. Any room or group of rooms located within a dwelling and forming a single habitable unit with facilities used or intended to be used for living, sleeping, cooking, and eating. This term shall include rooming units.

Equivalent residential unit (sometimes hereafter referred to as "ERU"). A statistically estimated average horizontal impervious area of residential developed property per dwelling unit. This estimated average is calculated by dividing the total estimated impervious area of three residential categories, to wit, single-family, multifamily and condominium, by the estimated total number of dwelling units. For the purpose of this ordinance each dwelling unit, to wit, single-family, multifamily, condominium, is assigned one ERU.

Impervious area. Any division of the horizontal ground surface which is incapable of being penetrated by rainwater. This shall include, but not be limited to, all structures, roof extensions, slabs, patios, porches, driveways, sidewalks, parking areas, swimming pools, athletic courts, and decks.

Nonresidential developed property. Any parcel of land which contains an impervious area and which is classified by Dade County property appraiser as land use types 10 through 99 as set forth in the Florida Administrative Code Rule 12D-8.008(2)(c), as amended from time to time.

Residential developed property. Any parcel of land which contains an impervious area and which is classified by the Dade County property appraiser as land use types 00 through and including 09 as set forth in Florida Administrative Code Rule 12D-008(2)(c), as amended from time to time.

Rooming unit. Any room or group of rooms, forming a single habitable unit, used or intended to be used for living, and sleeping but not for cooking or eating purposes.

Stormwater. The water which results from rainfall.

Stormwater infrastructure. The structural or nonstructural or natural features of a parcel of land or watershed which collect, convey, store, absorb, inhibit, treat, use, reuse, or otherwise affect the quantity or quality of stormwater.

Stormwater management program. The same term as defined by F.S. § 403.031(15) as may be amended from time to time.

Stormwater management system. The same term as defined by F.S. § 403.031(16) as may be amended from time to time.

Stormwater utility. The same term as defined by F.S. § 403.031(17) as amended from time to time.

Watershed. The same term as defined by F.S. § 403.031(18) as may be amended from time to time.

(Ord. No. 594, § 1, 8-12-96)

Sec. 20-15. - Fees.

- (a) The Bay Harbor Islands Stormwater Utility is hereby authorized and directed to establish, assess, and collect stormwater utility fees upon all developed property within the boundaries of the town, sufficient to plan, construct, operate, and maintain a stormwater management system, pursuant to F.S. § 403.0891(3). Such fees shall be implemented upon the approval of the governing body by resolution.
- (b) Each residential developed property shall be assessed a stormwater utility fee, at a rate of one ERU for each dwelling unit on the parcel.
- (c) Each nonresidential developed property shall be assessed a fee calculated by multiplying the rate for one ERU by a factor derived by dividing the actual impervious area of the particular property by the statistically estimated average horizontal impervious area of a residential developed property per dwelling unit, to wit, the square footage base equivalent established for (1) ERU.
- (d) The fees payable hereunder shall be deposited in a separate town fund and shall be used exclusively by the Bay Harbor Islands Stormwater Utility to pay for the cost of planning,

operating, constructing and maintaining the local stormwater management system.

(Ord. No. 594, § 1, 8-12-96)

Sec. 20-15.1. - Billing; discontinuance of service; liens.

- (a) Charges for storm water services shall be billed, noticed, collected, and liened as set forth in section 20-7, above.
- (b) Charges for storm water fees, late fees, mailing fees, and interest shall be debts due and owing the utility and the same shall be recoverable by the town or its assignee on behalf of the utility, in any court of competent jurisdiction.
- (c) *Intentionally deleted.*
- (d) Charges for storm water fees, late fees, mailing fees, and interest until fully paid and discharged, shall remain, and constitute a special assessment lien equal in rank and dignity with the liens of municipal ad valorem taxes and superior in rank and dignity to all other liens, encumbrances, titles, and claims in, to or against the developed property involved for a period of five years from the date of said fees and late charges, thereupon, become a lien as set forth in this article. Said lien may be enforced and satisfied by the town on behalf of the utility, pursuant to F.S. Ch. 173, as amended from time to time, or by any other method permitted by law. The lien provided herein shall not be deemed to be in lieu of any other legal remedies for recovery of said fee and late charges available to the town and to the utility.
- (e) A notice of lien shall be mailed within a reasonable time to the owner of the property as may be known to the town or shown on the tax assessment roll most recently published by Miami-Dade County. No such lien shall be enforceable by the town or the utility unless said notice shall be filed within six months from the date the fees and late charges become a lien as established by this article.
- (f) Liens may be discharged and satisfied by payment to the town, on behalf of the utility, of the aggregate amounts specified in the notice of lien and all filing and recording fees. When any such lien shall be fully paid or discharged, the town shall cause evidence of the satisfaction and discharge to be filed with the clerk of the circuit court of Miami-Dade County, Florida.

(Ord. No. 594, § 1, 8-12-96; Ord. No. 1027, § 1(Exh. A), 10-10-18)

ARTICLE III. - SANITARY SEWERS

Sec. 20-16. - Authorization.

This article is enacted pursuant to the general police power, the authority granted to the town by the Florida State Constitution, and sections 9, 17, and 72 of the Charter for the Town of Bay Harbor Islands.

(Ord. No. 621, § 1, 9-8-97)

Sec. 20-17. - Purpose and intent.

This article is for the purpose of implementing the town's comprehensive plan by requiring that new development pay for its fair share of the sanitary sewer system through the imposition of impact fees that will be used to finance, defray, or reimburse all or a portion of the costs incurred by the town for the sanitary sewer system that serves development.

(Ord. No. 621, § 2, 9-8-97)

Sec. 20-18. - Applicability.

Unless expressly excepted or exempted, this article applies to new construction or improvement of existing structures and facilities.

(Ord. No. 621, § 3, 9-8-97)

Sec. 20-19. - Definitions.

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

Collection. The point at which the sanitary sewer impact fee is actually paid to the town.

Dwelling unit. One or more rooms in a building or a portion of a room, designed or intended to be used, or actually used, for occupancy by one family for living and sleeping quarters and containing one kitchen only, but not including hotel or motel units.

Impose. To determine that a particular development project is subject to the collection of sanitary sewer impact fees as a condition of development approval.

New development or development project. Any residential project undertaken for the purpose of development or redevelopment, including without limitation, a project involving the issuance of a permit for construction, reconstruction, or change of use, but not a project involving the issuance of a permit to operate or to remodel, rehabilitate, or improve an existing structure, which does not change the density or intensity of use, nor the rebuilding of a structure destroyed or damaged by an act of God.

Residential development project. Any development undertaken to create one or more new dwelling units.

Sanitary sewer impact fee. A monetary exaction imposed by the town pursuant to this article as a condition of or in connection with approval of a development project for the purpose of defraying all or some of the town's cost or repaying costs previously expended from other town funds for capital improvements to the sanitary sewer system.

Sanitary sewer system improvement. Land or facilities for the collection, treatment, reclamation, storage, or disposal of sewage, and including the design, engineering, inspection, testing, planning, legal land acquisition, and all other costs associated with construction of such sanitary sewer system improvement.

(Ord. No. 621, § 4, 9-8-97)

Sec. 20-20. - Notice and hearing required for establishing or increasing sanitary sewer impact fees.

- (a) Prior to establishing or increasing any sanitary sewer impact fee, the town council shall hold a public hearing.
- (b) Notice of the time and place of the public hearing, including a general explanation of the matter to be considered, shall be published in accordance with the applicable notice provisions set forth in the Code of the Town of Bay Harbor Islands.
- (c) Town council action to establish or increase any sanitary sewer impact fee shall be taken only by ordinance or resolution containing findings which demonstrate the basis for calculating the fee.
- (d) Any costs incurred by the town in preparing for and conducting the public hearing may be recovered as part of the sanitary sewer impact fees which are the subject of the hearing.

(Ord. No. 621, § 5, 9-8-97)

Sec. 20-21. - Imposition, calculation and collection of sanitary sewer impact fees.

- (a) Except as provided in this article and any amendment to this article, the town may impose sanitary sewer impact fees as a condition of approval of building permits, whether for new development projects or for improvement of existing structures and facilities.
- (b) The base fee amount for the sanitary sewer impact fee shall be recalculated and adopted by town council resolution as needed, but with no more than one recalculation and adoption of an increase in the fee to occur within a twelve-month time period.
- (c) After an individual determination that the fee has been calculated as provided in this article, sanitary sewer impact fees shall be imposed prior to approval of any development permit or issuance of any building permit or certificate of occupancy, whichever is earlier.
- (d) Sanitary sewer impact fees shall be collected by the town clerk at the time and as a condition for issuance of a building permit.

(Ord. No. 621, § 6, 9-8-97)

Sec. 20-22. - Sanitary sewer impact fee base fee amount and computation.

Based upon the June 1997 Flow Capacity Study for the Town of Bay Harbor Islands by Kimley-Horn and Associates, Inc., and the town council reviewing and accepting same, the town council finds that the sanitary sewer impact fee shall be as follows:

Four hundred seventy-five dollars for each additional new dwelling unit.

(Ord. No. 621, § 7, 9-8-97)

Sec. 20-23. - Sanitary sewer impact fee account.

The town shall establish a sanitary sewer impact fee account within the accounting records of the town. The sanitary sewer impact fees collected shall be credited to such account, and shall be utilized only for sanitary sewer system improvements.

(Ord. No. 621, § 8, 9-8-97)

Sec. 20-24. - Use of sanitary sewer impact fee proceeds.

Sanitary sewer impact fees may be expended only for the type of capital improvements for which they were imposed, calculated, and collected and according to the procedures established in this article. Sanitary sewer impact fees may be used to pay the principal, interest, and other costs of bonds, notes, and other obligations issued or undertaken by or on behalf of the town to finance such improvements.

(Ord. No. 621, § 9, 9-8-97)

Sec. 20-25. - Audits.

A property owner may request an audit to determine whether the sanitary sewer impact fee imposed exceeds the amount reasonably necessary to finance capital improvements attributable to the development project. The town council shall then retain a qualified, independent auditor who shall determine whether the fee is appropriate. The town may require as a condition of the audit that the property owner deposit with the town a sum equal to the reasonable estimated cost of the audit and pay for the actual cost of the audit. The decision of the independent auditor is final unless appealed to the town council by the property owner as provided by this article.

(Ord. No. 621, § 10, 9-8-97)

Sec. 20-26. - Appeals.

- (a) Within ten days following mailing of notice of the auditor's decision to the appellant, a property owner may challenge the imposition of a fee imposed pursuant to this article by filing with the town clerk a written notice of appeal with a full statement of the grounds and an appeal fee of \$200.00 or such other amount as may be fixed from time to time by resolution of the town council. The town may continue processing the development application if the notice of appeal is accompanied with a bond or other security in an amount equal to the sanitary sewer impact fee.
- (b) The appellant shall bear the burden of demonstrating that the amount of the fee was not calculated according to the procedures established by this article.

- (c) At a regular meeting following the filing of the appeal, the town council shall fix a time and place for hearing the appeal, and the town clerk shall mail notice of the hearing to the appellant at the address given in the notice of appeal. The hearing shall be conducted at the time and place stated in the notice, and the determination of the town council shall be announced at the conclusion of the hearing or at the next regular meeting of the town council. The determination of the town council shall be final.

(Ord. No. 621, § 11, 9-8-97)

Sec. 20-27. - Statute of limitations.

Any judicial action or proceeding to attach, review, set aside, or annul the reasonableness, legality, or validity of any sanitary sewer impact fee must be filed and service of process effected within 90 days following the date of imposition of the fee or the final determination of the town council, whichever is later.

(Ord. No. 621, § 12, 9-8-97)

Sec. 20-28. - Variances and exceptions.

Petitions for variances and exceptions to the application of this article shall be made in accordance with sections 2-16 through 2-24 of this Code.

(Ord. No. 621, § 13, 9-8-97)

Sec. 20-29. - Conflicts.

In the event of a conflict between the provision of this article and the provisions of any other ordinance or resolution establishing or amending sanitary sewer impact fees, the provisions of this article shall govern.

(Ord. No. 621, § 14, 9-8-97)

Town's Who Do Not Refund Deposit On Active Accounts

Cities		Responses		Contact Person	Phone Numbers
Bal Harbor		No		Tina	305-866-4633
North Bay Village		No		Annabelle	305-756-7171
Surfside		No		Demairs	305-861-4863
Miami Beach		No		Patrick	305-673-7420
Norh Miami Beach		No		Krystal	305-948-2960



Town of Bay Harbor Islands

Aging Report

Account No.	Parcel No.	Name	Last Pmt Status	Current Amount	+ 1 Month	+2 Months	+ 3 Months	+ 4 Months	Balance
100-11510-06	100-11511	Kai At Bay Harbor Condo, Assoc	6/25/2021	6,424.00	6,246.68	5,518.35	5,487.99	57,591.88	81,268.90
010-19100-03	010-94993	Bhi Hotel, LLC	4/28/2021	2,944.32	2,944.32	2,944.32	2,944.32	28,073.09	39,850.37
100-49400-03	100-49400	Bal Harbour Investments, LLC	8/25/2021	2,892.00	3,743.83	3,105.94	3,214.10	24,640.10	37,595.97
010-94993-04	010-94993	Bhi Hotel, LLC	4/28/2021	2,075.63	2,075.63	2,075.63	2,075.63	29,160.82	37,463.34
100-25000-05	100-25000	Bay Harbor Island 1 LLC	11/13/2020	2,511.39	2,778.55	2,624.38	2,517.37	19,040.72	29,472.41
010-70300-02	010-70300	Wendy Fong		0	0	0	0	25,017.49	25,017.49
100-50000-03	100-50000	Invepa International LLC	10/24/2019	797.5	729.88	580.76	688.93	17,147.53	19,944.60
100-44204-01	100-44207	Dcp Schools System	7/19/2021	2,391.04	3,094.90	3,311.47	2,539.94	6,007.53	17,344.88
010-13400-04	010-13400	Island Pointe At B.H. Condo	7/30/2021	14,750.43	0	0	0	0	14,750.43
100-33400-03	100-33400	The Ivory At Bay Harbour, LLC	7/12/2021	4,209.90	5,114.09	4,435.81	0	22.9	13,782.70
100-11100-01	100-11100	Rexleigh Apts Inc	8/31/2021	4,893.39	6,069.74	996.86	0	0	11,959.99
100-23400-01	100-23400	Club Of Bay Harbor Condo Asn.	6/30/2021	3,466.58	4,007.43	3,628.72	0	0	11,102.73
100-10100-08	100-10110	Bay Harbor Hotel, LLC	7/30/2021	9,252.89	0	0	0	0	9,252.89
010-16400-01	010-16401	Isl Manor Condo Assn Inc.	8/6/2021	3,682.78	5,173.65	0	0	0	8,856.43
100-22100-03	100-22100	Tross Infinity, LLC	10/31/2019	374.48	374.48	374.48	374.48	7,305.71	8,803.63
100-23700-03	100-23700	Burgos Developers LLC Linda	7/7/2021	689.07	689.07	674.75	918.12	5,505.47	8,476.48
100-42300-02	100-42300	Bal Harbour Investment, Llc	8/25/2021	689.07	837.8	782.92	782.92	5,266.35	8,359.06
100-12100-01	100-12100	The Belmont	8/2/2021	8,196.82	0	0	0	0	8,196.82
100-37100-06	100-37110	PPG Bay Harbor Owner LLC	8/11/2021	7,880.67	0	0	0	0	7,880.67
100-26201-03	100-26201	The Forge Condominium Assoc.	8/2/2021	2,263.45	2,642.05	2,316.90	357.96	-0.01	7,580.35
010-46000-02	010-46000	Vintage Condominium Assoc.	8/6/2021	7,513.29	0	0	0	0	7,513.29
100-49200-01	100-49200	Berkshire House Condo	8/5/2021	3,161.72	3,740.17	0	0	0	6,901.89
100-34400-01	100-34400	Blair House Condominium Assoc.	8/11/2021	6,603.98	0	0	0	0	6,603.98
100-19800-01	100-19800	The Assoc.Inc. Summit Condo	7/30/2021	5,973.29	0	0	0	0	5,973.29
010-70401-03	100-70400	Sagi & Elana Genger	2/8/2021	97.62	97.62	122.69	122.69	5,529.93	5,970.55
010-17700-01	010-17701	Concourse Plaza Condo Assn Inc	7/30/2021	2,787.86	2,591.98	0	0	0	5,379.84
100-25111-01	100-25114	Naspi, LLC		107.67	131.39	117.66	144.71	4,376.90	4,878.33
100-34800-01	100-34800	Park Place Partners Inc.	7/2/2021	611.62	692.75	584.28	584.28	2,339.06	4,811.99
100-46100-02	100-46100	Atrium Condo Owners Assoc.	8/9/2021	2,770.18	2,003.46	0	0	0	4,773.64
100-51001-02	100-51001	Longwood Towers	7/30/2021	4,503.07	0	0	0	0	4,503.07
100-13101-04	100-31301	Bh Bayview LLC	8/2/2021	4,288.40	0	0	0	0	4,288.40
010-48101-04	010-48101	Bay Harbor Club Association	8/2/2021	4,219.00	0	0	0	0	4,219.00
100-12600-05	100-12600	Sereno Residences Condominium	8/24/2021	4,042.20	0	0	0	0	4,042.20
100-13300-01	100-13300	Bay Harbor Club	7/12/2021	2,311.54	1,698.80	0	0	0	4,010.34
010-13800-01	010-13800	Haven Apts Inc	8/9/2021	1,756.22	2,096.11	1.26	0	0	3,853.59
030-36500-09	030-36500	Riva Bay Harbor Condominium	8/24/2021	3,765.33	0	0	0	0	3,765.33
100-49900-03	100-49900	Blue Wave Condominium	7/29/2021	878.37	905.41	825.24	814.67	318.97	3,742.66
010-94510-06	010-94510	Miami Dade County Fire Rescue	7/26/2021	521.12	562.43	521.12	548.66	1,563.55	3,716.88