



October 14, 2025

VIA EMAIL AND CERTIFIED MAIL

Chair and Members of the School Board of Lee County
c/o Superintendent Denise Carlin
2855 Colonial Boulevard
Fort Myers, FL 33966

Re: Response to School Board Letter Regarding Fort Myers Beach Elementary School

Dear Chair and Members of the School Board:

The Town of Fort Myers Beach appreciates the School Board’s written response dated October 13, 2025, regarding Fort Myers Beach Elementary School. While we value continued dialogue, several statements in the Board’s letter require clarification and correction. The Town must respectfully reaffirm that both Florida law and the binding Interlocal Agreements between the Town and the School Board require cooperation, compliance with applicable local and federal law, and preservation of the building and educational opportunities at issue pending completion of those processes.

I. Interlocal Agreement Is a Binding, Enforceable Contract

The Board’s assertion that it retains unrestricted authority regardless of prior agreements misstates the law. The Interlocal Cooperation Act (Section 163.01, Florida Statutes) expressly authorizes school boards and municipalities to enter into binding interlocal agreements. Such agreements are legally enforceable contracts, and sovereign immunity does not bar enforcement. As the Florida Supreme Court held in *Pan-Am Tobacco Corp. v. Department of Corrections*, 471 So. 2d 4 (Fla. 1984), governmental entities are subject to suit for breach of express contracts they voluntarily execute. Accordingly, the Interlocal Agreements between the Town and the School Board are enforceable legal commitments. They cannot be unilaterally disregarded by the School Board without consequence. The Town relied upon those agreements in good faith and expended substantial effort and resources to support their implementation. Among other commitments, the Interlocal Agreement provides for a phased rebuild of Fort Myers Beach Elementary School and includes the Town’s right to consider operation of the school as a municipal charter school should the School Board decline to continue operation. Demolishing the historic school building would render that bargained-for option impossible and would therefore constitute a direct breach of the Agreement.

II. Compliance with Chapter 164, Florida Statutes

The Town properly initiated the governmental conflict resolution process under Chapter 164, Florida Statutes, by adoption of Resolution No. 25-296. That statute requires that the parties engage in good-faith negotiation and, if necessary, mediation before taking unilateral action that affects the subject of the dispute. Continuing the process



of demolition, contracting, or site preparation while this statutory procedure is pending would undermine the cooperative intent of Chapter 164 and risk rendering the process meaningless. The Town again requests that the School Board pause any actions relating to demolition until the required discussions and mediation are completed.

III. Applicability of Local Historic Preservation Law

The Board's letter suggests that local historic-preservation requirements do not apply to School Board actions. That is not correct. While school boards may be exempt from local *building-permit* procedures, they remain subject to local land-development regulations enacted pursuant to comprehensive-plan authority, including historic-preservation ordinances. Sections 1013.33 and 163.3194, Florida Statutes, require educational facilities to be consistent with local comprehensive plans and implementing land-development regulations. The Town's Historic Preservation Ordinance (Chapter 22, Town Code) implements those statutory directives and applies to all properties within the Town, including those owned by other public entities. Before any alteration or demolition of a designated historic resource, a Special Certificate of Appropriateness must be obtained from the Town's Historic Preservation Board following a public hearing. Florida courts apply the Temple Terrace "balancing of interests" test when a governmental entity seeks to act contrary to another's land-use regulation (*Hillsborough Ass'n for Retarded Citizens, Inc. v. City of Temple Terrace*, 332 So. 2d 610 (Fla. 1st DCA 1976)). Under that test, preservation of a designated historic landmark within a community easily satisfies the standard for continued application of the local regulation. Accordingly, demolition of the Fort Myers Beach Elementary School building without compliance with Chapter 22 would be contrary to local law and inconsistent with the comprehensive-plan mandates of Sections 1013.33 and 163.3194, Florida Statutes.

IV. Federal Funding and Section 106 of the National Historic Preservation Act

The Board's response acknowledges both FEMA funding and the school's National Register of Historic Places designation, which confirm that the Section 106 review process under the National Historic Preservation Act (54 U.S.C. § 306108; 36 C.F.R. Part 800) applies. The Town appreciates the Board's stated intent to coordinate with FEMA and the State Historic Preservation Office, but that coordination must be completed before any adverse effect—including demolition—occurs. Proceeding with demolition prematurely would risk non-compliance with federal law and jeopardize reimbursement or future disaster-recovery funding.

V. Unaddressed Enrollment and Good-Faith Performance Concerns

The Town notes that the Board's response did not address serious concerns previously raised regarding the failure to return students to the island campus, which has directly prevented the school from meeting its enrollment benchmarks and realizing the negotiated goals of the Interlocal Agreement. Those omissions must be addressed in the forthcoming dispute-resolution meetings, as they bear directly on both parties' good-faith obligations and the viability of the school moving forward.

VI. Location of the Chapter 164 Proceedings



The Town must also address the matter of the location for the first meeting under Chapter 164, Florida Statutes. The School Board has refused to hold the meeting in Fort Myers Beach, despite the Town’s clear designation of its new Town Hall as the meeting site in the duly adopted Resolution initiating this process. That location was selected by the Town Council itself as part of a properly noticed and adopted legislative act reflecting both the Town’s statutory rights and its commitment to ensure local accessibility for its residents.

Under § 164.1052, the initiating governmental entity—here, the Town—has the statutory authority to propose the date and location for the initial conflict-assessment meeting. Nothing in Chapter 164 grants the responding entity a veto over that proposed location. The statute’s structure, further reinforced by § 164.1055, which assigns to the initiating entity responsibility for scheduling a future joint public meeting, clearly demonstrates the Legislature’s intent that the initiating government maintain logistical control. The School Board’s categorical refusal to meet in Fort Myers Beach has no basis in law, policy, or equity.

Moreover, the only members of the public directly affected by the outcome of this Chapter 164 proceeding reside within the Town of Fort Myers Beach. The School Board’s insistence on relocating the meeting off-island serves no legitimate administrative purpose and appears intended to make attendance more difficult for the very parents, residents, and voters whose children and community are at stake. Such an action is needlessly divisive and mean-spirited, inconsistent with the cooperative intent of Chapter 164, and conveys an unmistakable disregard for the individuals most directly impacted by the Board’s decisions. It also undermines the statute’s express purpose of fostering transparency, cooperation, and accountability between governmental entities.

Fort Myers Beach is the most appropriate and reasonable location for these proceedings. The subject of the dispute—the elementary school facility and its future—lies squarely within the Town, and the outcome will directly affect the Town’s residents, land-use planning, and community character. Holding the meeting locally would promote public trust, accessibility, and the cooperative dialogue envisioned by the Legislature. Conversely, refusing to conduct the meeting in the Town undermines those purposes and imposes an unnecessary burden on the affected community.

Because the Town Council’s Resolution lawfully designated the meeting location, no Town staff member has authority to override a formal action of the Council, and the statutorily required publication requirements and newspaper deadlines are strict, the first conflict-assessment meeting will, of necessity, take place at the Fort Myers Beach Town Hall, as specified in Resolution No. 25-296.

VII. Mischaracterization of the August 5, 2025 Workshop Presentation

The Town must respectfully correct the School Board’s suggestion that the August 5, 2025 “State Operations Overview” presentation somehow placed the public or the Town on notice that the District might demolish Fort Myers Beach Elementary School without rebuilding it. Nothing in that presentation conveyed, implied, or even suggested that complete removal of the school without replacement was under consideration. To the contrary, the discussion and slides reflected a forward-looking planning process to determine the most fiscally and structurally



sound means of rebuilding the school—whether through modernization, reconstruction, or new construction on the same site at a more resilient elevation.

The slide titled “*State Operations Overview*” merely listed the procedural steps then underway: “post third-party assessment,” “Advanced Plant Survey,” “Florida DOE review and expectations,” and “determination of state review forthcoming.” Each of these steps, by law, is part of the Florida Department of Education’s Advanced Plant Survey process, which compares the cost of renovation versus new construction to guide the State’s approval of funding for continued educational use of a facility. The plain meaning of those items indicated that the District would evaluate how best to repair or rebuild the Beach School—not that it would abandon the site or eliminate the school altogether.

Moreover, the accompanying presentation remarks made clear that the consultant’s task was to analyze options for future building planning in light of storm resilience and cost effectiveness. The presenter specifically emphasized the desire to avoid repetitive storm losses and to ensure any future facility would be “strategic” and “resilient.” Those comments necessarily presupposed a continuing school presence on Fort Myers Beach; the only question was whether rebuilding should occur through modernization of the existing structure or new construction on the same site. At no time did District staff state or imply that the School Board was contemplating permanent closure or demolition without replacement.

For these reasons, the Town cannot accept the assertion that the August 5 presentation or its *State Operations Overview* slide served as notice of a potential decision to raze the school and forego rebuilding. The content of that workshop, viewed in full and in context, reinforced the Town’s reasonable understanding—shared by parents, staff, and community members—that rebuilding in some form would occur. Any contrary interpretation is inconsistent with both the language of the presentation itself and the communications that followed.

VIII. The Path Forward

The Town reiterates its commitment to cooperative problem-solving through the Chapter 164 process and to protecting both the educational future of Fort Myers Beach students and the community’s historic and cultural heritage.

We respectfully request that the School Board:

1. **Refrain from any demolition, contracting, or construction actions** pending completion of the Chapter 164 process and Section 106 consultation;
2. **Engage promptly and in good faith** with the Town in the required negotiation and mediation sessions; and
3. **Respond substantively** to the Town’s prior concerns regarding enrollment management, relocation decisions, and adherence to the Interlocal Agreement’s phased-rebuild commitments.



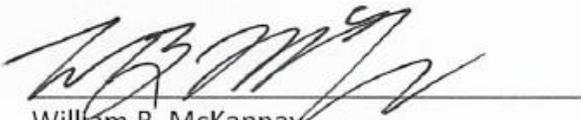
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Dan Allers, Mayor | Jim Atterholt, Vice Mayor | John R. King, Council Member | Scott Safford, Council Member | Karen Woodson, Council Member

The Town looks forward to a cooperative and lawful resolution consistent with the spirit of partnership envisioned when the Interlocal Agreement was executed.

Respectfully,

Town of Fort Myers Beach



William B. McKannay
Town Manager, Town of Fort Myers Beach

FORT MYERS BEACH ESTERO ISLAND

P. 239-765-0202 | **F.** 239-765-0909 | 6231 Estero Boulevard, Fort Myers Beach, FL 33931