



**MINUTES  
FORT MYERS BEACH  
Code Enforcement  
Town Hall  
2525 Estero Boulevard  
Fort Myers Beach, FL 33931**

**Thursday, March 1, 2018**



**Hearing Examiner - Special Magistrate:** Mr. Joe Madden

Mr. Madden swore in those providing testimony.  
Mr. Jack Peterson, Town Attorney, represented the Town in cases with opposing counsel.

Property Owner:       PRESAUD PROPERTIES FL INVESTMENTS  
SUBJECT:                LDC Section: 6-111 Adopting FBC 105.1 Operating w/out Permit - USE  
LOCATION:                1046 Estero Blvd.  
STRAP NO:              24-46-23-W3-00016-0000  
CODE OFFICER:        Molly Jacobs  
REFERENCE NO:        CE17-0707

Ms. Jacobs stated that the condition violated LDC Section 34-621 operating a parking lot without a permit. To abate the violation, the property owner needs to secure required permits and pass subsequent inspections to operate the parking lot.

A notice of violation was sent to the property owner and claimed on September <sup>6</sup> 2017. A notice of hearing was provided to the property owner and claimed on February 8, 2018. It was posted in Town Hall on February 2, 2018 and at the property on February 3, 2018. The property was inspected on February 28, 2018 and the violation still existed.

If the hearing found a violation, the Town requested a finding of fact, submit a valid application for use permit to operate a parking lot within 15 days, March 16, 2018, and complete all required site improvements within 90 days of the use application approval and pay \$275.00 in administrative costs by completion of the code case; otherwise a fine per day pursuant to code.

Jim Moon distributed a photo from the Lee County Appraiser's website dated September 1999, which reflected a photo that showed the property was used for parking. He stated the parking lot had been in existence for 18 years. He stated that they had a permit for the contiguous parking lot from the restaurant. Under Town code, they were allowed to rent excess parking.

Mr. Madden questioned whether there was direct testimony to establish continuous use since 1999. Mr. Moon replied that the owner would provide testimony and he had photos from 2005, 2009 and 2014 showing the parking lot existed. Mr. Moon referred to Chapter 34, Section 2019 (a) and Chapter 34, Section 2011 (1) of the code.

Terry Persaud, owner, stated that the parking lot had been in existence since the '70s and had always been used by the restaurant. He purchased the property in June of 2014. Mr. Madden questioned how he knew the parking lot had been in existence since the '70s. Mr. Persaud replied that he researched records for the case and found that the lot existed in 1989 when the Top O' Mast existed.

Mr. Madden questioned whether they were presenting a defense of a pre-existing legally non-conforming use or that it is conforming because there were two code provisions that allow for it. Mr. Moon replied affirmatively. Mr. Peterson cited LDC Section 34-3244 discontinuance of a non-conforming use for nine months while the Top O' Mast was being renovated. ~~Mr.~~ <sup>Ms.</sup> Jacobs noted that the permit for the remodel was issued on February 11, 2015 and finalized on March 8, 2016.

Mr. Moon questioned Ms. Jacobs regarding details concerning the renovation. Mr. Persaud testified that the parking lot was being operated as a paid parking lot during the renovation. He stated that the Town acknowledged that the parking lot was one with the restaurant in a 1996 sign permit. Mr. Moon stated that the parking lot was never abandoned. He challenged the Town to produce a case that showed a renovation constituted an abandonment of property.

Mr. Madden read LDC Chapter 34, Section 2019 (a), which did not apply. Ms. Jacobs read Chapter 34, Section 2011 (1).

Mr. Persaud stated that he rented parking spaces in Times Square, which had zero parking requirements for restaurants. The parking lot was used primarily for his guests during the evening and he rented it out during the day. He indicated that Chapter 34-2011 (c) allowed them the rent all the parking spaces.

Mr. Peterson stated that it was a use question and there was no use permit issued during the renovation of Top O' Mast. Mr. Madden suggested a continuance. Mr. Moon stated that it was up to the Town to prove the case and he did not see a rebuttal to the Segal defense. Mr. Madden stated that the Segal defense did not go back to 2014 and he did not make a case for the Laches defense.

Mr. Madden continued the case for 30 days, March 29, 2018. Mr. Moon cited the Swan River case where 21 months was found to be sufficient under Segal for Laches defense.

#### RECALL CASE:

Property Owner: LEDESMA MANUEL I + YOLANDA  
SUBJECT: LDC Section: 304.2 and 302.4 Over Grown Lawn/ Mold on property  
LOCATION: 21541/543 Widgeon Ter  
STRAP NO: 34-46-24-W1-00001-0010  
CODE OFFICER: Joe Kontomanolis  
REFERENCE NO: CE17-0512

JK

Mr. Kontomanolis stated that the case was brought before Magistrate on November 29, 2017. A finding of fact was established and an order was issued citing the respondent was in violation of an overgrown lawn and mold on the property. The respondent was ordered to cut the grass and remove the mold. The respondent was assessed an administrative fee of \$175.00 and a fine per day of \$100.00 per day if the violation was not abated by January 25, 2018. The lawn was cut before January 25, 2018 but the mold was not removed until February 14, 2018. The administrative fee of \$175.00 was paid. The fine of \$100.00 per day for 20 days totaled \$2,000.00. He requested an order to lien.

Mr. Ebelini stated that the case stemmed from the sale of the property in October. The owner gave permission to the closing agent to settle the open violation. On October 20, 2017, Hector's Tree Service was contracted to clean the place. Mr. Ebelini provided a photo showing that the property had been cleaned up but the mold on the side of the house had not been fully remedied. On

November 17, 2018 the closing took place. All parties at closing were told that the violation had been resolved. A recall notice was sent to the previous owner, Manuel Ledesma in Miami on February 2, 2018. The present owner did not receive a copy of the notice. When he returned to the States, he noticed the violation on the property. He spent \$800.00 to remedy the mold situation on a house he was going to demolish on February 15, 2018. Mr. Madden revealed that he could not mitigate cases any longer. Mr. Ebelini questioned why the current owner should be subject to a lien. Mr. Madden agreed with Mr. Ebelini.

Mr. Kontomanolis stated that recall notice was posted to the property. Mr. Madden quashed the order.

Property Owner: HOESCH GEORGE TR  
SUBJECT: LDC Section: 6-111 Adopting FBC 105.1 Work without permit-Railings  
LOCATION: 5380 Estero Blvd  
STRAP NO: 33-46-24-W1-00206-0040  
CODE OFFICER: Joe Kontomanolis  
REFERENCE NO: CE17-0256

J.K.

Mr. Bogart indicated that Mr. Kontomanolis was the officer on the case. Mr. Bogart stated that the property was inspected on May 19, 2017 and June 16, 2017 and work was done without a permit. The action was to secure required permit and pass inspection. The notice of violation was sent on June 7, 2017 and claimed. The notice of hearing was sent on February 12, 2018 and claimed. It was posted on the property on February 18, 2018. Mr. Kontomanolis had pictures. If the hearing found a violation, the Town requested a finding of fact, obtain a permit and pass subsequent inspections by April 18, 2018; otherwise a fine per day pursuant to code, an administrative fee of \$175.00 and a recall date of April 26, 2018. The respondent did apply for a permit.

Mr. Hoesch stated that the inspector was scheduled for tomorrow. Mr. Bogart revealed that the final inspection should be completed within a couple of weeks.

Mr. Madden made a finding of fact that railings were installed without the proper permit. He gave the respondent 30 days for the final inspection. Mr. Kontomanolis stated that the Town requested \$175.00 for administrative fees and pass inspections by April 18, 2018; otherwise, a fine of \$50.00 per day will be assessed if not abated by April 26, 2018.

18th

Property Owner: JABO LLC  
SUBJECT: LDC Section: 14-7 Ord 97-5 Sec 7 (G) Vehicle & Horse on Beach  
LOCATION: 275/322 Estero Blvd.  
STRAP NO: 24-46-23-W1-00700-0340  
CODE OFFICER: Molly Jacobs  
REFERENCE NO: CE18-0053

Notice of Hearing

Mr. Bogart stated that Ms. Jacobs was the officer. He noted the property was inspected on January 21, 2018. He indicated that a notice of violation was sent on January 25, 2018 and claimed. (Notice of hearing sent?) B.A.S.E. officer Nello Cernoia took pictures. He commented that they had issues with the respondent parking on the beach in the past but they worked with staff. A citation of \$250.00 was paid on February 6, 2018.

If the hearing found a violation, the Town requested a finding of fact, no vehicles on the beach unless they were allowed through the permitting process. An administrative fee of \$275.00 to be paid by March 21, 2018. If the violation occurs again the Town asked for a fine per day pursuant to the code. If the fine is not paid by March 21, 2018, they would like to establish a recall date of March 29, 2018.

Mr. ?, general manager of the Pink Shell, stated that the wedding was supposed to be in Puerto Rico but it was displaced due to hurricane Maria. The Pink Shell reached out to the Town regarding the religious ceremony where the groom was brought out on an animal. An email from the Town indicated that it was fine. The vehicle on the beach was an outside catering truck and they mistakenly drove out on the beach and got stuck. Mr. Madden noted that the citation had been paid. The Town requested that the Magistrate provide an order stating that if it happened again the fine could be increased to \$500.00 per day. Mr. Madden provided the order.

Property Owner: FRERICHS STACEY E & FRERICHS K  
SUBJECT: LDC Section: : 6-111 Adopting FBC 105.1 Work W/out Permit- Fence/  
structure  
LOCATION: 271 Randy Ln.  
STRAP NO: 28-46-24-W4-00305-0000  
CODE OFFICER: Joe Kontomanolis  
REFERENCE NO: CE17-0720

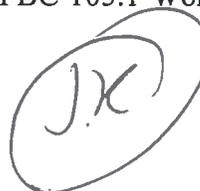


Mr. Bogart stated that Mr. Kontomanolis was the officer. The property was inspected on September 2, 2017 and January 12, 2018 and verified that the work was done without a fence permit. Action necessary to correct the violation was to obtain a permit and pass inspections. A notice of violation was sent to the property owner on December 28, 2017 and claimed. A notice of hearing was sent to the property owner on January 22, 2018 and claimed. Pictures were taken by Mr. Kontomanolis. The property was inspected on February 28, 2018 and the violation still existed.

If the hearing found a violation, the Town requested a finding of fact, obtain a permit and pass subsequent inspections by April 18, 2018; otherwise a fine per day pursuant to code, administrative costs of \$275.00 and a recall date of April 26, 2018.

Mr. Madden entered an order of \$275.00 in administrative costs, a fine of \$50.00 per day, obtain required permits and pass inspections by April 18, 2018, pay \$275.00 by April 18, 2018 and a recall date of April 26, 2018.

Property Owner: LAHAINA INN RESORT PH I + II T  
SUBJECT: LDC Section: 6-111 Adopting FBC 105.1 Work w/out Permit - Windows  
LOCATION: 5600 Estero Blvd.  
STRAP NO: 33-46-24-W1-02400-00CE  
CODE OFFICER: Joe Kontomanolis  
REFERENCE NO: CE17-0739



Mr. Bogart stated that Mr. Kontomanolis was the officer. The property was inspected on October 28, 2017 and December 16, 2017 and the violation still existed. Action necessary to correct the violation was to obtain a permit and pass inspections. A notice of violation was sent to the property owner on November 1, 2017. (Was it claimed?) The notice of hearing was sent to the property

owner on December 20, 2017 and claimed. Mr. Kontomanolis had pictures of the property. The property was inspected on February 28, 2018 and the violation still existed.

If the hearing found a violation, the Town requested a finding of fact, obtain a permit and pass subsequent inspections by April 18, 2018; otherwise a fine per day pursuant to code, administrative costs of \$275.00 and a recall date of April 26, 2018.

Mr. Kontomanolis noted that a permit had been applied for on February 5, 2018.

Mr. Madden entered an order that windows were installed without the proper permits. He made a finding that the permit was applied for on February 5, 2018. If the permit was not achieved and final inspection by April 18, 2018 a fine of \$200.00 per day will be assessed. The administrative fee of \$275.00 was to be paid by April 18, 2018. The recall date was April 26, 2018.

Property Owner: GRAND RESORT FT MYERS BEACH LLC  
SUBJECT: LDC Section: 6-111 Adopting FBC 105.1 Work W/out permit Expired  
PRK12-0010  
LOCATION: 1188/1190 Estero Blvd.  
STRAP NO: 19-46-24-W4-0140B-0010  
CODE OFFICER: Joe Kontomanolis  
REFERENCE NO: CE17-0892



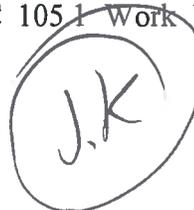
Mr. Bogart stated that Mr. Kontomanolis was the officer. The property was inspected on December 5, 2017 and January 17, 2018 and work was being done without a permit. Action necessary is to secure a permit and pass inspections. A notice of violation was sent to the owner on December 11, 2017 and claimed. A notice of hearing was sent to the owner on January 9, 2018 and claimed. Mr. Kontomanolis took pictures of the property. The property was inspected on February 28, 2018 and the violation still existed.

If the hearing found a violation, the Town requested a finding of fact, obtain a permit and pass subsequent inspections by April 18, 2018; otherwise a fine per day pursuant to code, administrative costs of \$275.00 and a recall date of April 26, 2018.

Mr. Kontomanolis added that the work without permit referred to an expired parking permit. Mr. Madden indicated that he did not have pictures. Mr. Kontomanolis did not have photos but he was able to track it on the computer. He requested a continuance to March 29, 2018.

Mr. Madden continued the matter to March 29, 2018 with no finding of fact.

Property Owner: GANIM PROPERTIES LLC  
SUBJECT: LDC Section: 6-111 Adopting FBC 105.1 Work W/out permit - signs  
LOCATION: 1240 Estero Blvd.  
STRAP NO: 19-46-24-W4-0140A-0010  
CODE OFFICER: Joe Kontomanolis  
REFERENCE NO: CE17-0903



Mr. Bogart stated that Mr. Kontomanolis was the officer. The property was inspected on December 7 & 8, 2017 and on January 13, 2018 and work was being done without a permit.

Action necessary is to secure a permit and pass inspections. A notice of violation was sent to the owner on December 27, 2017 and claimed on January 19, 2018. A notice of hearing was sent to the owner on January 22, 2018 and claimed on January 19, 2018. The property was inspected on February 28, 2018 and the violation still existed.

If the hearing found a violation, the Town requested a finding of fact, obtain a permit and pass subsequent inspections by April 18, 2018; otherwise a fine per day pursuant to code, administrative costs of \$275.00 and a recall date of April 26, 2018.

Mr. Kontomanolis noted that their sign permit was expired and a new sign was on the property without a permit. He did speak to the owner and he stated the new sign would be moved off the premises.

Mr. Madden entered an order to the effect that there was a violation with no permits for the signs. The administrative fee of \$275.00 is to be paid by April 18, 2018. The recall date was April 26, 2018. A fine per day of \$200.00 per day will be assessed if not abated by April 26, 2018.

18th

**RECALL CASES:**

Property Owner: ISLAND WINDS CONDO  
SUBJECT: LDC Section: 6-111 Adopting FBC 105.1 SWO - REPEAT - Work w/out Permit - Remodel (office)  
LOCATION: 6614 Estero Blvd.  
STRAP NO: 34-46-24-W4-02100-00CE  
CODE OFFICER: Molly Jacobs  
REFERENCE NO: CE17-0354

Mr. Bogart stated that Ms. Jacobs was the officer. The case was brought to the Magistrate on July 26, 2017 and a finding of fact was established. Ms. Jacobs noted that the permit was in the review process. The recall notice was posted on January 24, 2018 and the respondent was ordered to obtain a permit and pass inspections. They were assessed \$175.00 in administrative costs. In the event that the violation was not abated by October 25, 2017, a fine of \$150.00 was to be imposed. As of ~~November 21, 2017~~ and March 1, 2018, the permit was under review. The administrative fee of \$175.00 was paid. The Town requested an order to lien. Mr. Madden granted an order to lien.

Property Owner: EVANS WIRT T + DOROTHY  
SUBJECT: LDC Section: 6-111 Adopting FBC 105.1 Work W/out Permit Deck  
LOCATION: 650 Estero Blvd.  
STRAP NO: 24-46-23-W3-00400.013D  
CODE OFFICER: Joe Kontomanolis  
REFERENCE NO: CE17-0394

Mr. Bogart stated that Mr. Kontomanolis was the officer. The case was brought before the Magistrate on October 25, 2017 and a finding of fact was established. An order was issued in violation of work without a permit - deck. The respondent was ordered to obtain permits and assessed a \$175.00 administrative fee. If the violation was not abated prior to January 17, 2018 a fine per day of \$150.00 would be imposed. As of January 18, 2018 an application had not been submitted and the \$175.00 administrative fee had not been paid. The Town requested an order to lien. Mr. Madden ordered the lien.

Case CE17-0659 was continued to March 29, 2018. Cases CE17-0787, CE17-0870, CE16-0099, CE15-0397, CE15-0260, CE15-0385 and CE17-0066 were continued to April 26, 2018. Cases CE17-0831, CE17-0428, CE17-0674, CE17-0285 and CE17-0302 were continued without a date.

Signature: \_\_\_\_\_

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