

MINUTES
FORT MYERS BEACH
Special Magistrate Hearings
Town Hall
2525 Estero Boulevard
Fort Myers Beach, FL 33931

Thursday, September 27, 2018

Hearing Examiner - Special Magistrate: Mr. Joe Madden

Mr. Madden swore in those providing testimony.

Property Owner: ORVIS ROBERT M + MARY H
SUBJECT: LDC Section: 6-111 Adopting FBC 105.1 Work w/out permit – Stairs/Deck
LOCATION: 116 Eucalyptus Ct
STRAP NO: 29-46-24-W1-0020D-0240
CODE OFFICER: Joe Kontomanolis
REFERENCE NO: CE17-0241

JK

w1

Mr. Bogart stated the Town requested a lien. He reviewed the history of the case from August 30, 2017. He noted that, as of September 26, 2018, the administrative fee of \$175.00 was paid and the permit finalized. The case was in violation for 77 days with a fine of \$150.00 per day for a total of \$11,550.00.

Mr. Orvis stated that he received a letter from the Town that he was assessed \$175.00 in fines and he expected a bill. He noted that his wife had been sick and it slipped his mind. Mr. Madden informed him that the \$175.00 had been paid but he did not abate the issue in time. Mr. Orvis indicated that his contractor signed off on everything in January and he did not think there was an issue.

Mr. Madden stated that he will order the lien and he encouraged Mr. Orvis to request a lien reduction from Town Council.

Property Owner: FMB ASSOCIATES LP
SUBJECT: LDC Section: 14-75 Turtle Inspections
LOCATION: 684 Estero Blvd
STRAP NO: 24-46-23-W3-00400-0090
CODE OFFICER: Rae Burns
REFERENCE NO: CE18-0448

RB

Ms. Burns inspected the property on May 22, 2018 and September 18, 2018. She found white up lighting left on during turtle season. The action necessary to correct the violation was to move the up lights, replace the lights with sea turtle friendly fixtures or turn off the lights. A combination notice of violation and notice of hearing was sent to the owner via certified mail on August 10, 2018 and it was claimed on August 11, 2018.

Ms. Burns stated that Best Western had up lights on the beach side of his property. She provided pictures that accurately reflected the condition of the property.

Paul Malbon, one of the owners, stated that the hotel was remodeled in 2008 and he described all the changes they made to their property to comply with turtle regulations. He commented that they also had a responsibility to their guests and their safety. He described incidents where guests were injured. He was reluctant to make the property darker than it was. He questioned why the lights were fine all these years.

Ms. Burns replied that the property had been told about the up lights for years and warnings were issued. She stated if the lights were visible from the beach they had to be changed or turned off. She will work with the respondent to abate the situation.

Mr. Madden found a violation did exist and a retrofit was required. Mr. Malbon stated that the work was in process. Mr. Madden ordered gave the respondent to abate the situation prior to April 30, 2019.

Mr. Bogart requested a finding of fact with a \$500.00 per day fine pursuant to code and \$275.00 in administrative fees. Mr. Madden replied that it was a finding of first violation, which was eligible for up to \$250.00 per day with administrative costs of \$275.00 with a recall date of May 30, 2019.

Property Owner: RIVIERA CLUB CONDO
SUBJECT: LDC Section: 14-75 Turtle Inspections - Caused Disorientation
LOCATION: 7500 ~~Estero Blvd~~ Riviera Club Condo C/E
STRAP NO: 03-47-24-W4-04400-00CE
CODE OFFICER: Rae Burns
REFERENCE NO: CE18-0356

RB

September 18, 2018 RB

Bogart

Mr. Bogart stated that Ms. Burns inspected the property on May 10, 2018 and ~~August 18, 2018~~ (should this date be September 18, 2018 like the other inspections?) and she found the following condition: white lights shining on the beach. The action necessary to correct the violation was to replace the lights and shield the light source from the beach. A notice of violation was provided to the owner on July 3, 2018 and it was claimed on July 11, 2018. A notice of hearing was provided to the owner on August 9, 2018 and it was claimed on August 13, 2018. Pictures were taken on May 10, 2018 and September 18, 2018.

The Town requested a finding of fact with a fine of \$500.00 per day pursuant to code should the violation occur in the future with an administrative fee of \$275.00. If the violation was not abated by October 17, 2018 a fine of \$500.00 per day is to be imposed with a recall date of October 25, 2018.

Ellen Vaughn, President of the Riviera Club Association, stated that they replaced the lighting in their garage in 2014 with assurances from the contractor that it was turtle friendly. They found out that the lights were not in compliance so they worked with the Town for a solution. This year one of the owners, who was a code enforcement officer, personally handled the light shielding that turned out the be inadequate. Due to miscommunication, Ms. Vaughn missed the fact that they were out of compliance. They were very concerned regarding the turtle disorientation. She stated that until they could replace the lights, they would remain turned off during turtle season. Ms. Burns confirmed that the lights were off.

Mr. Madden found that a violation did exist and \$275.00 in administrative costs were to be paid. If the violation occurs again, a fine of \$500.00 per day will be imposed with a recall date of October 25, 2018.

Property Owner: DIBIASI LEO J TR FOR LEO J + V
SUBJECT: LDC Section: 6-111 Adopting FBC 105.1 REPEAT - Work w/out Permit - Lg Shed
LOCATION: 205 Sterling Ave
STRAP NO: 33-46-24-W2-0080A-0160
CODE OFFICER: Molly Jacobs
REFERENCE NO: CE18-0244

Mr. Bogart stated that Ms. Jacobs inspected the property on March 26, 2018 and September 19, 2018 and the following condition was found: repeat work w/out a permit for large shed. The action to correct the violation was to obtain a permit and pass inspections. A compliance agreement was completed on May 23, 2018.

The notice of violation was provided to the owner on September 15, 2018 and it was claimed. It was posted at Town Hall and the property on September 14, 2018. ~~(Notice of hearing? None needed if compliance agreement?)~~

Ms. Jacobs took pictures that accurately reflected the condition of the property. She was in contact with the owner and contractor and met with them twice.

If the hearing found a violation, the Town requested a finding of fact, obtain a permit and pass inspections by January 23, 2019; otherwise, a fine per day pursuant to the code with administrative costs of \$375.00 with a recall date of January 31, 2019.

Ms. Jacobs referred to the permit plan review information and comment letters sent to the contractor.

Jimmy Dean, Designer, explained that it took several weeks to get responses from the Town and they responded to every request immediately. He stated that he had not heard from the Town in two weeks and the main structure guy (Jack) apparently only worked part-time. Mr. Bogart indicated that Jack approved the structural part on June 15, 2018. The permit was assigned to flood plain.

Mr. Madden found that a violation existed and he gave the respondent until January 23, 2019 to abate the matter; otherwise, a fine of \$150.00 per day will be imposed and administrative costs of \$375.00 were assessed with a recall date of January 31, 2019.

Property Owner: DIBIASI LEO J TR FOR LEO J + V
SUBJECT: LDC Section: 6-111 Adopting FBC 105.1 REPEAT - Work w/out Permit - Small Shed
LOCATION: 205 Sterling Ave
STRAP NO: 33-46-24-W2-0080A-0160
CODE OFFICER: Molly Jacobs
REFERENCE NO: CE18-0245

Nov 1 NOV 1
Mr. Bogart stated that Ms. Jacobs inspected the property on March 26, 2018 and September 19, 2018 and the following condition was found: repeat work w/out a permit for small shed. The action necessary to correct the violation was to obtain a permit and pass inspections. A compliance agreement was executed on May 23, 2018.

The notice of violation was provided to the owner on September 15, 2018 and it was claimed. It was posted at Town Hall and the property on September 14, 2018. (Notice of hearing?)

Ms. Jacobs took pictures that accurately reflected the condition of the property. She had contact with the owner and contractor. The permit was under review.

If the hearing found a violation, the Town requested a finding of fact, obtain a permit and pass inspections by January 23, 2019; otherwise, a fine per day pursuant to the code with administrative costs of \$275.00 with a recall date of January 31, 2019.

Mr. Dean stated that he had the material to abate the situation. He indicated that the sheds were prefab, had been there for years and they were in the process of repairing them.

Mr. Madden found that a violation existed and he gave the respondent until January 23, 2019 to abate the matter; otherwise, a fine of \$150.00 per day will be imposed and administrative costs of \$275.00 were assessed with a recall date of January 31, 2019.

Property Owner: DIBIASI LEO J TR FOR LEO J + V
SUBJECT: LDC Section: 6-111 Adopting FBC 105.1 REPEAT - Work w/out Permit - Porch
LOCATION: 205 Sterling Ave
STRAP NO: 33-46-24-W2-0080A-0160
CODE OFFICER: Molly Jacobs
REFERENCE NO: CE18-0246

Nov 1 NOV 1
Mr. Bogart stated that Ms. Jacobs inspected the property on March 26, 2018 and September 19, 2018 and the following condition was found: repeat work w/out a permit for a porch. The action necessary to correct the violation was to obtain a permit and pass inspections. A compliance agreement was executed on May 23, 2018.

The notice of violation was provided to the owner on September 15, 2018 and it was claimed. It was posted at Town Hall and the property on September 14, 2018. (Notice of hearing?)

Ms. Jacobs took pictures that accurately reflected the condition of the property. She had contact with the owner and contractor. The permit was under review.

If the hearing found a violation, the Town requested a finding of fact, obtain a permit and pass inspections by January 23, 2019; otherwise, a fine per day pursuant to the code with administrative costs of \$275.00 with a recall date of January 31, 2019.

Mr. Dean confirmed it was the rear porch. He noted that everything was turned in and he provided another copy of the pricing that was provided to the Town previously. Mr. Bogart noted the permit may be ready to issue.

Mr. Madden continued the matter to October 25, 2018.

Property Owner: DIBIASI LEO J TR FOR LEO J + V
SUBJECT: LDC Section: 6-111 Adopting FBC 105.1 REPEAT - Work w/out Permit - Dock

LOCATION: 205 Sterling Ave
STRAP NO: 33-46-24-W2-0080A-0160
CODE OFFICER: Rae Burns
REFERENCE NO: CE18-0247

RB

Mr. Bogart stated that Ms. Burns inspected the property on March 26, 2018 and September 19, 2018 and the following condition was found: repeat work w/out a permit for dock. The action necessary to correct the violation was to obtain a permit and pass inspections.

A combination notice of violation and notice of hearing was provided to the owner on April 18, 2018 and it was claimed on April 24, 2018.

Ms. Burns took pictures on March 26, 2018 and July 17, 2018 that accurately reflected the condition of the property. She had contact with the owner.

If the hearing found a violation, the Town requested a finding of fact, obtain a permit and pass inspections by January 23, 2019; otherwise, a fine of \$250.00 per day pursuant to the code with administrative costs of \$275.00 with a recall date of January 31, 2019.

Mr. Dean stated that he had a permit that expired because he thought a final inspection had occurred. When he found out the permit expired, he renewed the permit and he was still waiting for the final inspection. Ms. Burns stated that the dock was incomplete on July 17, 2018 and she could not pass the inspection. She had not received a request to set up an inspection since. Mr. Dean noted that it took over a week for a response and he had to call again for an inspection. He stated that the dock was complete and he was waiting for a final inspection.

Mr. Madden found that a violation existed and he gave the respondent until January 23, 2019 to abate the matter; otherwise, a fine of \$250.00 per day will be imposed and administrative costs of \$275.00 were assessed with a recall date of January 31, 2019.

Property Owner: SUN CAPER CONDO
SUBJECT: LDC Section: 14-75 Turtle Inspections
LOCATION: 7928 Estero Blvd
STRAP NO: 03-47-24-W4-04000-00CE
CODE OFFICER: Rae Burns
REFERENCE NO: CE18-0352

RB

Mr. Bogart stated that Ms. Burns inspected the property on May 10, 2018 and September 18, 2018 and she found the following condition: interior lights shining on the beach. The action necessary to correct the violation was to close blinds and drapes by 9:00 p.m. A notice of violation was provided to the owner on June 28, 2018 and it was claimed on July 6, 2018. A notice of hearing was provided to the owner on August 14, 2018 and it was claimed on August 17, 2018. Pictures were taken on May 10, 2018 and September 18, 2018. Ms. Burns noted the pictures accurately reflected the condition of the property. She had been in contact with the owner and she noted that the lights were reduced from the original violation but there were still some interior lights shining. The Town requested a finding of fact ~~with a fine of \$500.00 per day pursuant to code~~ with an administrative fee of \$275.00. If the violation was not abated by October 17, 2018 a fine of \$500.00 per day is to be imposed with a recall date of October 25, 2018.

fee to be waived at this time. If violation occurs again, administrative cost of \$275.00 will be imposed
RD

Mr. Madden found that a violation did exist and he gave the respondent until October 17, 2018 to abate the matter; otherwise, a fine of \$250.00 per day will be imposed and administrative costs of \$275.00 were assessed with a recall date of October 25, 2018.

Property Owner: 4280 ESTERO BLVD LLC
SUBJECT: LDC Section: 14-75 Turtle Inspections
LOCATION: 4280 Estero Blvd
STRAP NO: 29-46-24-W3-00188-0030
CODE OFFICER: Rae Burns
REFERENCE NO: CE18-0479

RB

Although the owner abated the situation, the Town requested a finding of fact for repeat violations. Ms. Burns noted that the furniture was removed but the lights were not addressed. She requested that the administrative costs of \$275.00 be waived this time.

Mr. Madden found a finding of fact that the lights were not abated within the timeline but they were in compliance today. If the violation occurred again, a fine of \$250.00 per day and administrative costs of \$275.00 will be imposed.

Property Owner: CRESCENT SHORE CONDO ASSOC
SUBJECT: LDC Section: 14-75 Turtle Inspections
LOCATION: Crescent Shore C/E
STRAP NO: 19-46-24-W4-02600-00CE
CODE OFFICER: Rae Burns
REFERENCE NO: CE18-0566

RB

Mr. Bogart stated that Ms. Burns inspected the property on June 14, 2018 and September 25, 2018 and she found the following condition: exterior white lights shining on the beach. The action necessary to correct the violation: replace the lights and shield the light source.

A combination notice of violation and notice of hearing was provided to the owner on July 19, 2018 and it was unclaimed. It was posted at Town Hall on August 16, 2018 and on the property August 17, 2018. Pictures were taken on June 14, 2018 and September 25, 2018. Ms. Burns noted the pictures accurately reflected the condition of the property. She stated that the violation was abated but not within the required timeframe.

Mr. Madden found a finding of fact that the lights were not abated within the timeline but they were in compliance today. If the violation occurred again administrative costs of \$275.00 will be imposed.

Property Owner: GANIM PROPERTIES LLC
SUBJECT: LDC Section: 6-111 Adopting FBC 105.1 Work W/out permit
LOCATION: 1240 Estero Blvd.
STRAP NO: 19-46-24-W4-0140A-0010
CODE OFFICER: Joe Kontomanolis
REFERENCE NO: CE18-0008

JIK

Mr. Bogart reviewed the history of the case from July 26, 2018. He indicated the situation was abated on September 26, 2018 but administrative costs of \$275.00 were not paid. He requested an order to lien in the amount of \$275.00. Mr. Madden sent out the order.

Property Owner: EDSON WAYNE + LINDA M
SUBJECT: LDC Section:6-111 Adopting FBC 105.1 Work W/out permit- Fence
LOCATION: 242 Delmar Ave.
STRAP NO: 19-46-24-W3-0100C-0160
CODE OFFICER: Joe Kontomanolis
REFERENCE NO: CE18-0182

JK

Mr. Bogart reviewed the history of the case from July 20, 2018. Mr. Kontomanolis revealed that the situation was abated but administrative costs of \$275.00 were not paid. He requested an order to lien in the amount of \$275.00. Mr. Madden sent out the order.

Property Owner: GISE PROPERTY LLC
SUBJECT: LDC Section: 6-111 Adopting FBC 105.1 Work W/Out Permit-Stairs
LOCATION: 2543 Cottage Ave.
STRAP NO: 19-46-24-W3-0120A-013A
CODE OFFICER: Joe Kontomanolis
REFERENCE NO: CE17-0702

JK

Mr. Bogart reviewed the history of the case from May 31, 2018. He stated that the application was submitted on September 26, 2018 but it was voided. Administrative fees of \$275.00 were not paid. He requested an order to lien for the ongoing and accruing fines per day of \$150.00 plus administrative fees of \$275.00. Mr. Madden sent out the order.

The following cases were abated: CE17-0223, CE18-0009 and CE17-0914. A compliance agreement was reached with CE17-0285.



Signature: _____

- End of document