

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

Thursday, January 30, 2020

Hearing Examiner - Special Magistrate: Myrnabelle Roche

Magistrate Roche swore in those providing testimony.
Town Attorney Herin, Jr. represented the Town.
Staff: Code Compliance Manager Daphne Saunders

CASES TO BE HEARD:

Violator: HAYWORTH, TREVOR
SUBJECT: Parked in Handicap
CODE SECTION: Sec. 28-20(2)L
LOCATION: Old San Carlos
BASE OFFICER: Nello Cernoia
REFERENCE NO: 70427803

WR

While patrolling on December 14, 2019 at 11:45 a.m. Officer Cernoia observed a three-wheel vehicle parked in a handicap space #64 without a sticker or plate. He stated that Mr. Hayworth would not move his vehicle when asked. As Officer Cernoia was issuing a citation, Mr. Hayworth drove away. He came back and grabbed a towel out of Officer Cernoia's vehicle and threw it on the pavement. Officer Cernoia stated that he issued citations to Mr. Hayworth the day before. He mailed the citation but it was not paid.

The Town requested the fine in the citation and administrative costs. Magistrate Roche found that a violation did exist and she ordered the respondent to pay \$200.00 plus 75.00 in administrative fees within 10 days.

Violator: SCHEHLEIN, CHRIS JAMES
SUBJECT: Overtime Meter
CODE SECTION: Sec. 28-51 (A)
LOCATION: Lanark St.
BASE OFFICER: Harry Lee
REFERENCE NO: 70947365

VL

Officer Lee stated that on November 25, 2019 he issued a citation for an overtime meter in space #71. He placed the citation on the window of the vehicle.

Mr. Schehlein stated that he paid and left within the time frame. He stated that space #73 was paid for twice. He indicated that there were three posts on a dirt side road that were not marked. He indicated that if a person parked in the middle and paid the wrong meter, it negatively affected everyone who parked there afterwards. He commented that he tried to call the number, but he could not connect.

Magistrate Roche found that a violation did exist and she ordered the respondent to pay \$35.00 within 10 days.

Violator: PITRE, TANYA
SUBJECT: Overtime Meter
CODE SECTION: Sec. 28-51 (A)
LOCATION: Old San Carlos
BASE OFFICER: David Lee
REFERENCE NO: 70022116

Officer Lee reported that he issued a citation for spot #4 and placed in on the vehicle on November 11, 2019 at 7:27 p.m. He noticed a paid receipt on the window, but it expired at 7:06 p.m. He commented that the respondent requested a hearing. The citation had not been paid. The Town requested a fine and administrative costs.

Magistrate Roche found that a violation did exist and she ordered the respondent to pay \$35.00 and administrative fees of \$75.00 within 10 days.

Violator: MARPALI, ESMERALDA
SUBJECT: Overtime Meter
CODE SECTION: Sec. 28-51 (A)
LOCATION: MP Bridge Lot 2
BASE OFFICER: James Blackwood
REFERENCE NO: 70602906

While on patrol, Officer Blackwood noticed an expired meter for #137. He issued a citation and placed it on the windshield of the vehicle. The Town requested a fine and administrative costs.

Magistrate Roche found that a violation did exist and she ordered the respondent to pay \$35.00 and administrative fees of \$75.00 within 10 days.

Property Owner: YANKE RONALD L
SUBJECT: LDC Sec. 14-455 Permit Required to Cut Mangroves
LOCATION: 298 Ohio Ave.
STRAP NO: 19-46-24-W4-0090F.0180
CODE OFFICER: Chadd Chustz
REFERENCE NO: 20190764

Environmental staff Chadd Shustz stated that staff received a complaint concerning mangrove cutting. He provided pictures of destroyed and damaged mangroves. No permit was issued to trim the mangroves. A notice of violation and a notice of hearing were sent to the respondent. No permits had been issued in the interim.

David Jones, professional mangrove trimmer, represented his granddaughter. He stated the original citation was issued on November 1, 2019 and reissued on January 10, 2020. He reported that he had to go to the DEP (Department of Environmental Protection) to resolve the issue. He stated that the mangroves had not been trimmed properly. He requested time to meet with the state but he did not know how long it would take. Mr. Jones noted that he had been in contact with the state. He commented that mangroves on the western side were dead but the mangroves on the northern side would come back.

The Town requested a finding of fact and suggested a status report in a month. The Town will abide by the timeframe set by the DEP. The Town requested a fine of \$1,000.00 plus administrative costs.

Magistrate Roche found that a violation did exist, continued to exist and irreparable harm was done to the mangroves. She ordered a fine of \$1,500.00 and ordered the respondent to come into compliance within 45 days; otherwise, a fine of \$250.00 per day will be imposed. She ordered the respondent to submit a report within 30 days.

Property Owner: ORTIZ DANIA CARBALLO + GARCIA DAISY 
SUBJECT: LDC Sec. 6-111, Adopting FBC 105.1 Work w/out Permit – Remodel
LOCATION: 268/270 Nature View Ct.
STRAP NO: 20-46-24-W4-01700.0050
CODE OFFICER: Eli Lee
REFERENCE NO: CE18-0700

Officer Lee stated that a fire was reported at the property in June of 2015 that affected the second floor. He indicated that a notice violation and notice of hearing were issued on August 15, 2018. Permits had not been submitted for the work. He provided photos of the damage from the fire and photos from a third-party website that showed a remodel. He did not have contact with the owners. A notice of violation and notice of hearing were sent and photos reflected the condition of the property.

Ms. Carballo indicated that she did not live in the area and thought the contractor had submitted permits. She noted they started the work in 2018 and completed the work in 2019. The respondent spoke off microphone.

Town Attorney Herin, Jr. stated that they had to certify that the property met code requirements. He requested that the respondent stop advertising the property for rent.

Magistrate Roche found that a violation did exist, continued to exist and she ordered the property owner to come into compliance within 30 days; otherwise a fine of \$250.00 per day will be imposed. She ordered the property owner to cease advertising the property for rent. She ordered the respondent to pay \$75.00 in administrative fees.

Property Owner: ORTIZ DANIA CARBALLO + GARCIA DAISY 
SUBJECT: LDC Sec. 6-111, Adopting FBC 105.1 Work w/out Permit – Roof
LOCATION: 268/270 Nature View Ct.
STRAP NO: 20-46-24-W4-01700.0050
CODE OFFICER: Eli Lee
REFERENCE NO: CE18-0724

Officer Lee stated that a fire was reported at the property in June of 2015 that affected the roof. He indicated that a notice violation and notice of hearing were issued on August 15, 2018. Permits had not been submitted for the work. He provided photos of the damage from the fire and photos from a third-party website. He did not have contact with the owners. A notice of violation and notice of hearing were sent and photos reflected the condition of the property.

The Town requested that the same order be issued as CE18-0700.

The property owner stated that the roof was painted but not damaged by the fire.

Magistrate Roche found that a violation did exist, continued to exist and she ordered the property owner to come into compliance within 30 days; otherwise a fine of \$250.00 per day will be imposed. She ordered the property owner to cease advertising the property for rent. She ordered the respondent to pay \$75.00 in administrative fees.

Property Owner: ORTIZ DANIA CARBALLO + GARCIA DAISY
SUBJECT: LDC Sec. 34-2391 Daily Rentals in Weekly Rental Zone
LOCATION: 268/270 Nature View Ct.
STRAP NO: 20-46-24-W4-01700.0050
CODE OFFICER: Kristin Schumacher
REFERENCE NO: CE19-0517

Short term rental coordinator Kristin Schumacher reported that the property was rented for less than seven days. She stated that online calendars showed bookings for less than seven days and neighbors submitted photos and affidavits.

The Town requested a finding of fact and to cease rentals. The Town requested an administrative fee.

Ms. Carballo stated that she and her family stayed at the property but she conceded that five-day rentals had occurred in the past. She noted that they would not rent for less than seven days in the future.

Magistrate Roche found that a violation did exist. She did not impose a fine but she ordered \$75.00 in administrative fees.

Property Owner: ORTIZ DANIA CARBALLO + GARCIA DAISY
SUBJECT: LDC Sec. 6-1, 308.4, Sec 14-62 Scattered Trash
LOCATION: 268/270 Nature View Ct.
STRAP NO: 20-46-24-W4-01700.0050
CODE OFFICER: Eli Lee
REFERENCE NO: CE20-0001

Officer Lee reported that a compliant was registered with the town that renters left trash at the property. He was unable to contact the property owner to remove the trash so he issued a citation. He indicated that he issued a warning for the same offense last year and they came into compliance. Officer Lee provided photos that accurately reflected the condition of the property. He stated that the property was now in compliance. A copy of the notice of violation and notice of hearing was included in the packet.

The Town requested a finding of fact, a fine of \$100.00 plus administrative fees of \$75.00.

Magistrate Roche found that a violation did exist but had been corrected. She ordered a fine of \$100.00 plus \$75.00 in administrative fees to be paid within 10 days.

Property Owner: KEY ESTERO SHOPS LLC
SUBJECT: LDC Sec. 34-3203 Illegal Parking Lot
LOCATION: 1661 Estero Blvd.
STRAP NO: 19-46-24-W4-00402.0010
CODE OFFICER: Eli Lee
REFERENCE NO: CE19-0026

Office Lee reported that the parking lot did not have a use permit. He provided copies of the notice of violation and the notice of hearing in addition to photos that accurately reflected the condition of the property. He added that they were also operating without a permit during the Roar event. Town Attorney Herin, Jr. reviewed the history of the case. He noted that an application had not been submitted.

Mr. Nakarato stated that he followed what the previous owner did. (He spoke on and off the microphone throughout testimony.) He indicated that he spoke to Jason Green and he was told not to worry about it but he would call him when the Town decided how to handle the case. Mr. Nakarato commented that he applied for a permit to close a second entrance due to speeding vehicles. He stated that the property was authorized for parking.

Town Attorney Herin, Jr. explained that the location was not approved for specific commercial parking. Town Council ruled that he did not have a vested right to operate a commercial parking lot. Magistrate Roche tabled the case while Mr. Nakarato retrieved documents. Magistrate Roche reviewed the documents.

Town Attorney Herin, Jr. stated that the documents did not allow for commercial parking. Magistrate Roche found that a violation did exist and continued to exist. She ordered the property owner to come into compliance within 30 days; otherwise a fine of \$200.00 per day plus \$75.00 in administrative fees would be imposed.

Property Owner: SURFUS JOHN D
SUBJECT: LDC Sec. 10-198 Unregistered Short-Term Rental
LOCATION: 265/267 Virginia Ave.
STRAP NO: 19-46-24-W4-0090D.0120
CODE OFFICER: Kristin Schumacher
REFERENCE NO: CE19-0404

Coordinator Schumacher stated that the property was not registered and they did not come into compliance after she sent out a notice. A notice of violation and notice of hearing were sent in June of 2019 and they still were not registered. She spoke to a woman who stated they did not have to register because they were an Inn. Coordinator Schumacher noted they were required to register.

The general manager (~~name inaudible~~ *Karen Leuzzi*) indicated that she misunderstood the registration process because she had been paying for a license for the past 25 years. She registered some properties but not all of them.

The Town requested a finding of fact and an administrative fee of \$75.00.

Magistrate Roche found that a violation existed and continued to exist; however, the agent stated they would register the property today. She did order administrative fees of \$75.00. If the owner did not register the property within the next 24 hours, the property would be subject to a fine of \$200.00.

Property Owner: SURFUS JOHN D
SUBJECT: LDC Sec. 10-198 Registration Number Not Present on Advertising
LOCATION: 265/267 Virginia Ave.
STRAP NO: 19-46-24-W4-0090D.0120
CODE OFFICER: Kristin Schumacher
REFERENCE NO: CE19-0413

Coordinator Schumacher stated that the registration number was not included in advertisements. The file included a photo of the advertised property without a registration number, the warning, the notice of violation and notice of hearing. The Town requested a finding of fact and to post the registration number three days after the registration.

Magistrate Roche found that a violation existed and continued to exist. She granted the owner three days to place the number on advertising after obtaining the registration. Failure to include the registration number would result in a \$200.00 fine and administrative fees of \$75.00.

Property Owner: PERSAUD PROPERTIES FL INVESTMENT
SUBJECT: LDC Sec. 308.4 Rubbish Regulations, Dumpster to Be Screened
LOCATION: 1046 Estero Blvd.
STRAP NO: 24-46-23-W3-00016.0000
CODE OFFICER: Eli Lee
REFERENCE NO: CE18-0446

Town Attorney Herin, Jr. stated that the case was an imposition of lien. He noted the original hearing was June 20, 2019 and it gave the owner 45 days to come into compliance; otherwise a fine of \$250.00 per day would accrue. An administrative fee of \$75.00 was imposed but not paid. The total fees amounted to \$44,825.00 for 179 days. He requested that the Magistrate certify the figure, impose an order for staff to record a lien and that the penalties continue to accrue at \$250.00 per day until brought into compliance.

Terry Persaud, owner, stated that the property was in compliance and a CO was issued. Mr. Persaud noted that they appealed the matter and he was told by the Town that no further action would be taken until Town Council reviewed the matter. He submitted a copy of the original notice of violation, photos of the property and a request for a variance in July of 2019. He questioned why a hearing was not scheduled and he submitted required documentation. He stated that he was not required to screen the compactor because it was not moveable and the compactor was too tall for screening. Mr. Persaud commented that the matter was removed from the court because it was appealed in Lee County. Town Attorney Herin, Jr. stated that it was not part of the case in front of Lee County.

Magistrate Roche certified the order to lien and explained that the owner had alternatives to remedy the situation outside of her court. She found that the order dated July 3, 2019 was not corrected

and the property remained out of compliance. She certified the order in the amount of \$44,825.00 and accrual of \$250.00 per day until it was brought into compliance.

Property Owner: DRISKILL DEAN B + EILEEN *W*
SUBJECT: LDC Sec. 10-198 Unregistered Short-Term Rental
LOCATION: 463 Washington Ct.
STRAP NO: 29-46-24-W1-0110C.0110
CODE OFFICER: Kristin Schumacher
REFERENCE NO: CE19-0422

Town Attorney Herin, Jr. stated that an order was entered on October 4, 2019 in the amount of \$2,075.00 but it was not paid. The Town requested that the fine be certified and noted that the property was brought in compliance after the compliance date. He requested an order to lien. Tracy Palin, property manager, indicated that the owners requested a reduction in fines because they were in compliance.

Magistrate Roche found that the original order was not complied with. She certified \$2,075.00, which would not continue to accrue. She entered an order to lien.

Property Owner: DRISKILL DEAN B + EILEEN *no*
SUBJECT: LDC Sec. 10-198 Registration Number Not Present on All Advertising
LOCATION: 463 Washington Ct.
STRAP NO: 29-46-24-W1-0110C.0110
CODE OFFICER: Kristin Schumacher
REFERENCE NO: CE19-0423

Town Attorney Herin, Jr. stated that an order was entered on October 4, 2019 in the amount of \$160.00 but it was not paid. The Town requested that the fine be certified and that the property be brought in compliance. He requested an order to lien.

Magistrate Roche found that the original order was not complied with. She certified \$160.00 as an order that shall become a lien on the property.

The following cases were closed or continued: 70322814, 73218530, CE17-0866, CE19-0645, 20190737, 20190777, 20190653, 20190659, CE17-0285, CE17-0707, CE18-0446, CE18-0227, CE19-0042 and CE19-0055.

Signature: *Wt Sll*

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