

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

**Thursday, November 19, 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 Daphnie Saunders.

**BEACH PATROL CASES TO BE HEARD:**

Property Owner: ADAMS, ROBERT  
SUBJECT: Overtime Meter  
CODE SECTION: 28-51(A)  
LOCATION: Old San Carlos Blvd  
BASE OFFICER: Kevin Przbyszewski  
REFERENCE NO: 7032644

Officer Przbyszewski observed the vehicle at an overtime meter and issued a citation. A notice was sent to the property owner concerning the hearing. The owner was not in attendance. The Town requested a fine of \$35.00 with \$150.00 in administrative fees.  
Officer Roche found that a violation existed and she imposed a one-time fine of \$35.00 plus \$150.00 in administrative fees to be paid within 30 days.

Property Owner: BELL, SUSAN  
SUBJECT: Not a Legal Space  
CODE SECTION: 28-20 (2)R  
LOCATION: Strandview Ave.  
BASE OFFICER: Harry Lee  
REFERENCE NO: 70953212

Officer Lee was no longer employed by the Town, so Officer Przbyszewski presented the case. He reviewed the photos provided and noted that the vehicle was parked in an unmarked space. He indicated the car blocked ingress and egress of a walkway at Newton Park. The property owner was issued a notice of hearing. The Town requested a fine of \$50.00 and \$175.00 in administrative fees.

Ms. Bell's conversation was mostly inaudible. She reviewed the photos taken by Officer Lee. A gentleman with Ms. Bell spoke out of range of the microphone.

Magistrate Roche found that a violation did exist and she imposed a fine of \$50.00 with \$25.00 in administrative fees payable within 30 days.


**IMPOSITION OF LIEN CASES TO BE HEARD:** 

Property Owner: RODRIGUEZ, WILFREDO  
SUBJECT: LDC Section: 34-2391, Weekly Rental Restrictions Multiple Rentals  
During a One Month Period  
LOCATION: 5765 Lauder St.  
STRAP NO: 33-46-24-W2-005M0.0020  
CODE OFFICER: Kristin Schumacher  
REFERENCE NO: CE19-0110

Officer Schumacher noted the property owner was given until December 31, 2019 to come into compliance. The property owner was currently compliant but was not from January 1, 2020 to September 17, 2020 resulting in 15 violations totaling \$4,075.00. The Town requested a lien in the amount of \$4,075.00.

Mr. Rodriguez stated that he did not receive 15 violations. Magistrate Roche replied that he did not follow her orders to purge the rest of rentals within 30 days. Attorney Herin, Jr. provided copies of the 15 violations.

Magistrate Roche found that her order dated February 6, 2020 was not complied with and the original \$225.00 fine was not paid. She noted 15 rentals took place and she certified a lien in the amount of \$4,075.00. Mr. Rodriguez testified that he paid \$225.00. Officer Schumacher concurred. Magistrate Roche reduced her lien certification by \$225.00.

Property Owner: RODRIGUEZ, WILFREDO   
SUBJECT: LDC Section: 34-2391, Weekly Rental Restrictions Daily Rentals  
LOCATION: 215 Nature View Ct.  
STRAP NO: 19-46-24-W3-01700.0170  
CODE OFFICER: Kristin Schumacher  
REFERENCE NO: CE19-0520

Officer Schumacher noted the property owner was given until December 31, 2019 to come into compliance. She discovered 16 violations between May and September 19, 2020 for a total of \$4,000.00.

Mr. Rodriguez reviewed the evidence.

Magistrate Roche found that her order dated February 6, 2020 was not complied with and 16 additional rentals took place thereafter. She certified the order in the amount of \$4,000.00 to be recorded as a lien.

Property Owner: TAR, STEPHEN & GABRIELE  
SUBJECT: LDC Section: 6-111, Adopting FBC 105.1 Work Without Permit- Canopy  
Boathouse  
LOCATION: 21521 Madera Rd.  
STRAP NO: 28-46-24-W4-00500.0020

CODE OFFICER: Steve Wick  
REFERENCE NO: 20190604

Officer Wick stated that the order was issued on August 20, 2020. He received an email on October 30 showing the canopies were removed but a photo on October 16, 2020 showed the canopies in place. The canopies were in violation for 41 days for a total of \$10,575.00, which included the original fine of \$250.00 and \$75.00 in administrative fees.

Attorney Spector from Roetzel and Andres represented the property owners. She stated her clients were Canadian residents and hired Hickox Brothers to replace the docks. The contract required the contractors to install canopies over the docks and obtain all necessary permits. She noted the accessory dock encroached on the neighbors' property due to the contractor's error. The DEP permit was amended to include the canopies but the initial and amended applications sent to the Town did not include the canopies. She noted the property owners had to return to Canada due to the coronavirus and they did not receive notifications while in Canada. The owners did not know the canopies were not included on the application nor did they know violations were accruing until a neighbor alerted them in October. She stated that the contractor told the owners that the Town did not require a permit for the canopy and they refused to obtain an after the fact permit. She provided evidence that the main canopy was removed on September 23, 2020 and the accessory canopy was removed on October 30, 2020 as soon as the owners were notified of the running fine and lack of permits. She requested a reduction in fine and explained why it should be reduced. She reported that the property owner tried to pay the fine and administrative fees twice but they were not allowed to. She requested the lien be reduced to zero.

Magistrate Roche found that the original order was not complied with. She believed there were extenuating circumstances and certified the loan in the amount of \$2,000.00.

Property Owner: DELISLE, JOSEPH C  
SUBJECT: LDC Section: 10-198, Registry of Short-Term Rentals Unregistered Short-Term Rental  
LOCATION: 4753 Estero Blvd 601  
STRAP NO: 28-46-24-W4-0260B.0601  
CODE OFFICER: Kristin Schumacher  
REFERENCE NO: CE20-0461

Officer Schumacher noted that the property owner rented the unit from October 1, 2020 to November 19, 2020 for a total of 49 days for a total of \$12,325.00. The Town requested a lien. The property owner was not in contact with the Town.

Magistrate Roche found that her original order on September 30, 2020 was not complied with and continued to be out of compliance. She ordered a lien in the amount of \$12,250.00 plus \$75.00 in administrative fees for a total of \$12,325.00. Fines will continue to accrue at the rate of \$25.00 per day.

\$250.00

Property Owner: THIEL, TIMOTHY M  
SUBJECT: LDC Section: 10-603, Section 10-605 Illicit Drainage  
LOCATION: 464 Washington Ct.  
STRAP NO: 29-46-24-W2-0110C.0160

CODE OFFICER: Steve Wick  
REFERENCE NO: CE20-0214



Officer Wick testified that the property owner had until May 4, 2020 to comply with the order and the property was currently in compliance. He noted the violation was corrected sometime between August 7, 2020 and August 31, 2020. He calculated the property was out of compliance for 119 days for a total of \$29,750.00 plus \$75.00 in administrative fees. He did not know whether the administrative fees were paid.

Mr. Thiel stated that there was no violation and he paid \$2,000.00 to have a barrier removed. He stated that he was an engineer and what he did made no difference because the cul-de-sac still flooded.

Magistrate Roche found that the order dated March 5, 2020 was not complied with within the timeframe stated. She stated it was 119 days out of compliance at \$250.00 per day plus the administrative fees of \$75.00 for a total of \$29,825.00. She certified the order to lien for \$29,825.00.

### NEW CASES TO BE HEARD



Property Owner: PERSAUD PROPERTIES FL INVESTMENT  
SUBJECT: LDC Chapter 10, Article IV Illicit Drainage Grease Discharged into MS4 System  
LOCATION: 1028 Estero Blvd.  
STRAP NO: 24-46-23-W3-00017.0000  
CODE OFFICER: Eli Lee  
REFERENCE NO: CE20-0315

Officer Lee stated that he received notification of the violation on May 7, 2020. He found grease leaking into the drainage system and it affected neighboring businesses. He noted that the workers attempted to clean up the grease but did not succeed. He provided photos. A citation, notice of violation and notice of hearing were provided to the property owner. Officer Lee met with the workers and a manager to explain why he issued a citation. A partner with the restaurant admitted to knowing about the grease the night before.

An attorney represented the property owner. He contested that the grease was hazardous and questioned whether the material had been tested. Officer Lee replied negatively. Mr. Persaud's attorney requested that Officer Lee read the water quality criteria, which he did. Mr. Persaud's attorney discussed minimum water quality standards and contamination levels. He questioned whether the Officer considered the discharge to be an imminent or substantial danger to the environment. Officer Lee replied positively and noted they took steps to contain the spill. Mr. Persaud's attorney questioned the contaminant source. He summarized that the spill was cleaned up within two hours, told they were not going to be fined and the area was completely remediated. He stated the Town did not know the particles per million of the material.

Officer Lee read the definition of illicit discharge from the code and answered questions from Town Attorney Herin, Jr.

Mr. Persaud stated that the sewer line backed up and seeped into the grease trap. They shut down the kitchen immediately. He stated grease in the grease trap was from washing dishes, not from

the fryers. He explained that the system backed up from lack of use because they had to close due to the pandemic. He stated that his employees cleaned up the spill as best as they could before the grease trap people arrived on the scene. Mr. Persaud noted they pressure washed the area as requested by a different code officer and they did not push the material into the drain.

Magistrate Roche questioned the invoice to clean up the site from Mitchell & Stark Construction Co. The Town replied that they had to pay to clean up the spill. Mr. Persaud stated he was not negligent because it was an accident. Mr. Persaud's attorney argued that Town Attorney Herin, Jr. closed his case and they could not add the invoice after the fact.

Employee Christopher Rowe testified that he was there during the cleanup. He stated they specifically cleaned the grease and contamination from the pipes to prevent flow into the back bay. Magistrate Roche questioned the \$13,000.00 invoice. Mr. Rowe explained the system and how they had to isolate the area (approximately one block) to contain the material.


Mr. Persaud's attorney questioned Mr. Rowe regarding the contamination level of the spilled material. He replied that, to his knowledge, the material was not tested on site.

Town Attorney Herin, Jr. questioned Mr. Persaud concerning the discharge. Mr. Persaud stated that he did not test the material. He reiterated that the sewer line backed up and it was cleaned up as soon as possible. He produced an invoice from a plumber.

Town Attorney Herin, Jr. stated that Mr. Persaud discharged an illicit material into the Town's stormwater system and the Town had to clean the spill. The Town requested that Mr. Persaud pay a fine and reimburse the Town for the cost of cleanup.

Mr. Persaud's attorney acknowledged that there was an accidental spill but the Town did not prove that the material was an illicit discharge. He did not think that Mr. Persaud should be fined.

Magistrate Roche found that a violation did exist; however, she found that it was unintentional. She ordered Mr. Persaud to pay the \$13,097.00 invoice from Mitchell & Stalk without prejudice.

Property Owner: WHITE SAND PROPERTIES OF FORT MYERS BEACH, LLC  
SUBJECT: LDC Sec. 6-111, Adopting FBC 105.1 Work Without Permit - Installation of Pavers  
LOCATION: 2520 Cottage Ave.  
STRAP NO: 19-46-24-W3-0120A.016A   
CODE OFFICER: Bill Stout  
REFERENCE NO: CE20-0619

Officer Stout observed pavers installed and he did not see a permit in the system. He took pictures, which accurately reflected the condition of the property, and mailed a citation to the property owner. He noted he had many conversations with someone at the property named Bill. Officer Stout stated that there was not a permit application on file.

Bill who worked in the Town for 20 years and he was hired to replace the pavers and since it was under 500 square feet, he did not apply for a permit. He stated that he reduced the impervious area of the patio. He referred to the permit application and noted it did not state a permit was required for replacing an existing patio with like material.

Town Attorney Herin, Jr. stated that a permit was required for a complete removal of old material. Magistrate Roche found that a violation did exist and she ordered the property owner to apply for a permit within seven days, 21 days for the issuance of the permit; otherwise, a \$250.00 fine per

day would be imposed. She ordered the property owner to pay \$75.00 in administrative fees to be paid within 10 days. She put the case on the next agenda for a status update.

Property Owner: WHITE SAND PROPERTIES OF FORT MYERS BEACH, LLC  
SUBJECT: LDC Sec. 6-111, Adopting FBC 105.1 Tiki Hut Built Without Permit  
LOCATION: 2520 Cottage Ave.  
STRAP NO: 19-46-24-W3-0120A.016A  
CODE OFFICER: Bill Stout  
REFERENCE NO: CE20-0623

Officer Stout testified that a tiki hut was built without permits. He provided photos that accurately reflected the condition of the property. There was not a permit application or site plan on file. The property owner stated that an after the fact permit application was sent to the Town on October 26, 2020. Manager Saunders replied that they did not have a record of a complete application in the system.

The property owner indicated that his contractor was handling the permit application. Magistrate Roche found that a violation did exist and continued to exist. She ordered the property owner to submit the permit application within 7 days and 21 days for the issuance of the permit; otherwise, a fine of \$250.00 per day will be imposed. A status update would be included in the February agenda. She ordered the property owner to pay \$75.00 in administrative fees within 10 days.

Property Owner: SUGAR BEACH ESTATES, LLLP  
SUBJECT: LDC Section: 14-3(a)(3) Destruction of Dune Vegetation  
LOCATION: 5286 Estero Blvd.  
STRAP NO: 33-46-24-W1-00206.0340  
CODE OFFICER: Chadd Chustz  
REFERENCE NO: CE20-0695

Officer Chustz observed that the dune vegetation was severely cut down in late September of 2020. He took photos of the property that accurately reflected the condition of the property. There were no permit applications on file.


Michael Drake managed the property for the owner. He stated that the material was cut by a weed-eater but their landscaper denied cutting the dune. The owner hired another landscape company to create a restoration plan. Mr. Drake requested 30 days to restore the dune and he asked that the fines be waived. Officer Chustz indicated that the restoration would not have to go through the state for a permit. The Town requested a fine of \$1,000.00 and a restoration plan to be submitted within 30 days and implemented within 60 days.

Magistrate Roche found that a violation did exist and she ordered the property owner to submit a restoration plan within 30 days and the plants to be restored within 60 days; otherwise, a fine of \$250.00 per day would be imposed. She ordered the property owner to pay a one-time fine of \$1,000.00 plus \$75.00 in administrative fees. She added the case to the February agenda for a status update.

Property Owner: SUGAR BEACH ESTATES, LLLP


SUBJECT: LDC Section: 14-3(a)(3) Destruction of Dune Vegetation  
LOCATION: 5276 Estero Blvd.  
STRAP NO: 33-46-24-W1-00206.0330  
CODE OFFICER: Chadd Chustz  
REFERENCE NO: CE20-0696

Magistrate Roche found that a violation did exist and she ordered the property owner to submit a restoration plan within 30 days and the plants to be restored within 60 days; otherwise, a fine of \$250.00 per day would be imposed. She ordered the property owner to pay a one-time fine of \$1,000.00 plus \$75.00 in administrative fees. She added the case to the February agenda for a status update.

Property Owner: OCEANIC BLUE RETREATS, LLC  
SUBJECT: FMB PMC Sec. 308-4 Trash Placed at Curb More Than 24 Hours Prior to Pick up  
LOCATION: 61 Flamingo St.   
STRAP NO: 33-46-24-W3-00600.0170  
CODE OFFICER: Bill Stout  
REFERENCE NO: CE20-0506

Officer Stout received a complaint concerning the trash and he issued a warning to the property owner. He received another complaint in two weeks and issued a citation. He provided photos that accurately represented the condition of the property. He forwarded the pictures to the property owner but did not hear back.

Magistrate Roche found that a violation did exist and she ordered the property owner to pay a one-time fine of \$100.00 and \$75.00 in administrative fees to be paid within 10 days.

Property Owner: BRELJE, TERRENCE L. & SUSAN E.  
SUBJECT: LDC Section: 6-111, Adopting FBC 105.1 Work Without Permit- BFE, Bottom Floor Enclosure  
LOCATION: 185 Pearl St.   
STRAP NO: 19-46-24-W4-00440.0000  
CODE OFFICER: Steve Wick  
REFERENCE NO: CE20-0096

Officer Wick stated they received a complaint regarding the work and discovered that a permit application was not on file. He noted that the property owner had been in contact with the Town. A notice of violation and notice of hearing were provided to the property owner. He indicated that the back of the house was not finished.

Terry Brelje, property owner, noted the home needed work when he bought it in 2017. He tore out the rotted storage unit downstairs and he replaced the siding and walls. He indicated that he applied for an after-the-fact permit but the person he worked with at the Town did not reply. He found out the person was no longer with the Town. He explained why it took so long for him to move forward and he continued to work on the situation.

The Town requested 30 days for issuance of the permit; otherwise a fine of \$250.00 per day with \$75.00 in administrative fees.

Magistrate Roche found that a violation existed and continued to exist. She ordered the property owner to obtain a permit within 30 days; otherwise a fine of \$250.00 per day would be imposed. She ordered the property owner to pay administrative fees in the amount of \$75.00.

Property Owner: TRABON, DIANE TR + PULLEY, JOYCE  
SUBJECT: LDC Section: 10-198, Registry of Short-Term Rentals Unregistered Short-Term Rental  
LOCATION: 8300 Estero Blvd. 101  
STRAP NO: 03-47-24-W3-03300.1010  
CODE OFFICER: Kristin Schumacher  
REFERENCE NO: CE20-0645

Officer Schumacher discovered on online advertisement to rent the property. She issued a notice of violation and a notice of hearing. She did not have contact with the property owner. The property owner was not in attendance.

Magistrate Roche found that a violation did exist and continued to exist. She ordered the property owner to register the rental within 5 days; otherwise face a fine of \$250.00 per day until compliance. She ordered the property owner to pay \$75.00 in administrative fees. She added that there be no short-term rental until the property was registered.

Property Owner: TEZAK, WAYNE P. + HELEN C. TR FOR TEZAK FAMILY TRUST  
SUBJECT: LDC Section: 14-3(a)(3), LDC Section : 14-9, LDC Section: 14-6, LDC Section: 14-7 Dune Vegetation Destruction, Raking Without Permit, Vehicle on Beach Without Permit  
LOCATION: 50 Chapel St.  
STRAP NO: 19-46-24-W3-0120A.0170  
CODE OFFICER: Chadd Chustz  
REFERENCE NO: CE20-0697

Officer Chustz testified that he received a complaint regarding vegetation. He inspected the property and noted sea oats were cut and raked over with a chain link fence. He stated permits were required but permit applications were not on file. He took photographs that accurately reflected the condition of the property. He contacted the property owner via email without positive results. Officer Chustz revealed that the property owner has since received permits for raking and a vehicle on the beach. He stated that the property owner had been raking the area for years without permits.

David Tezak stated that Mrs. Tezak for the Tezak Family Trust requested that the citation be denied because Helen was not present at the time of the alleged violation and she was not given due process rights of notice. She requested an extension so she could consider her legal options. He stated that they did not rake the dune or destruct vegetation. He felt the Town raked the area. He noted that the storm took out some of the vegetation and a beach raking company raked the neighboring property. He stated that they obtained a permit so he could go outside of his beach area.



Magistrate Roche found that a violation did exist and was corrected. She ordered the property owner to submit a restoration plan within 30 days and complete the restoration within 60 days; otherwise, a fine of \$250.00 per day would be imposed. She ordered a one-time fine of \$1,000.00 due to irreparable harm to the dune.

Property Owner: PAINE, FREDERICK L. + NANCY K.  
SUBJECT: LDC Section: 6-111, Adopting FBC 105.1 Driveway Without Permit  
LOCATION: 819 Lagoon St.  
STRAP NO: 24-46-23-W3-0050A.0390  
CODE OFFICER: Bill Stout  
REFERENCE NO: CE20-02

*MS*

Officer Stout observed a driveway without a permit on file. An after-the-fact permit was required. The property owner started the permit process but there was no movement since May. Officer Stout provided photos that accurately reflected the condition of the property. A notice of violation and hearing were provided to the property owner.

Frederick Paine stated that he applied for permits but one was not included for the driveway even though it was on the site plan. He explained why it took so long to move forward and he noted that he was waiting on drawings from the engineer.

Magistrate Roche found that a violation existed and continued to exist. She ordered the property owner to come into compliance within 30 days; otherwise, a fine of \$250.00 per day would be imposed. She ordered the property owner to pay \$50.00 in administrative fees.

Signature: *MS SLD*

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