

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

Thursday, March 18, 2021

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.

NEW CASE

Property Owner: NATURE VIEW COURT, LLC
SUBJECT: LDC Section: 6-111, Adopting FBC 105.1 SWO-Work without Permit-
Bottom Floor Enclosure
LOCATION: 313/317 Nature View Ct.
STRAP NO: 20-046-24-W4-01700.0230
CODE OFFICER: Eli Lee
REFERENCE NO: CE20-0306

Officer Lee testified that he issued a stop-work order in September of 2019 because of work to enclose the bottom floor. The property owner was told that he needed a permit to frame the bottom floor. He sent pictures of the work and was advised to apply for a permit, which he did. The permit had not been issued because their site plan was rejected. The notice of violation, notice of hearing and emails were entered into the record and emails were provided to Mr. Tony Lawhon, who represented the respondent. Officer Lee stated that the respondent continued to do the work despite the stop-work order. He consulted with Certified Flood Plane Manager Steve Wick regarding why the permit was denied. Mr. Lawhon questioned whether the stop-work order was originally issued due to the exterior siding work. Officer Lee replied that the violation was for the bottom enclosure and included the siding. Town Attorney Herin, Jr. noted the stop-work order was for work without a permit. Mr. Lawhon indicated that the respondent replaced the rotted garage door. He provided an email from Officer Lee indicating that a permit was required to replace the utility door and the garage door. Mr. Lawhon verified that the respondent submitted an application that was denied because floor plans were needed. He remarked that the current application was rejected because enclosing the garage area included improving the living quarters. Officer Lee stated that the application was denied because they increased the square footage of the existing bedrooms when they enclosed the garage. Mr. Lawhon requested acknowledgment that square footage was not added to the footprint of the property. He questioned what the property owner needed to do to bring the property into

compliance. Officer Lee referred to the rejection letter dated October 30, 2020. Mr. Lawhon stated that the respondent stopped work after he got the stop-work order.

Manager Wick explained the flood regulations and noted that improvements to downstairs enclosures were not allowed in certain zones. He stated that the plan included a statement that the house was built before 1984, it was compliant and they were allowed to convert the space into a living area. Manager Wick indicated that the house was nonconforming and they could not increase the amount of noncompliance to a structure. He saw the plans and noticed walls instead of a garage. He researched pictures online and they showed a garage and laundry facility before 2018. He commented that bedrooms in the back half were original, but they were addressing the garage space, which was converted to a living space without a permit. He stated that, as far as he knew, the original bedrooms were not modified.

Mr. Lawhon discussed the statement on the plan regarding compliance and the National Flood Insurance Program (NFIP) regulations. He stated that 476 square feet was the apartment and was built before the NFIP requirements. Manager Wick remarked that the respondent could have applied for and received a permit to enclose the space for a storeroom without garage doors but not to add bedrooms. Mr. Lawhon referred to details in a December 2020 email from Manager Wick. Manager Wick was not sure whether he replied to the email, but he sent pictures. Mr. Lawhon referred to a January 29, 2021 email and stated that he was not told why they could not convert the garage space to a living space. Mr. Lawhon commented that they adopted and followed the Florida Building Code. He agreed that converting the garage space into living space would not be approved.

Town Attorney Herin, Jr. confirmed that a permit could not be issued for the improvements and compliance would be to remove the improvements.

Mr. Lawhon discussed the 50% rule and stated that they did not exceed 50% of the value of the building, so they did not have to comply with the special flood rules. He requested that Magistrate Roche deny the violation and fines or allow them to submit a permit application for the interior conversion with a 50% form.

Town Attorney Herin, Jr. noted the 50% rule did not cover new construction without a permit. The Town requested a finding of fact, 30 days to obtain a demolition permit and complete the work within that timeframe; otherwise, a \$250 fine per day until compliance.

Mr. Lawhon addressed the timeframe. He stated that no one lived in the converted space and there was no safety issue. He asked that the time to come into compliance be increased and the fine be reduced.

Magistrate Roche found that a violation existed and continued to exist. She ordered the respondent to come into compliance within 60 days; otherwise, a \$250 fine per day would be imposed until the violation was corrected. An administration fee of \$75.00 was ordered.

IMPOSITION OF LIENS

no

Property Owner: WHITE SAND PROPERTIES OF FORT MYERS BEACH
SUBJECT: LDC Section: 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 testified that the Special Magistrate entered an order to apply for a permit within 7 days and be issued within 21 days. He noted an application had been submitted and was approved with conditions. One condition was proof of insurance from the contractor, but he did not know the second condition. He noted the pavers had not been inspected for the final.

Attorney Steven Remuni represented the respondent. He shared documents and entered them into the record. He referred to the permit application and conditions from 2020, shortly after the original hearing in November of 2020. He noted the conditions dated December 8, 2020, required an updated contractor license and proof of the worker's compensation insurance certificate. He stated that the completed date was February 11, 2021. Town Attorney Herin, Jr. remarked that the completed date referred to when the notification was sent. Attorney Remuni disputed the conditions and completion date. He was handed a document about the case and objected to further evidence. He requested public records on March 10 but had not been responded to. Town Attorney Herin, Jr. stated the document was a screenshot and was available to the general public.

Officer Stout agreed with Town Attorney Herin, Jr. that the applicant was advised of the deficiency and conditions of approval on November 11, 2020. To his knowledge, the information had not been provided to the Town. Attorney Remuni and the respondent revealed that they were just notified of the pending conditions.

The Town requested a finding of noncompliance and an imposition of lien for \$15,575.00.

Attorney Remuni noted there was no notification to the registered agent and the conditions were outstanding. He referred to the section stating that the respondent and contractor were responsible for flooding caused by water leaving the property. He stated the permit was available and he objected to any fine.

Magistrate Roche found that the order dated December 4, 2020, in reference to the hearing on November 19, 2020, was not complied within the timeframe stated. She reduced the fine to \$1,000.00 conditioned on payment within 30 days and to provide the license and proof of insurance from the contractor within 30 days. Failure to do so will revert into a \$15,575.00 lien amount.

Property Owner: WHITE SAND PROPERTIES OF FORT MYERS BEACH
SUBJECT: LDC Section: 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 the property owner had not complied with the previous order and the tiki hut did not meet the zoning requirements. A permit application was submitted and rejected due to zoning. The tiki hut encroached into mandatory setbacks and would have to be removed, moved or reduced in size to come into compliance.

Attorney Remuni shared documents and entered them into the record. He referred to the permit application date of November 2020. The document showed that the permit was under review, but Officer Stout indicated it was rejected. He reviewed an entry from January 8, 2021, that stated an accessory structure must remain five feet from the rear line that did not have access to an alley.

He questioned whether the document stated that it had to be a 20-foot setback. Officer Stout replied negatively.

A town memo from March 10, 2021, stated that the property was subject to a 20-foot side and rear setback because it was classified as a residential multi-family. Attorney ~~Ramuni~~ ^{Ramuni} noted there was a contradiction between the town documents.

Steven Sudder, a licensed contractor and owner of Center Builders, testified that he submitted the application and followed up with all requests, but the Town kept requiring more information. He provided a survey that showed an excess of five-foot setbacks in the rear and side. He noted that the survey was rejected last week and the Town required 20-foot setbacks on all sides. A note was provided, but the ordinance was not included. Mr. Sudder was not notified that the permit was rejected and the permit portal showed that the permit was under review. Magistrate Roche reviewed the survey and code. Mr. Sudder stated that the survey was taken from the pole to the fence. ^{Ramuni}

Attorney ~~Ramuni~~ entered an escrow agreement and another document into the record. Magistrate Roche reviewed the documents and noted they were not relevant to the case and not admitted as evidence.

Town Attorney Herin, Jr. questioned whether Mr. Sudder was a surveyor. Mr. Sudder replied negatively. He stated that he did not build the tiki hut or install the pavers. Town Attorney Herin, Jr. referred to the definition of setbacks while questioning Mr. Sudder.

John Karsi from Studio 1 Design stated that the Town of Fort Myers Beach and Lee County measured from the property line to the wall setback, not the roof structure. He noted that he was not a surveyor nor involved in the project. Town Attorney Herin, Jr. questioned whether they would be there if the respondent had applied for a permit in the first place. Magistrate Roche stated that Mr. Karsi did not have to answer the question.

Carl Bengé from Community Development described the different surveys and the dates they were submitted. He noted that he measured the site and it was 4.7 feet from the closest point of the pole. He indicated that the rejection letter was in reference to a principal structure setback, not an accessory setback. Town Attorney Herin, Jr. read portions of the letter. Mr. Bengé testified that he had not received a survey showing the setbacks on all sides. He agreed the tiki hut was an accessory structure. Town Attorney Herin, Jr. read the definition of structure from the code.

Magistrate Roche found that the order dated December 4, 2020, in reference to the hearing on November 19, 2020, was not complied within the timeframe stated. The property remained out of compliance and continued to accrue daily fines of \$250.00. She certified the order to lien in the amount of \$10,575.00 and a fine of \$250.00 per day will continue to accrue.

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


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Town Attorney Herin, Jr. stated that the case was heard previously and the Magistrate found the property owner in violation of the code.

Officer Lee testified that the property owner had not paid the fine of \$13,097.00.

Mr. Persaud's attorney, Mr. ^{Chionopoulos}Shanapolis, stated that they were supposed to have an evidentiary hearing. Magistrate Roche replied that she determined the discharge was accidental at the last hearing and did not impose a fine; however, the property owner was responsible for the cost of cleanup in the amount of \$13,097.00. Attorney ^{Chionopoulos}Shanapolis argued that he needed to determine whether the charge was fair and cross-examine witnesses. Town Attorney Herin, Jr. reviewed the last hearing and noted they provided the invoice of the cost and Attorney ^{Chionopoulos}Shanapolis had the opportunity to cross-examine the witness. He indicated they were there to determine whether Mr. Persaud was in compliance with the order to pay for the cleanup. The recording from the hearing on February 18, 2021, was reviewed. The ^{Chionopoulos}Magistrate noted that she did allow the respondent to contest the amount of cleanup. Attorney ^{Chionopoulos}Shanapolis provided a copy of an email to the Town that requested a hearing and confirmed that it would be heard on March 18, 2021, but they received no response. He stated he was not prepared to proceed. Magistrate Roche tabled the case until the next hearing and it was limited to amounts incurred. She requested that the Town provide the property owner with names of who would show up. She gave both attorneys 30 days to exchange information for discovery before the next hearing date of May 20, 2021.

Magistrate Roche stated that they were disputing the amount of the invoice and both attorneys better be prepared for the next hearing. Discussion was held regarding subpoenas and witnesses.

Property Owner: PERSAUD PROPERTIES FL INVESTMENT 
SUBJECT: LDC Sec. 14-5, Beach Furniture and Equipment, Paragraph J Beach Chair
Rental Without Permit
LOCATION: 1028 Estero Blvd.
STRAP NO: 24-46-23-W3-00017.0000
CODE OFFICER: Bill Stout
REFERENCE NO: CE20-0018

Town Attorney Herin, Jr. summarized that Officer Stout previously testified that he observed money exchange hands for chair rentals. The hearing was continued so Officer Stout could produce the photographs and Attorney ^{Chionopoulos}Shanapolis could cross-examine the witness.

Attorney ^{Chionopoulos}Chionopoulos questioned who exchanged money. Officer Stout replied money changed hands between a customer and person on the beach. He did not recall the exact date and time. Attorney ^{Chionopoulos}Chionopoulos stated that he received over 100 pictures and not one of them showed money changing hands.

Town Attorney Herin, Jr. questioned whether the customer sat in a chair after exchanging money. Officer Stout replied affirmatively. Town Attorney Herin, Jr. questioned whether Officer Stout observed money exchanging hands after March 5, 2021. Officer Stout replied affirmatively.

Officer Tucci testified that on March 11, 2021, she worked undercover as a customer and was told by a server that it was \$10.00 for a folding chair and \$30.00 for a cabana. Officer Tucci paid \$10.00 for a chair and was issued an orange wristband. On March 13, 2021, she went back undercover and was told to see Mark inside the restaurant. She paid \$30.00 for a cabana and was issued a yellow wristband to prove that it was paid. She witnessed subsequent transactions while she was there. She stated that she was not told that she had to order food or beverages for the wristband.

George Nemer worked as a parking attendant at the Sunset Grill and testified that he did not rent beach chairs. The wristbands were for customers in the restaurant who wanted to use the chairs and different colors of wristbands were used on different days.

Town Attorney Herin, Jr. questioned whether Mr. Persaud requested that Mr. Nemer be present at the hearing. Mr. Nemer replied affirmatively.

Mr. Persaud stated that beach chairs were for customers only and were issued wristbands. He noted they had to monitor who used their chairs for liability purposes. He reviewed their policy and noted that people who just wanted to rent a chair were directed to a chair-rental business next door.

Town Attorney Herin, Jr. questioned Mr. Persaud regarding Officer Tucci's testimony. Mr. Persaud agreed that Officer Tucci testified that she rented a chair from his business. He responded that if CC rented the chair, she had no authority to do so because they did not rent chairs on the beach. He indicated that a manager inside the restaurant explained the policy to customers who wanted to use a chair on the beach. Discussion was held regarding whether Mr. Persaud was aware of the amount of the lien. Mr. Persaud disputed the number and lack of dates on photographs.

Magistrate Roche allowed a three-minute break.

Magistrate Roche found that the order on March 5, 2021, in reference to the March 4, 2021 hearing, was not complied with and there were violations after the court order. Fines accrued at \$250.00 per day, plus \$575.00 for a total of \$9,575.00. She indicated that photographs showed people in the chairs with coolers and bags of chips. She certified an order to lien in the amount of \$9,575.00 and fines would not accrue.

Cases CE20-0315, CE20-0597, CE21-0003, CE21-0020, CE21-0021, CE21-0022, CE21-0023, CE21-0050 and CE21-0071 were continued. CE20-0697 was compliant.

Signature: _____



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