

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: 2014-005

1. **Requested Motion:** Motion to approve/deny the appeal.

Meeting Date: January 6, 2014

Why the action is necessary: Town Council has adopted Resolution 13-26 which precludes the issuance of any permits for elevated swimming pools. That resolution provides for an appeal to Town Council for any such permits that have been denied pursuant to the resolution.

What the action accomplishes: Approves or denies the appeal

2. **Agenda:**

Consent
 Administrative

3. **Requirement/Purpose:**

Resolution
 Ordinance
 Other

4. **Submitter of Information:**

Council
 Town Staff
 Town Attorney

5. **Background:** On October 21, 2013, Town Council adopted Resolution 13-26 which declared zoning in progress and precludes the issuance of any building permits for elevated pools until such time as Town Council adopts regulations for such pools. That ordinance, in Section 3, provides for an appeal to Town Council of any permit that has been denied pursuant to the Resolution. Mr. Orlandini, represented by attorney Beverly Grady, has requested the issuance of permits for elevated pools for property located at 455, 221, 263, 551 and 301 Palermo. A copy of her letter request is included, along with a document that indicates the various dates when the permit applications for the affected properties were submitted to the Town.

6. **Alternative Action:**

7. **Management Recommendations:**

8. **Recommended Approval:**

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk
						

9. **Council Action:**

Approved Denied Deferred Other

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December 20, 2013

VIA E-MAIL (Marilyn.miller@fowlerwhite.com)
and REGULAR U. S. MAIL

VIA E-MAIL (terry@fortmyersbeachfl.gov) and
REGULAR U. S. MAIL

Marilyn Miller, Town Attorney
Fowler White Boggs & Banker
2235 First Street
Fort Myers, FL 33901

Terry Stewart, Town Manager
Town of Fort Myers Beach
2523 Estero Boulevard
Fort Myers Beach, FL 33931

RE: Request for Relief from Moratorium established by Resolution No. 13-26
for 301 Palermo, Fort Myers Beach

Dear Ms. Miller and Mr. Stewart:

Request for relief from the moratorium established by Resolution No. 13-26 which authorizes relief pursuant to Section 3. In addition, relief is authorized by the Second DCA, City of Sanibel v. Buntrock, 409 So.2d 1073.

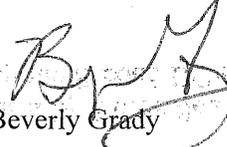
301 Palermo has been issued building permits for 301 Palermo for the principal structure and for the accessory structure containing a swimming pool. The actual pool permit has been refused to be processed by the staff due solely to Resolution No. 13-26.

The Town adopted a moratorium on October 21, 2013 without notice to the public. This moratorium was not on the Town's advertised agenda and was discussed under a council member item. Moratoriums are a land use regulation requiring two (2) public hearings in compliance with Chapter 166, Florida Statutes. Resolution No. 13-26 places a prohibition on the issuance of permits for pools even though there are existing applications that are in compliance with the Town's code. A moratorium without being adopted as the land use regulation is a violation of Florida law. The Town of Fort Myers Beach through its designated representatives and the Land Development Code recognized and applied the code to the building permit application for 301 Palermo and found that it met the property development regulations including setbacks, coverage and height, as set forth in the approved application the location of the swimming pool.

This a request for the Town Council to direct staff that Resolution No. 13-26 does not apply to 301 Palermo and to direct issuance of the permit for a pool at the first habitable floor level.

Very truly yours,

ROETZEL & ANDRESS, LPA


Beverly Grady

BG/ro

cc: Client

ROETZEL & ANDRESS
A LEGAL PROFESSIONAL ASSOCIATION

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November 26, 2013

Marilyn Miller, Town Attorney
Fowler White Boggs & Banker
2235 First Street
Fort Myers, FL 33901

Terry Stewart, Town Manager
Town of Fort Myers Beach
2523 Estero Boulevard
Fort Myers Beach, FL 33931

RE: Request for Relief from Moratorium established by Resolution No. 13-26

Dear Mr. Stewart and Ms. Miller:

Request for relief from moratorium established by Resolution No. 13-26 which authorizes relief pursuant to Section 3. In addition, relief is authorized by the Second DCA, City of Sanibel v. Buntrock, 409 So.2d 1073.

This firm represents the applicants for building permit numbers: BLD13-0049 (455 Palermo), BLD13-0130 (551 Palermo), BLD13-0131 (263 Palermo), and BLD13-0133 (221 Palermo). These permits were filed in March 2013 and three in June 2013, respectively.

Previously, the Town of Fort Myers Beach issued two (2) building permits for a single-family home with a pool at the first habitable floor level which is consistent with the current Land Development Code.

The Town adopted a moratorium on October 21, 2013 without notice to the public. This moratorium was not on the Town's advertised agenda and was discussed under a council member item. Moratoriums are a land use regulation requiring two (2) public hearings in compliance with Chapter 166, Florida Statutes. Resolution No. 13-26 places a prohibition on the issuance of permits for pools even though there are existing applications that are in compliance with the Town's code. A moratorium is a violation of Florida law.

Four (4) permit applications at issue were designed and filed by design professionals including a structural engineer consistent with the Town's code months in advance of the October 21, 2013 moratorium. The applicant relied in good faith on the current regulations.

This a request for the Town Council to direct staff that Resolution No. 13-26 does not apply to the properties located 455, 221, 263, and 551 Palermo and to issue the permits for a pool at the first habitable floor level.

Very truly yours,

ROETZEL & ANDRESS, LPA


Beverly Grady

BG/ro

cc: Client

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<u>Property Address</u>	<u>Type of Permit</u>	<u>Date Application Submitted</u>
221 Palermo	SFH Building Permit (BLD13-0133)	06/20/13
	Accessory Structure (BLD13-0227)	11/13/13
263 Palermo	SFH Building Permit (BLD13-0131)	06/20/13
	Accessory Structure (BLD13-0225)	11/13/13
	Garage (BLD13-0232)	11/21/13
301 Palermo	SFH Building Permit (BLD13-0029)	02/15/13
	Pool Permit (POL13-0056)	12/03/13
455 Palermo	SFH Building Permit (BLD13-0049)	03/08/13
	Accessory Structure (BLD13-0171)	09/04/13
	Accessory Structure (BLD13-0224)	11/13/13*
551 Palermo	SFH Building Permit (BLD13-0130)	06/20/13
	Accessory Structure (BLD13-0226)	11/13/13

*Permit application was a duplicate of BLD13-0171 and has been voided.