

MINUTES
FORT MYERS BEACH
Code Enforcement
Town Hall
2525 Estero Boulevard
Fort Myers Beach, FL 33931

Wednesday, November 29, 2017

Hearing Examiner - Special Magistrate: Mr. Joe Madden

Mr. Madden swore in those providing testimony.

Mr. Jack Peterson, Town Attorney, represented the Town in cases with opposing counsel.

Property Owner: TEKULVE LAYNE JOSEPH
SUBJECT: LDC Section: 34-631(c) (2) Increase in Living Space (BFE)
LOCATION: 190 Primo Dr.
STRAP NO: 19-46-24-W4-0060H.0170
CODE OFFICER: Molly Jacobs
REFERENCE NO: CE17-0185

Ms. Jacobs noted that the case was brought before the Magistrate on July 26, 2017 when it was continued for two months to allow the respondent time to do research.

Ms. Jacobs inspected the property on the VRBO website on April 12, 2017 and July 25, 2017. She found the following condition: increase in living space - Below Flood Elevation (BFE). The action necessary to correct the violation is to convert the ground floor area back to storage.

The notice of violation was provided to the property owner on April 17, 2017 and it was claimed. The notice of hearing was provided to the property owner on June 16, 2017 and it was claimed.

Ms. Jacobs presented pictures from the VRBO website on April 12, 2017 that accurately reflected the condition of the property.

If the hearing found a violation, the Town requested a finding of fact, obtain a permit and pass all subsequent inspections by February 14, 2018; otherwise, a fine per day pursuant to code with \$175 in administrative costs will be charged.

Mark Ebelini represented Mr. Tekulve. He questioned whether Ms. Jacobs personally inspected the property. She replied in the negative but noted that she relied on photos and descriptions from people who had stayed in the unit. She stated that Mr. Tekulve confirmed that the unit did exist and that a relative stayed there. Mr. Ebelini commented that the house was built in 1950 and he believed the condition was there at that time. He read and provided letters from two previous owners who confirmed the lower unit existed and was grandfathered. He produced a June 9, 2003 survey by Ventron Surveying, which showed a lower enclosed area of 469 square feet. He described the three permits that were granted in 2003. He discussed the building value in relation to the cost of the permits. Mr. Ebelini referred to Section 34-3235 of the Code regarding floodplain regulations. He stated that a disclosure regarding the 50% rule was not recorded. He requested that the matter be resolved by allowing the grandfather status.

Mr. Madden did not see any evidence that qualified the 469 square feet as existing non-conforming as of the day the floodplain Ordinance went into effect. Mr. Ebelini commented on the lack of records at Lee County. He stated the Town had the burden of proof.

Mr. Madden clarified that Mr. Ebelini's position was that the 469 square feet predated the floodplain Ordinance and was only elevated and renovated below the 50% level.

Town Attorney Peterson referred to a Community Development permit application completed by a previous owner in August, 2003. It included architectural drawings and signed acknowledged floodplain regulations. He did not locate a certificate of occupancy for the unit. Mr. Ebelini stated that the unit existed for years and he felt the matter was too old for the Town to claim a violation.

Mr. Madden questioned the elevation of the second floor. Ms. Jacobs, Mr. Green, Mr. Ebelini and Town Attorney Peterson reviewed the plans with Mr. Madden. Mr. Madden indicated that the ground-floor apartment was elevated and the space below was enclosed. Mr. Green replied that one could not recreate a living space on the ground floor just because the living space was elevated. The ground floor could be enclosed but adding plumbing for a living space was not permitted. Mr. Ebelini stated they provided sufficient evidence that the unit existed. Mr. Madden restated that the main building and the 469 below it were raised so Mr. ~~Tekula~~ ^{Tekulvc} wanted to recreate the 469 square feet on the ground floor. Mr. Ebelini stated that they were entitled to the space per Code. Mr. Madden stated the ground floor apartment did not comply with the plans they presented. Mr. ~~Tekula~~ ^{Tekulvc} stated that the only reason the house was lifted as opposed to demolition, was to grandfather in the lower level. Mr. Ebelini verified the statement with a letter. He stated the owner was legally entitled to the space. Mr. Madden commented that the letter he read did not state that the ground floor was left behind. He requested a short break.

Town Attorney Peterson stated the Town was not willing to concede. The testimony did not match the evidence. Ms. Jacobs contended they were still in violation. Mr. Madden was inclined to agree with the Town because it was never permitted and contrary to the authorizations for the new construction. He found that based on evidence and testimony from the Town and the respondent that the unit was not part of the permitted improvements in 2003. The respondent confirmed what the Town alleged. He stated that they did not make the case that the County or the Town acknowledged that the 469 square feet would remain below flood elevation. Mr. Ebelini replied that the Code allowed it if they were under 50%. Mr. Madden gave the Respondent until February 14, 2018 to bring it into compliance with revised plans or whatever needed to be achieved. In the event that it could not be achieved by then, they were to provide a status to Code Enforcement; otherwise, a fine of \$150 per day will go into effect and administrative costs of \$175 will be assessed. To bring it into compliance, obtain a permit or remove the improvements under base flood.

Property Owner: LAUT JOHN
SUBJECT: LDC Section: 6-111 Adopting FBC 105.1 Work w/out Permit - Shed
LOCATION: 120 Little Carlos Ln.
STRAP NO: 03-47-24-W3-00272.0000
CODE OFFICER: Molly Jacobs
REFERENCE NO: CE17-0355

Ms. Jacobs inspected the property on June 22, 2017 and the Lee County Appraiser site on August 14, 2017. She found the following condition: work w/out permit - shed. The action necessary to correct the violation is to secure required permit and associated inspections.

A notice of violation was provided to the property owner via certified mail on July 14, 2017 and it was unclaimed. It was posted at Town Hall on July 14, 2017 and on the property July 17, 2017. A notice of hearing was sent to the owner on August 22, 2017 and it was claimed.

Ms. Jacobs presented pictures from the Lee County Appraiser in 2014 and 2015 and pictures she took of the property on June 22, 2017. The pictures accurately reflected the condition of the property. Joe Kontomanolis inspected the property on November 28, 2017 and found the violation still existed.

If the hearing found a violation, the Town requested a finding of fact, obtain a permit and pass subsequent inspections by February 14, 2018; otherwise a fine per day pursuant to code with \$175 in administrative costs. *correct*

Mr. Laut stated that he had been trying to get the shed permitted but Lee County did not approve the plans. He indicated that the shed survived the hurricane with no damage. It was elevated, tied down and built at a 45 degree angle to the seawall.

Mr. Madden found that a violation existed and he gave the Respondent until March 21, 2018 to comply; otherwise a fine of \$100 per day with \$175 in administrative costs.

MJ
Property Owner: JEAN V SCALZADONNA & CATHERINE V SMITH
SUBJECT: LDC Section: 6-111 Adopting FBC 105.1 Work w/out Permit - 2 Tiki Huts
LOCATION: 3597 Shell Mound Blvd.
STRAP NO: 29-46-24-W1-0110A.0010
CODE OFFICER: Molly Jacobs
REFERENCE NO: CE17-0499

Ms. Jacobs inspected the property on July 12, 2017 and September 5, 2017. She found the following condition: work w/out permit - two Tiki Huts. The action necessary to correct the violation is to secure required permits and associated inspections. *27*

A notice of violation was provided to the property owner on July 21, 2017 and it was claimed. A notice of hearing was provided to the owner on September 20, 2017 and it was unclaimed. It was posted at Town Hall on September 28, 2017 and posted on the property September 28, 2017. *27*

Ms. Jacobs presented pictures she took on July 12, 2017. The pictures accurately reflected the condition of the property. Joe Kontomanolis inspected the property on November 28, 2017 and found the violation still existed.

If the hearing found a violation, the Town requested a finding of fact, obtain a permit and pass subsequent inspections by February 14, 2018; otherwise a fine per day pursuant to code with \$175 in administrative costs.

Ms. Scalzadonna stated that the Seminoles built the Tiki Huts and she was told a permit was not needed because they were tax exempt. Ms. Jacobs verified the account. Ms. Scalzadonna noted that she had not been able to contact the Seminoles regarding the situation.

Mr. Madden found that a violation existed and he gave the Respondent until February 14, 2018 to remove the huts; otherwise a fine of \$100 per day with \$175 in administrative costs.

Property Owner: GERVESCU FREDERIC MIHAIL+ DOCUZ SORIN


SUBJECT: LDC Section: 6-111 Adopting FBC 105.1 Work w/out Permit - Railings
LOCATION: 198-200 Anchorage St.
STRAP NO: 29-46-24-W2-00153.0240
CODE OFFICER: Molly Jacobs
REFERENCE NO: CE17-0674

Ms. Jacobs inspected the property on August 21, 2017 and on September 20, 2017. She found the following condition: work w/out permit - railings. The action necessary to correct the violation is to secure required permit and associated inspections.

A notice of violation was provided to the property owner on August 24, 2017 and it was claimed. A notice of hearing was sent to the owner on October 12, 2017 and it was unclaimed. It was posted at Town Hall and on the property October 12, 2017.

Ms. Jacobs presented pictures she took of the property on August 21, 2017. The pictures accurately reflected the condition of the property. She inspected the computer system on November 28, 2017 and found the violation still existed.

If the hearing found a violation, the Town requested a finding of fact, obtain a permit and pass subsequent inspections by February 14, 2018; otherwise a fine per day pursuant to code with \$175 in administrative costs.

Mr. Gervescu stated that the handrails were removed to seal the slippery surface of the stairs. After the stairs were complete, he waited until after the hurricane to put the handrails back up. He did not change anything so he did not understand why he needed a permit.

Robert Bogart, Building Department, noted that if the railings were the same, he was allowed to do repairs without a permit. He requested a continuation. Mr. Gervescu stated that the stairs were not being used.

Mr. Madden granted a continuation until January 25, 2018.

Property Owner: MOORE ERIK & SUSAN + WILCOX PHIL & NANCY
SUBJECT: LDC Section: 6-111 Adopting FMB 105.1 Work W/out Permit- Stairs
LOCATION: 231 Ostego Dr.
STRAP NO: 19-46-24-W4-00402.0200
CODE OFFICER: Joe Kontomanolis
REFERENCE NO: CE17-0591



Mr. Kontomanolis inspected the property on August 4, 2017 and September 2, 2017. He found the following condition: work without a permit - stairs. The action necessary to correct the violation is to secure required permit and pass associated inspections.

A notice of violation was sent to the owner via certified mail on August 14, 2017 and it was claimed. A notice of hearing was sent to the owner via certified mail on October 6, 2017 and it was unclaimed. It was posted at Town Hall on October 6, 2017 and on the property on October 7, 2017.

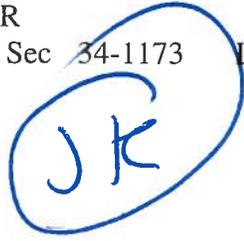
Mr. Kontomanolis presented pictures he took on August 4, 2017, September 2, 2017, October 7, 2017 and November 28, 2017. The pictures accurately reflected the condition of the property. He inspected the property on November 28, 2017 and found the violation still existed.

If the hearing found a violation, the Town requested a finding of fact, obtain a permit and pass subsequent inspections by February 14, 2018; otherwise a fine per day pursuant to code with \$175 in administrative costs.

Rick Lowry, property manager, represented the Respondent. He stated it was a short-term rental and after a fire inspection on December 7, 2016, he was required to add inside rails. The builder told Mr. Lowry that a permit was not required. The fire company approved the work done by the builder. The Town later notified them of the violation. Mr. Lowry replied that they could have removed the railings. He noted they applied for a permit but had not heard anything.

Mr. Madden found a violation existed and he gave the Respondent until March 21, 2018 to comply; otherwise a fine of \$100 per day with \$175 in administrative costs.

Property Owner: DEUTSCHE BANK TRUST CO TR
SUBJECT: LDC Section: 34-631 (c) (2) Sec 34-1173 Living space BFE
LOCATION: 21661/663 Indian Bayou Dr.
STRAP NO: 33-46-24-W2-02600.0160
CODE OFFICER: Joe Kontomanolis
REFERENCE NO: CE17-0506



Mr. Kontomanolis stated that the maintenance company agreed to the \$175.00 fine and the future abatement date.

Mr. Kontomanolis inspected the property on August 23, 2017 and September 23, 2017. He found the following condition: work without a permit - living space below flood elevation. The action necessary to correct the violation is to revert ground floor area back to storage, obtain a demo permit and a remodel permit.

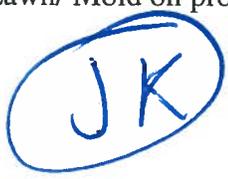
A notice of violation was sent to the owner and registered agent via certified mail on August 28, 2017 and it was claimed by both. A notice of hearing was sent to the owner and registered agent via certified mail on September 27, 2017 and both were claimed.

Mr. Kontomanolis presented pictures he took on August 23, 2017, September 23, 2017 and November 28, 2017. The pictures accurately reflected the condition of the property. He inspected the property on November 28, 2017 and found the violation still existed.

If the hearing found a violation, the Town requested a finding of fact, obtain a permit and pass subsequent inspections by February 14, 2018; otherwise a fine per day pursuant to code with \$175 in administrative costs.

Mr. Madden found a violation existed and he gave the Respondent until February 14, 2018 to comply; otherwise a fine of \$250 per day with \$175 in administrative costs.

Property Owner: LEDESMA MANUEL I + YOLANDA
SUBJECT: LDC Section: 302.4 Over Grown Lawn/ Mold on property
LOCATION: 21541/543 Widgeon Ter
STRAP NO: 34-46-24-W1-00001.0010
CODE OFFICER: Joe Kontomanolis
REFERENCE NO: CE17-0512



Mr. Kontomanolis inspected the property on July 19, 2017 and September 26, 2017. He found the following condition: overgrown lawn/mold on property. The action necessary to correct the

violation is removal of overgrown weeds and exterior mold. The weeds had been removed but the mold still existed.

A notice of violation was provided to the owner via certified mail on August 31, 2017 and it was unclaimed. It was posted at Town Hall on August 31, 2017 and on the property September 1, 2017. A notice of hearing was sent to the owner via certified mail on October 18, 2017 and it was unclaimed. It was posted at Town Hall and on the property September 27, 2017. (Should these dates be reversed?)

Mr. Kontomanolis presented pictures he took on July 19, 2017, September 1, 26 and 27, 2017 and November 28, 2017. The pictures accurately reflected the condition of the property. He inspected the property on November 28, 2017 and found the violation still existed. He noted that he did not have contact with the property owner.

If the hearing found a violation, the Town requested a finding of fact and remove the mold by January 25, 2018; otherwise a fine per day pursuant to code with \$175 in administrative costs.

Mr. Madden found a violation existed and he gave the Respondent until January 25, 2018 to comply; otherwise a fine of \$100 per day with \$175 in administrative costs.

Property Owner: FIRST BAPTIST CHURCH OF FORT MYERS BEACH
SUBJECT: LDC Section: 10- 101 Regrading Parking Lot
LOCATION: 130 -138 Connecticut St.
STRAP NO: 29-46-24-W1-00151.0010
CODE OFFICER: Molly Jacobs
REFERENCE NO: CE17-0672

Ms. Jacobs inspected the property on August 18, 2017 and the permitting system on September 21, 2017. She found the following condition: regrading parking lot. The action necessary to correct the violation is to secure required permit and associated inspections.

A notice of violation was provided to the property owner on September 7, 2017 and it was claimed. A notice of hearing was provided to the owner on September 28, 2017 and it was claimed.

Ms. Jacobs presented pictures she took on August 18, 2017. The pictures accurately reflected the condition of the property. She inspected the computer system on November 28, 2017 and found the violation still existed.

If the hearing found a violation, the Town requested a finding of fact, obtain a permit and pass subsequent inspections by February 14, 2018; otherwise a fine per day pursuant to code with \$175 in administrative costs.

Mr. Madden found that a violation existed and he gave the Respondent until February 14, 2018 to comply; otherwise a fine of \$150 per day with \$175 in administrative costs.

Property Owner: PRIMEAU NORMAN L TR FOR NORMAN
SUBJECT: LDC Section: 6-111 Adopting FBC Work w/out Permit - Remodel
LOCATION: 1365-1375 Estero Blvd.
STRAP NO: 19-46-24-W4-0060B.0120
CODE OFFICER: Molly Jacobs
REFERENCE NO: CE17-0748

Ms. Jacobs inspected the property on September 25, 2017 and the computer system on October 17, 2017. She found the following condition: work w/out permit - remodel. The action necessary to correct the violation is to secure required permit and associated inspections.

A notice of violation was provided to the property owner on September 27, 2017 and it was claimed. A notice of hearing was sent to the owner on October 19, 2017 and it was claimed.

Ms. Jacobs presented pictures she took of the property on September 25, 2017. The pictures accurately reflected the condition of the property. She inspected the computer system on November 28, 2017 and found the violation still existed.

If the hearing found a violation, the Town requested a finding of fact, obtain a permit and pass subsequent inspections by February 14, 2018; otherwise a fine per day pursuant to code with \$175 in administrative costs.

Mr. Madden found that a violation existed and he gave the Respondent until February 14, 2018 to comply; otherwise a fine of \$150 per day with \$175 in administrative costs.

RECALL CASES TO BE HEARD:

Property Owner: DEUTSCHE BANK TRUST CO TR FOR
SUBJECT: LDC Section: 302.4 Weeds and 304.2 Protective Treatment Overgrown Weeds/Mold on exterior walls
LOCATION: 21661/663 Indian Bayou DR
STRAP NO: 33-46-24-W2-02600.0160
CODE OFFICER: Joe Kontomanolis
REFERENCE NO: CE17-0175

Mr. Kontomanolis stated that the case was heard on July 26, 2017. A finding of fact was established and an order was issued citing that the Respondent was in violation of overgrown weeds and mold on the side of property. The weeds were removed but the mold still existed. Administration costs of \$175 were assessed and a fine per day of \$200 was to be imposed if the violation was not abated by August 22, 2017.

As of November 28, 2017 the administrative fee of \$175 had not been paid and the mold still on the side of the house. Mr. Kontomanolis requested an order to lien.

Mr. Madden entered an order to impose a lien on the property.

Property Owner: SUTTA DAVID + AMANDA
SUBJECT: LDC Section: 6-111 Adopting FBC 105.1 Tore down railing off porch no permit
LOCATION: 126 Coconut Dr.
STRAP NO: 29-46-24-W3-0070A.0070
CODE OFFICER: Joe Kontomanolis
REFERENCE NO: CE17-0205

Mr. Kontomanolis stated that the case was heard on July 26, 2017. A finding of fact was established and an order was issued citing that the Respondent was in violation of a torn down railing off porch with no permit. Administration costs of \$175 were assessed and a fine per day of \$150 was to be imposed if the violation was not abated by October 17, 2017.

As of November 28, 2017 the application had been submitted and finalized; however, the administrative fee of \$175 had not been paid. Mr. Kontomanolis indicated he was unable to reach the Respondent after numerous attempts. Mr. Madden entered an order for \$175.

 Cases CE17-0489, CE17-0747, CE17-0812, CE17-0813, CE17-0458, CE17-0703, CE17-0742 were abated. CE17-0241 was continued for a revised order to be sent with an abatement date of March 21, 2018. CE17-0674 was continued until January 25, 2018.

Signature: _____

- End of document