

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

Wednesday, June 29, 2016

Hearing Examiner - Special Magistrate: Mr. Joe Madden

Mr. Madden swore in those providing testimony.

Property Owner: Beachfront Escapes LLC (*Code Case to Follow)
SUBJECT: Citation
LOCATION: 60/64 Avenue C
STRAP NO: 19-46-24-W4-0070C.0070
BASE OFFICER: Kevin Przybyszewski
REFERENCE NO: **CE16-0229**

On June 2, 2016 at about 11:50 a.m., Mr. Przybyszewski observed that blue umbrellas from S & J Property Management were set up at 60/64 Avenue C. The property was usually occupied by All Island Beach Rentals. The property owner, Eric, owned the license for 60/64, and he stated that he did not give permission for any other company to use his property. Mr. Przybyszewski issued a citation for running a business without a license and he gave the citation to Sean Wilcox, who refused to sign the ticket.

Mr. Madden found the violation existed and ordered Beachfront Escapes LLC to pay a first-offense fine of \$100.

Property Owner: Beachfront Escapes LLC (*Code Case to Follow)
SUBJECT: Citation
LOCATION: 60/64 Avenue C
STRAP NO: 19-46-24-W4-0070C.0070
BASE OFFICER: Todd Sears
REFERENCE NO: **CE16-0237**

On June 3, 2016 at about 11:00 a.m., Mr. Sears observed beach equipment owned by S & J Property Management set up outside of his area. He was set up on 60/64 Avenue C, which was owned by All Island Water Sports. He approached Sean Wilcox, an employee of Joe Orlandini who owns S & J Property Management. Mr. Sears issued a citation for being outside his business area. Mr. Wilcox refused to sign the citation and gave it to Mr. Orlandini. Mr. Sears provided pictures that accurately reflected the condition of the property on June 3, 2106. He requested that they cease and remove the rental equipment from the property. Mr. Madden found it was a violation of Ordinance 14-5. Mr. Orlandini did not argue with the facts stated. The Town asked for a \$250 fine for a repeat violation and an administrative fee of \$100.

Mr. Madden found the business operated in violation of the Ordinance and it was the second violation. He ordered the respondent to pay a fine of \$250 with administrative costs of \$100.

Property Owner: Kline, Lyle (*Code Case to Follow)
SUBJECT: Citation
LOCATION: 1560 I Street
STRAP NO: 19-46-24-W4-0070C.0090
BASE OFFICER: Todd Sears
REFERENCE NO: CE16-0205

On May 19, 2016 at approximately 12:10 p.m., Mr. Sears observed beach equipment set up in front of 1560 I Street belonging to S & J Property Management. Mr. Sears provided copies of warning citations issued on May 17, 2016 and May 18, 2016. On May 19, 2016 and May 20, 2016 he issued citations to Sean Wilcox who refused to sign them. Mr. Sears met with Mr. Orlandini who refused to sign the citations. Mr. Sears provided pictures from May 20, 2016 that accurately reflected the condition of the property on that day. The Town requested \$100 for the first violation and \$250 for the second violation.

Matt Uhle, for the respondent, stated this was the case where the estoppel argument applied. He questioned whether the Special Magistrate had the authority to hear the argument. Mr. Madden replied that he would like to hear what the Town and respondent's representative thought. Mr. Uhle replied that the opinion he shared with Mr. Madden earlier applied specifically to latches, but some of the authority quoted in the case talked about general equitable defenses. In his opinion, it was up to the Special Magistrate to decide whether to consider equitable estoppel as a defense.

Town Attorney Lehnert stated the Circuit Court case they referred to was Seagull vs. Lee County. It was determined based upon the fact that the county's regulations specifically addressed equitable estoppel in certain arenas. The Town did not have any statement in any provision in respect to what a Special Magistrate could address. She did not think equitable estoppel was applicable. She revealed that the Town did submit a motion to dismiss with respect to the complaint that was filed.

Mr. Madden was not aware of a complaint or a motion to dismiss. Town Attorney Lehnert stated that Mr. Orlandini filed a request for a permit to rent beach furniture and staff denied his request. He appealed to the Town Council and they denied his appeal. Mr. Orlandini then appealed it to Circuit Court.

Mr. Uhle explained that Count 1 alleged the Town had no authority to apply certain provisions of Ordinance 15-12 to the property on 1560 I Street based on equitable estoppel. The second count alleged that certain provisions of Ordinance 15-12 violated the due process provisions of both the Florida and the United States Constitution and therefore unenforceable as applied to the 1560 I Street property. The third count alleged that the equal protection provisions of the United States Constitution invalidated portions of Ordinance 15-12 as applied to the 1560 I Street property and are therefore invalid as applied to that property. Mr. Orlandini is a beneficiary of the trust.

Mr. Madden questioned whether their equitable estoppel premise was that they do not need a permit because they had been doing it all along without a permit. Mr. Uhle agreed. Mr. Madden had not been asked to listen to an equitable argument outside of the code of the Town of Fort Myers Beach of whether or not that was a permissible use. Mr. Uhle stated they were prepared to put on the case if Mr. Madden determined that he had jurisdiction over the issue. Mr. Madden stated that Chapter 162 did not create a Circuit Court kind of equitable power for the Special Magistrate to interpret the regulations. He applied the law to the facts he was given and allowed the respondent to pursue the matter in the venue they had already pursued. Mr. Madden was

reluctant to make a finding of violation based on his inclination that litigation was pending over the issuance of the underlying permit that constituted a violation. He mentioned holding the case in abeyance. The Town requested that Mr. Madden find that there was a violation and hold the fines in abeyance. Town Attorney Lehnert stated that the Town did not believe it was appropriate for Mr. Madden to go forward with the equitable estoppel issue because if he determined that equitable estoppel was appropriate, his only recourse would be to tell the Town Council that they had to issue the permit. She felt that put him in a position that goes beyond the authority that was granted to the Special Magistrate by the Town.

Mr. Uhle did not have a problem with a finding of fact based on the testimony provided by the Officer. He questioned whether that constituted a violation given the underlying issues in the case.

Mr. Madden issued an order of findings of fact that the operation existed on the two days that it was alleged, the equipment was present, that the owner of S & J Properties was not the holder of a license under the code section cited, acknowledgement that there was pending litigation as to the matter, and in the event that the respondent was not successful in their campaign, the facts constituted a violation of the code and the requested relief would be appropriate \$100 for the first violation and \$250 for the second violation. He held the fines in abeyance pending the outcome of the litigation. The Town requested a fine plus \$100 in administrative costs. Mr. Madden ordered administrative costs not to exceed \$100. Town Attorney Lehnert handed Mr. Madden copies of underlying documents for the code file. Mr. Madden amended the order to state the respondent had 30 days from the render of the final opinion to pay the fines.

Property Owner: Persaud Properties FL Investments LLC
SUBJECT: Citation
LOCATION: 1028 Estero Blvd.
STRAP NO: 24-46-23-W3-00017.0000
BASE OFFICER: Todd Sears
REFERENCE NO: CE16-0183

Mr. Sears was patrolling the beach on May 13, 2016 at about 12:20 p.m., he observed two menu boards set up on the sidewalk at Sunset Beach Tropical Grill. Town Code 1-2 states that each business is permitted to have one menu board; no secondary signs. He issued verbal warnings on three prior occasions and one board was removed after each warning. Mr. Sears took pictures of the violation on May 13, 2016. He met with the manager Danny. Danny stated that he should have had one sign on the sidewalk and one leaning on the building. Based on previous warnings, Mr. Sears issued citation 1-2 for the area signage.

Mr. Orlandini stated that it was abated and fines were paid.

Mr. Madden requested that the Town withdraw the case.

Property Owner: Kline, Lyle Trust
SUBJECT: FMB LDC Section: 14-5(j)(1)
LOCATION: 1560 I Street
STRAP NO: 19-46-24-W4-0070C.0090
CODE OFFICER: Molly Jacobs
REFERENCE NO: CE16-0111

Ms. Jacobs inspected the property on April 1, 2016 and she found that the respondent was operating a business without a permit. The case was scheduled for April 27, 2016; however, it was continued until the appeal process was complete. The appeal was denied on May 16, 2016 at the Fort Myers Beach Town Council Meeting. Subsequent inspection was conducted June 14, 2016 and the violation continued. The condition violates LDC Section 14-05(j)1. The action necessary to correct the violation would be to stop all beach vendor activities on the property.

Both the notice of violation and notice of hearing were provided to the property owner via certified mail on June 20, 2016 and it was claimed. It was posted in Town Hall and on the property June 14, 2016. It was given to the attendant on June 15, 2016. He refused to sign.

Ms. Jacobs provided pictures from April 1, 2016 and June 14, 2016. The pictures accurately reflected the condition of the property. She inspected the property again on June 28, 2016 and found the violation still existed.

If the hearing finds a violation, the Town would request a finding of fact, stop all beach vendor activities on the property by July 5, 2016; otherwise a fine per day pursuant to the code with \$175.00 in administrative costs. The property appears to be occupied and she had been in contact with the property owner.

Mr. Uhle responded that the facts were the same as the other case.

Mr. Madden stated that the facts were confirmed that a beach vending business was operating without a license under the cited code section. He made a finding of fact acknowledging that there has been litigation filed with the Circuit Court to overturn the Town's denial of the license application. He found that a violation existed as cited and acknowledged that relief granted and the violation was subject to the final outcome of the case provided by Town Attorney Lehnert earlier. The respondent or the Town will advise the Special Magistrate as the outcome of the case.

Town Attorney Lehnert questioned whether they could continue to rent the beach furniture without a license. Mr. Madden replied that if there was a beach rental activity there without a license on January 5, 2016, it would be a repeat violation subject to a fine of up to \$500 per day.

Mr. Madden ordered the respondent to pay a fine of \$250 per day, \$175 in administrative costs and abatement by July 5, 2016.

Property Owner: Beachfront Escapes LLC
SUBJECT: FMB LDC Section: 14-5 (j)(1) Must obtain a Beach Furniture Vending Permit
LOCATION: 60/64 Avenue C
STRAP NO: 19-46-24-W4-0070C.0070
CODE OFFICER: Molly Jacobs
REFERENCE NO: CE16-0262

Ms. Jacobs inspected the property on June 14, 2016 and she found that the respondent was operating a business without a permit. The action necessary to correct the violation would be to stop all beach vendor activities on the property.

Both the notice of violation and notice of hearing were provided to the property owner and registered agent via certified mail on June 20, 2016 and it was claimed by both the property owner and registered agent. It was posted in Town Hall and on the property June 14, 2016. It was given to the attendant on June 15, 2016. He refused to sign.

Ms. Jacobs provided pictures from June 14, 2016. The pictures accurately reflected the condition of the property. She inspected the property again on June 28, 2016 and found the violation had been abated.

If the hearing finds a violation, the Town would request a finding of fact and administrative costs of \$175 to be paid by July 5, 2016. Ms. Jacobs had been in contact with the property owner and registered agent.

Mr. Przybyszewski testified that the operation existed on Sunday, June 26, 2016.

Mr. Madden found a violation existed and the testimony was that it was abated on the 28th. He found a finding of first violation for the purpose of repeat violation and he imposed an administrative cost of \$175.

Mr. Orlandini requested to see pictures from June 26, 2016. He accepted the violation.

Property Owner: Sandarac I
SUBJECT: Mitigate Lien Request
LOCATION: 6666 Estero Blvd.
STRAP NO: 03-47-24-W1-02800.00CE
CODE OFFICER: Molly Jacobs
REFERENCE NO: CE15-0413

Ms. Jacobs reviewed the history of the case. The lien total of \$12,000 was amassed between the dates of January 27, 2016 and May 12, 2016. The respondent submitted a request to mitigate the lien. Mr. Madden questioned whether lien mitigation cases were taken away from the Special Magistrate. Ms. Jacobs was not aware of any restriction.

Gordy Moore, property manager, provided documents to Mr. Madden. He stated they constructed crawl spaces under the building that were not permitted. The contractor took 86 days to apply for a permit, which was rejected due to being beyond the coastal construction line. The second time it was turned down for a structural reason, which was not clear to him. He received clearance from the state in March, giving them an exception. Mr. Moore stated he was told that he needed a final inspection letter from the engineer along with submitted prints. On March 21, 2016, his engineer would not sign off on the final inspection until doors were changed. Mr. Moore contacted Ms. Jacobs to request a 45 day extension. Ms. Jacobs told him that he had to wait until the permit was issued and the fine totaled up. He asked that the fine be waived since he asked for an extension in March. She indicated that he would have to attend the hearing to ask for mitigation.

Ms. Jacobs requested that the respondent pay a minimum of \$600 in administrative costs. Mr. Madden entered an order to mitigate the \$12,500 fine to \$600 to be paid within 30 days.

Property Owner: FMB Water Front Investment Group LLC
SUBJECT: LDC Section: 6-111 Adoption of Florida Building Code 105.1
Required
LOCATION: 551 Palermo Cr.
STRAP NO: 19-46-24-W4-0060E.0050
CODE OFFICER: Molly Jacobs
REFERENCE NO: CE16-0159

Ms. Jacobs inspected the property on April 22, 2016 and May 12, 2016. She found that a fence was built without a permit. In order to correct the violation, the property owner must secure the required permit and associated inspections. Notice of violation was provided to the property

owner on April 27, 2016 and it was claimed. Notice of hearing was provided to the property owner on June 8, 2016 and it was unclaimed. The notice was posted at the property and Town Hall on June 9, 2016. Ms. Jacobs presented pictures from April 22, 2016 that accurately reflected the condition of the property. She inspected the property on June 28, 2016 and found that the violation still existed. If the hearing finds a violation, the Town would request a finding of fact, obtain a permit, pass all subsequent inspections by July 15, 2016; otherwise a fine per day pursuant to code with \$175 in administrative costs. Ms. Jacobs noted that a fence application had been submitted and applied for on April 22, 2016. A comment letter was sent back to the contractor on May 25, 2016. There had not been a response.

Mr. Orlandini stated that he assumed the pool permit covered the pool fence as it had in the past. After the violation showed up, he realized a separate permit was required for the fence.

Mr. Madden found the violation did exist and he gave Mr. Orlandini until July 29, 2016 to obtain a permit; otherwise a fine of \$100 per day plus \$175 in administrative costs to be paid within 30 days. The administrative fee is to be paid regardless.

Property Owner: Luebaker, Hal
SUBJECT: LDC Section: 6-111 Adoption of Florida Building Code 105.1 Required
LOCATION: 130 Bahia Via
STRAP NO: 34-46-24-W4-00021.0010
CODE OFFICER: Molly Jacobs
REFERENCE NO: CE16-0110

Ms. Jacobs inspected the property on March 24, 2016 and March 29, 2016. She found that renovation of level 1 ground level was done without a permit. In order to correct the violation, the property owner must obtain the required permit and pass subsequent inspections. Notice of violation was provided to the property owner on April 19, 2016 and it was claimed. Notice of hearing was provided to the property owner on May 17, 2016 and it was claimed. Ms. Jacobs presented pictures from March 24, 2016 and on March 29, 2016 that accurately reflected the condition of the property. She inspected the property on June 28, 2016 and found that the violation still existed. If the hearing finds a violation, the Town would request a finding of fact, obtain required permit(s) and pass all subsequent inspections by July 29, 2016; otherwise a fine per day pursuant to code with \$175 in administrative costs. The property appears not to be occupied and she has had contact with the property owner. There is an active building permit and plans were resubmitted on June 23, 2016. Steve Neese, general contractor, stated that he submitted architectural plans but has not heard back from the Town.

Mr. Madden ordered that he obtain the permit by July 29, 2016 and the inspections be passed by February 27, 2017; otherwise a fine of \$100 per day will be imposed. The administrative fee of \$175 is payable within 30 days.

Property Owner: Rodriguez Abelardo
SUBJECT: FMB PMC: 304.7 - 304.13 - 304.13.1 & 308.1 Property Maintenance
LOCATION: 5770/5774 Estero Blvd.
STRAP NO: 33-46-24-W2-0030B.0070
CODE OFFICER: Molly Jacobs
REFERENCE NO: CE16-0025

Ms. Jacobs inspected the property on January 28, 2016. Per a conversation with the owner and his contractor, they agreed on a 45-day abatement timeframe for the case and for CE16-0026. She conducted a re-inspection on May 27, 2016 and the following conditions were found: roof leaking, broken window, deteriorating window frame and a pile of debris on the south side of the cottage. The action necessary to correct the violation is to repair the roof to eliminate leaks, repair or replace kitchen window frame, repair master bathroom window and remove debris pile, which had been removed.

The notice of violation was provided to the property owner on February 25, 2016 and it was unclaimed. It was posted on the property February 26, 2016 and posted at the Town February 25, 2016. The notice of hearing was posted on the property and the Town on May 31, 2016.

Ms. Jacobs provided pictures of the property from January 28, 2016 and June 28, 2016. The pictures accurately reflected the condition of the property. She inspected the property on June 28, 2016 and found the violation still existed.

If the hearing finds a violation, the Town would request a finding of fact, obtain required permit(s) and pass all subsequent inspections by July 15, 2016; otherwise a fine per day pursuant to code with \$175 in administrative costs.

Mr. Madden found that a violation did exist and he ordered the owner to pay \$150 per day if not abated by July 15, 2016 and the \$175 administrative cost to be paid within 30 days.

Property Owner: Rodriguez Abelardo
SUBJECT: LDC Section: 6-111 Adoption of Florida Building Code 105.1 Required
LOCATION: 5770/5774 Estero Blvd.
STRAP NO: 33-46-24-W2-0030B.0070
CODE OFFICER: Molly Jacobs
REFERENCE NO: CE16-0026

Ms. Jacobs inspected the property on January 28, 2016. Per a conversation with the owner and his contractor, they agreed on a 45-day abatement timeframe for the case. She conducted a re-inspection on May 27, 2016 and the following conditions were found: deck built without a permit. Action necessary to correct the violation is to obtain an after-the-fact permit for rebuilt deck and pass all subsequent inspections.

The notice of violation was provided to the property owner on February 25, 2016 and it was unclaimed. It was posted to the property on February 26, 2016 and to Town on February 25, 2016. The notice of hearing was provided to the property owner on June 23, 2016 and was unclaimed. It was posted on the property June 17, 2016 and the Town on June 16, 2016.

Ms. Jacobs provided pictures of the property from May 8, 2016. The pictures accurately reflected the condition of the property. She inspected the property on June 28, 2016 and found the violation still existed.

If the hearing finds a violation, the Town would request a finding of fact, obtain required permit and pass all subsequent inspections by July 15, 2016; otherwise a fine per day pursuant to code with \$175 in administrative costs.

Mr. Madden found that a violation did exist and he ordered the owner to pay \$100 per day if not abated by September 1, 2016 and a \$25 administrative fee was to be paid within 30 days.

Cases CE16-0085 was continued and CE16-0137 was abated.

Vote: _____ Signature: _____

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