

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

Thursday, April 18, 2019

Hearing Examiner - Special Magistrate: Ms. Myrnabelle Roche

Magistrate Roche swore in those providing testimony.
Town Attorney Herin, Jr. represented the Town.

CASES TO BE HEARD:

Property Owner: RANDY CARROLL FELKER
SUBJECT: 18-02 Section 28.84 Assisted bicycles prohibited
LOCATION: 280 Pearl St
CODE SECTION:
BASE OFFICER: Kevin Przybyszewski
REFERENCE NO: Citation 0903, Citation 0904, Citation 0907, Citation 0908, Citation 0909
and Citation 0910

On January 15, 2019, Officer Przybyszewski observed Mr. Felker operating an electric bike on the beach, sidewalk and Times Square and he gave him an official warning (Citation 0903). On January 23, 2019, Officer Przybyszewski observed Mr. Felker operating an electric bike on the beach at the Mango access. He attempted to stop Mr. Felker but was unable to do so. Officer Przybyszewski followed him and took pictures before returning to Town Hall to issue summons. Later that day, Mr. Felker was observed on his electric bike at the Beach Connection. Base officer Todd Sears joined Officer Przybyszewski to serve the citations. After Mr. Sears served the citations, Mr. Felker observed Mr. Felker fleeing down the sidewalk with his electric bike, which earned him an additional citation.

Magistrate Roche reviewed the evidence and noted the respondent was not in attendance. Town Attorney Herin, Jr. requested that Magistrate Roche find Mr. Felker in violation of the Town's code. Magistrate Roche found that violations did exist and Mr. Felker was fined \$50.00 for each citation for a total of \$250.00. *ns*

Property Owner: 1821 ESTERO BLVD CORPORATION
SUBJECT: Violation of Resolution No. 96-27 Violation of Resolution No. 96-27
LOCATION: 1821 Estero Blvd
STRAP NO: 19-46-24-W4-00405-0000
CODE OFFICER: Joe Kontomanolis
REFERENCE NO: CE18-0910

Code Compliance Manager Daphnie Burcher stated that Officer Kontomanolis inspected the property on December 11 & 16, 2019 and on January 12, 2019 and found the following: live outdoor music or speakers. The action necessary is to abide by conditions stated in the resolution. A notice of violation was sent to the property owner and registered agent via certified mail on December 28, 2018 and it was claimed. It was posted at the Town on December 18, 2019 and at the property on December 19, 2019. A notice of hearing was sent to the property owner and registered agent via certified mail on February 22, 2019 and it was not claimed. It was posted at the Town on January 28, 2019 and at the property on January 26, 2019.

If the hearing found a violation, the Town would request a finding of fact, refrain from violation of the resolution or obtain a special exception by June 25, 2019; otherwise a fine per day pursuant to code with a \$75.00 administrative fee and a hearing to impose fines or liens on July 18, 2019. Officer Kontomanolis added that the respondent was in the process of obtaining a special exception for live music.

Goran Stojkowski, owner of the Liki Tiki BBQ, stated that he was told by the zoning and building department that a live entertainment license was not needed before he purchased the property in July of 2018. He was not aware of the resolution passed in 1996 approving the outdoor patio with no entertainment allowed. He noted there were two other issues on the citation. The A-frame sign cited was removed immediately. The Town required him to install a sprinkler system for the Tiki hut but the fire department informed him that the Tiki hut was indoors and part of the main building. He filed a document with zoning to strike part of the resolution that banned him from hosting outdoor entertainment. Officer Kontomanolis stated that Mr. Stojkowski was more than cooperative with the Town. The live entertainment continued after they were notified.

Mr. Stojkowski questioned whether the Tiki hut was indoors or outdoors. Magistrate Roche replied that they were there to address the noise violation only. Mr. Stojkowski stated that he would contain the music to the indoor area until the issue was resolved.

Magistrate Roche found that a violation did exist and continued to exist; however, she did not impose a fine. She ordered that they obtain the exception by June 25, 2019 and refrain from having live outdoor entertainment during that period of time; otherwise, the order shall continue to be in effect with a fine of \$250.00 for each recurring violation. She assessed an administrative fee of \$75.00.



Property Owner: JIMMY'S JAVA CAFÉ (DJURIN PROPERTIES LLC)
SUBJECT: LDC 34-621 Allowable Use
LOCATION: 450 Old San Carlos Blvd 102
STRAP NO: 24-46-23-W3-04200-G102
CODE OFFICER: Nello Cernoia
REFERENCE NO: CE19-0125; Citation 0942

Officer Cernoia stated that the coffee shop put chairs on the sidewalk without a proper permit from September to March. The respondent was instructed that he needed to apply for a permit. On March 16, 2019 Officer Cernoia informed the owner's son that they would be charged \$100.00 per day if they did not obtain a permit. The son stated that he would inform his father. On March 17, 2019, the chairs were outside and Officer Cernoia issued a \$100.00 citation. The respondent appeared at Town Hall to plead his case and now he has the proper permit.

If the hearing found a violation, the Town would request a finding of fact, a \$100.00 fine and \$75.00 in administrative fees.

Magistrate Roche noted the respondent was not in attendance. She found that a violation existed and imposed a fine of \$100.00 plus \$75.00 in administrative fees. *us*

Property Owner: ALBRIGHT HOLDINGS- CHRIS SCHAAB
SUBJECT: LDC 14-5 Beach Furniture and Equipment
LOCATION: 1550 I St STRAP NO: 19-46-24-W4-0070C-0100
CODE OFFICER: Rae Burns
REFERENCE NO: CE19-0121; Citation 1013

Officer Todd Sears stated that Mr. Schaab submitted an application for a beach vendor permit on August 15, 2018. On February 11, 2019, Officer Sears observed a price sign attached to a buggy. Mr. Schaab was informed that the sign was not compliant and he was given a warning. On February 11, 2019 another officer observed the sign and issued citation 1013 for beach chair and equipment and fined him \$100.00.

Chris Schaab stated that his signs and structures were compliant per the ordinance. He described his interactions with the code officers. He noted that he was not given a remedy for the violations, but his signs were now in compliance. He described the exhibits he provided. He questioned the difference between a structure and storage box. He stated that he was not given enough time to remedy the situation between violations and he did make efforts to comply.

Magistrate Roche reviewed the evidence. She found that a violation did exist and continued to exist past warning. She imposed a fine of \$100.00 and assessed \$75.00 in administrative fees. *us*

Property Owner: ALBRIGHT HOLDINGS- CHRIS SCHAAB
SUBJECT: LDC 14-5 Beach Furniture and Equipment
LOCATION: 1550 I St STRAP NO: 19-46-24-W4-0070C-0100
CODE OFFICER: Rae Burns
REFERENCE NO: CE19-0122; Citation 0732

Chris Schaab stated that his signs and structures were compliant per the ordinance. He described his interactions with the code officers. He noted that he was not given a remedy for the violations, but his signs were now in compliance. He described the exhibits he provided. He questioned the difference between a structure and storage box. He stated that he was not given enough time to remedy the situation between violations and he did make efforts to comply.

On February 14, 2019 Officer Sears observed another sign mounted on a wood tripod. Mr. Schaab was informed that he was not in compliance per the ordinance and he was issued a warning. On February 15, 2019 a \$250.00 citation 0732 was issued for noncompliance.

Magistrate Roche reviewed the evidence. Mr. Schaab stated that the sign was mounted on the storage box. He explained how he mounted the signs with four posts flat against the structure. He stated that the language regarding structures and storage boxes was vague.

Magistrate Roche found that a violation did exist; however, she reduced the fine to \$100.00 and imposed \$75.00 in administrative fees. *us*

Property Owner: ALBRIGHT HOLDINGS- CHRIS SCHAAB

SUBJECT: LDC 14-5 Beach Furniture and Equipment
LOCATION: 1550 I St STRAP NO: 19-46-24-W4-0070C-0100
CODE OFFICER: Rae Burns
REFERENCE NO: CE19-0123; Citation 0911

Chris Schaab stated that his signs and structures were compliant per the ordinance. He described his interactions with the code officers. He noted that he was not given a remedy for the violations, but his signs were now in compliance. He described the exhibits he provided. He questioned the difference between a structure and storage box. He stated that he was not given enough time to remedy the situation between violations and he did make efforts to comply.

On February 18, 2019 the sign was still there and he was issued citation 0911 for \$500.00.

Magistrate Roche reviewed the evidence. Mr. Schaab felt the code was not clear and recommendations were not provided for a resolution. He stated that the final structure was determined to be compliant but he wasted time trying to figure out how to comply without direction from the Town. Officer Sears stated that he showed him the ordinance and instructed him how to correct the signs. Mr. Schaab noted the ordinance did not contain a vertical height requirement and his competitors covered up his signs with 12-foot tall umbrellas. Magistrate Roche stated that the structure had to be four by six.

Magistrate Roche found that a violation did exist and she imposed a fine of \$500.00 with a \$75.00 administrative fee.

no

Property Owner: OCEANIC BLUE RETREATS LLC
SUBJECT: LDC Sec. 34-239, Table 34-2 Weekly Rental in a Monthly Zone
LOCATION: 215 Flamingo St., lower unit
STRAP NO: 34-46-24-w4-00701.0060
CODE OFFICER: Carl Bengé
REFERENCE NO: CE19-0079

Officer Bengé inspected the property on March 14 and 26, 2019. The following condition was found: weekly rentals in a monthly zone. The action required to correct the violation was to cease renting weekly immediately. The notice of violation was provided to the property owner and registered agent via certified mail on March 25, 2019. It was posted at the Town on March 27, 2019 and on the property March 26, 2019. A notice of hearing was provided to the property owner and registered agent via certified mail on March 25, 2019. It was posted at the Town on March 27, 2019 and at the property on March 26, 2019.

If the hearing found a violation, the Town requested a finding of fact, a \$500.00 fine per violation per unit, pay the existing fine and a \$75.00 administrative fee by April 29, 2019. The violation still existed and the Town requested that they be ordered to cease weekly rentals immediately. If further evidence showed noncompliance, the Town requested a repeat violation and subsequent fines ordered. Evidence was provided by reviewing VRBO (Vacation Rentals by Owner) websites and reviews of weekly rentals.

Town Attorney Herin, Jr. stated that some businesses were grandfathered but they still had to register.

Magistrate Roche reviewed the evidence and noted the property owner was not in attendance. She found that a violation did exist, she imposed a fine of \$250.00 and assessed \$75.00 in administrative fees. *WR*

Property Owner: OCEANIC BLUE RETREATS LLC
SUBJECT: LDC Sec. 34-239, Table 34-2 Weekly Rental in a Monthly Zone
LOCATION: 215 Flamingo St., upper unit
STRAP NO: 34-46-24-w4-00701.0060
CODE OFFICER: Carl Bengé
REFERENCE NO: CE19-0081

Officer Bengé inspected the property on March 14 and 26, 2019. The following condition was found: weekly rentals in a monthly zone. The action required to correct the violation was to cease renting weekly immediately. The notice of violation was provided to the property owner and registered agent via certified mail on March 25, 2019. It was posted at the Town on March 27, 2019 and on the property March 26, 2019. A notice of hearing was provided to the property owner and registered agent via certified mail on March 25, 2019. It was posted at the Town on March 27, 2019 and at the property on March 26, 2019.

If the hearing found a violation, the Town requested a finding of fact, a \$500.00 fine per violation per unit, pay the existing fine and a \$75.00 administrative fee by April 29, 2019. The violation still existed and the Town requested that they be ordered to cease weekly rentals immediately. If further evidence showed noncompliance, the Town requested a repeat violation and subsequent fines ordered. Evidence was provided by reviewing VRBO (Vacation Rentals by Owner) websites and reviews of weekly rentals. The Town requested a repeat violation.

Magistrate Roche reviewed the evidence and noted the property owner was not in attendance. She found that a violation did exist, she imposed a fine of \$500.00 and assessed \$75.00 in administrative fees. *WR*

Property Owner: OCEANIC BLUE RETREATS LLC
SUBJECT: Sec. 10-198 Unregistered Short-Term Rental
LOCATION: 215 Flamingo St., lower unit
STRAP NO: 34-46-24-w4-00701.0060
CODE OFFICER: Carl Bengé
REFERENCE NO: CE19-0082

Code Compliance Manager Daphnie Burcher stated that the property owner was now in compliance; however, the Town was requesting citation fines. Officer Bengé inspected the property on March 13 & 26, 2019 and found the following condition: unregistered short-term rental. The action necessary to correct the violation would be to register the unit.

The notice of violation was provided to the property owner and registered agent via certified mail on March 25, 2019. It was posted at the Town on March 27, 2019 and on the property March 26, 2019. A notice of hearing was provided to the property owner and registered agent via certified mail on March 25, 2019. It was posted at the Town on March 27, 2019 and at the property on March 26, 2019. If the hearing found a violation, the Town requested a finding of fact, a \$500.00

fine per violation per unit and a \$75.00 administrative fee. Officer Bengé noted that the property owner came into compliance on March 28, 2019.

Magistrate Roche noted that the property owner was not in attendance. She found that a violation did exist, she imposed a fine of \$500.00 and assessed \$75.00 in administrative fees.

Property Owner: OCEANIC BLUE RETREATS LLC
SUBJECT: Sec. 10-198 Unregistered Short-Term Rental
LOCATION: 215 Flamingo St., upper unit
STRAP NO: 34-46-24-w4-00701.0060
CODE OFFICER: Carl Bengé
REFERENCE NO: CE19-0083

Officer Bengé inspected the property on March 13 & 26, 2019 and found the following condition: unregistered short-term rental. The action necessary to correct the violation would be to register the unit.

The notice of violation was provided to the property owner and registered agent via certified mail on March 25, 2019. It was posted at the Town on March 27, 2019 and on the property March 26, 2019. A notice of hearing was provided to the property owner and registered agent via certified mail on March 25, 2019. It was posted at the Town on March 27, 2019 and at the property on March 26, 2019. If the hearing found a violation, the Town requested a finding of fact, a \$500.00 fine per violation per unit and a \$75.00 administrative fee. Officer Bengé noted that the property owner came into compliance on March 28, 2019 and the Town requested a repeat violation.

Magistrate Roche noted that the property owner was not in attendance. She found that a violation did exist, she imposed a fine of \$500.00 and assessed \$75.00 in administrative fees. She noted that the ordinance did not allow her to make a repeat violation determination.

Property Owner: OCEANIC BLUE RETREATS LLC
SUBJECT: Sec. 10-198 Registration Number Not Present on Advertising
LOCATION: 215 Flamingo St., lower unit
STRAP NO: 34-46-24-w4-00701.0060
CODE OFFICER: Carl Bengé
REFERENCE NO: CE19-0084

Officer Bengé inspected the property on March 13 & 26, 2019 and found the following condition: registration number not present on advertising. The action necessary to correct the violation would be to place registration number on all forms of advertising.

The notice of violation was provided to the property owner and registered agent via certified mail on March 25, 2019. It was posted at the Town on March 27, 2019 and on the property March 26, 2019. A notice of hearing was provided to the property owner and registered agent via certified mail on March 25, 2019. It was posted at the Town on March 27, 2019 and at the property on March 26, 2019. If the hearing found a violation, the Town requested a finding of fact, a \$500.00 fine per violation per unit and a \$75.00 administrative fee. Officer Bengé noted that the property owner came into compliance on March 28, 2019 and the Town requested fines.

Magistrate Roche noted that the property owner was not in attendance. She found that a violation did exist, she imposed a fine of \$250.00 and assessed \$75.00 in administrative fees.

Property Owner: OCEANIC BLUE RETREATS LLC
SUBJECT: Sec. 10-198 Registration Number Not Present on Advertising
LOCATION: 215 Flamingo St., upper unit
STRAP NO: 34-46-24-w4-00701.0060
CODE OFFICER: Carl Bengé
REFERENCE NO: CE19-0087

Officer Bengé inspected the property on March 13 & 26, 2019 and found the following condition: registration number not present on advertising. The action necessary to correct the violation would be to place registration number on all forms of advertising.

The notice of violation was provided to the property owner and registered agent via certified mail on March 25, 2019. It was posted at the Town on March 27, 2019 and on the property March 26, 2019. A notice of hearing was provided to the property owner and registered agent via certified mail on March 25, 2019. It was posted at the Town on March 27, 2019 and at the property on March 26, 2019. If the hearing found a violation, the Town requested a finding of fact, a \$500.00 fine per violation per unit and a \$75.00 administrative fee. Officer Bengé noted that the property owner came into compliance on March 28, 2019 and the Town requested fines.

Magistrate Roche noted that the property owner was not in attendance. She found that a violation did exist, she imposed a fine of \$500.00 for a repeat violation and assessed \$75.00 in administrative fees.

CE19-0059 was granted a continuance. CE19-0126 was not addressed.

Signature:  _____

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