

MINUTES
FORT MYERS BEACH
Code Enforcement
Town Hall
2525 Estero Boulevard
Fort Myers Beach, FL 33931
Thursday, May 31, 2018

Hearing Examiner - Special Magistrate: Mr. Joe Madden

Mr. Madden swore in those providing testimony.

Mr. Jack Peterson and Mr. John Turner, Town Attorneys, represented the Town in cases with opposing counsel.

Property Owner: BEACHFRONT ESCAPE LLC
SUBJECT: LDC Section: 6-111, adopting FBC 105.1
NEW – Work w/out Permit – New Monument Sign
LOCATION: 1710-1740 Estero Blvd
STRAP NO: 19-46-24-W4-0070A-0010
CODE OFFICER: MOLLY JACOBS
REFERENCE NO: CE17-0787

Jim Moon represented the property owner. He requested that CE17-0787 and CE17-0870 be put into the June docket with Mr. Orlandini's other cases due to a pending FOIA (Freedom of Information Act) request regarding permits. Town Attorney Turner noted that they were not aware of any public records request in the matter. He indicated that the cases had been continued before and they strenuously objected to further continuances. He stated that Mr. Moon submitted a request for continuance at 7:30 a.m. the day of the hearing. Town Attorney Turner read a timeline of events prepared by Ms. Jacobs dating back to January. His position was that it was a continuing pattern to delay the proceedings.

Mr. Moon stated that he did not request a continuance with the email sent earlier. He pointed out that the Town also requested continuances. He indicated that information he requested earlier had not been sent. He stated that some of the permits had been submitted but not approved by the city and the information he requested addressed those issues. He asked for a continuance until he received the information requested. Mr. Madden requested that Ms. Jacobs look up the status of the application.

Town Attorney Turner was not aware of any specific public records request relating to this code enforcement action. Town Attorney Peterson noted that Exhibit C1 in the packet of information contained everything related to the case. Mr. Madden reviewed the document. He requested a copy of the request for information recently submitted. Mr. Moon did not have a copy but he indicated that he sent the request to the Town Clerk. Mr. Madden requested that Mr. Orlandini testify that additional requests were sent and a public records request was made. Mr. Orlandini swore that he submitted a permit for a new monument sign and it was denied. He submitted additional information as requested with his architectural engineer during a meeting with Ms. Jacobs. The restaurant remodel permit was submitted at the same time and the monument information may be with that paperwork. The restaurant remodel permit had not been granted

either. Mr. Orlandini stated that he had outstanding permits from 2015. Ms. Jacobs provided a copy of the original submittal in January. There was no information submitted after the denial in January. Mr. Madden did not grant the continuance.

Ms. Jacobs inspected the property on October 10, 2017 and January 25, 2018. She found work without a permit for a new monument sign. The actions necessary to correct the violation are to secure the required permit and associated inspections. A notice of violation was provided to the owner and registered agent on October 13, 2017 and it was claimed. The notice of hearing was posted at the property on May 20, 2018 and Mr. Kontomanolis posted it at Town Hall on May 21, 2018.

Ms. Jacobs took pictures on October 10, 2017 that accurately reflected the condition. An application was under review. The Town had been in contact with the owners and others.

If the hearing found a violation, the Town requested a finding of fact, obtain a permit and pass all subsequent inspections by July 18, 2018; otherwise a fine per day pursuant to Code (\$500 per day for repeat violation) with \$475.00 in administrative costs with a recall date for July 26, 2018.

Mr. Moon questioned whether Ms. Jacobs was present when the notice of violation was posted. She replied negatively. Mr. Moon questioned whether the prior violation was due to hurricane damage. Ms. Jacobs could not testify what the damage was caused by. Mr. Moon questioned whether the Town allowed for safety mitigation with hurricane damage. He felt it was inappropriate for Ms. Jacobs to confer with Town Attorney Peterson before answering questions. Mr. Madden noted that the question related to Exhibit A1 from the Town to impose a lien. He asked that Mr. Moon rephrase the question. Mr. Moon refrained. He questioned how they could meet a July 18, 2018 deadline without a permit. He asked that Mr. Madden give the Town a deadline for issuing the permit. Mr. Madden summarized that a permit application was pending and the Town requested that a permit be obtained and final inspections be completed by July 18, 2018. Mr. Moon cited a statute that required a permit to be issued timely after an application was submitted. Mr. Madden set August 22, 2018 as the date for compliance with a recall date of August 30, 2018; otherwise, a fine of \$250.00 per day will be imposed. Administrative costs of \$300.00 are to be paid by August 22, 2018. Town Attorney Turner explained why they requested \$475.00 in administrative costs. Mr. Moon stated that the Attorney's fees would include the continuances requested by the Town.

Property Owner: BEACHFRONT ESCAPE LLC
SUBJECT: LDC Section: 6-111, adopting FBC 105.1
NEW – Work w/out Permit – Restaurant Remodel
LOCATION: 1710-1740 Estero Blvd
STRAP NO: 19-46-24-W4-0070A-0010
CODE OFFICER: MOLLY JACOBS
REFERENCE NO: CE17-0870

Ms. Jacobs inspected the property on November 17, 2017. She found work without a permit for restaurant remodel. The actions necessary to correct the violation are to secure the required permits and associated inspections. A combination notice of violation and notice of hearing was provided to the owner and registered agent on January 13, 2018 and it was claimed. It was posted at the Town on January 11, 2018 and on the property on January 17, 2108.

Ms. Jacobs took pictures on November 17, 2017 that accurately reflected the condition. She included photos from Yelp. An application to replace the windows was submitted and under

review. She had contact with the property owner and registered agent. Ms. Jacobs explained pictures and pointed out that there was a previous use submitted by Tuck Away Bagel showing how the property was set up. The application showed where the equipment was moved to before the permit was issued. The permit was still under review.

Mr. Moon questioned whether additional information was needed to approve the permit. Ms. Jacobs referred to the information request form. She stated the application was submitted on October 10, 2017. Mr. Moon questioned when the Town notified Mr. Orlandini that they needed additional information to grant the permit. Ms. Jacobs replied that there were requests for additional information on February 2, 2018 and March 1, 2018.

Mr. Orlandini testified that the property was damaged from hurricane Irma, the interior suffered water damage, he had to remove items to safeguard the property, he requested a permit after he safeguarded the property and he had not been granted the permit yet. He stated that he made the Town aware of the damage and they submitted an application on October 10, 2017.

Town Attorney Turner questioned Mr. Orlandini when he started to remodel. Mr. Orlandini replied that he did not have the exact date of the permit for the restaurant, but he entered the building a couple of weeks after the hurricane. Town Attorney Turner questioned whether Mr. Orlandini commenced remodeling at that location prior to hurricane Irma on September 9, 2017. Mr. Orlandini replied negatively and indicated that the interior work on the property was done after the hurricane. Town Attorney Turner noted that the violation was issued on January 13, 2017 for remodeling without a permit. Mr. Orlandini stated that the violation he referenced was a different unit with a different violation and a different permit. Town Attorney Turner questioned whether he ever applied for a remodel or construction permit for that location prior to October of 2017. Mr. Orlandini stated that the work was done after the hurricane. Town Attorney Turner questioned when the violation was issued for CE17-0870. Mr. Orlandini was not sure and he noted that the Town had that information. Town Attorney Turner questioned whether he met with Town officials regarding the code violation for the address for remodeling without a permit. Mr. Orlandini stated that he met with Ms. Jacobs and he addressed the property damage due to the hurricane. He felt that Ms. Jacobs had the opportunity to indicate to him whether something else needed to be done. Mr. Orlandini noted the architect's name was Mike Stuart. He testified that he did not do any remodeling or construction activities prior to the hurricane. Town Attorney Turner questioned whether paper was placed over the windows. Mr. Orlandini replied affirmatively and stated that paper and a temporarily closed sign were put up after the hurricane. Mr. Madden summarized that the work was done and the permits were under review but not issued yet. He questioned whether the Town was close to issuing a permit.

Robert Bogart, Building Official, stated that Lee County reviewed the request and three letters requesting additional information were sent on January 29, 2018, February 27, 2018 and April 16, 2018. They needed to submit information to Lee County. Mr. Moon questioned whether the additional information had been provided to the Town. Mr. Bogart replied negatively. Mr. Orlandini stated that he submitted the information and he tracked it through eTRAKit. He noted that his plans had been lost several times. Town Attorney Turner questioned whether Mr. Orlandini had evidence that he submitted anything to the Town. Mr. Moon stated that Mr. Orlandini could not testify to his work product. Mr. Orlandini explained the difficulty with the system and tracking information. He stated that he personally turned in everything approximately two months ago. He requested that Missy be called to verify how many times he had to provide additional copies because the Town lost documents.

Mr. Bogart revealed that the letters sent were based on responses from the permit application, which were done by permit number, not by addresses. If Mr. Orlandini submitted materials, they would be included with the permit number. Mr. Bogart noted that comments on April 16, 2018 indicated that he had not complied with the ADA requirement.

Mr. Moon disputed the repeat violation. He noted the red comments could be addressed by July 18, 2018.

Mr. Madden found that a violation existed and the respondent agreed to obtain a permit and final inspection by July 18, 2018; otherwise a fine per day pursuant to Code (\$250.00 per day) with \$300.00 in administrative costs with a recall date for July 26, 2018.

Property Owner: ORLANDINI JOSEPH
SUBJECT: LDC Section: 6-111, adopting FBC 105.1
NEW Work w/out Permit – Expired Permit (ROF09-0076)
LOCATION: 1666 I St.
STRAP NO: 19-46-24-W4-0070B-010B
CODE OFFICER: JOE KONTOMANOLIS
REFERENCE NO: CE18-0014

Mr. Kontomanolis inspected the property through eTRAKit on January 5, 2018 and February 16, 2018. The following condition was observed: expired roof permit. The actions necessary to correct the violation are to secure the required permits and associated inspections. The notice of violation was provided to the owner on January 16, 2018 and it was claimed. The notice of hearing was provided to the owner on February 28, 2108 and it was claimed. If the hearing found a violation, the Town would request a finding of fact, obtain a permit and pass subsequent inspections by July 18, 2018; otherwise a fine per day pursuant to Code and \$425.00 in administrative costs will be assessed.

Mr. Madden revealed that the permit was from 2009. Mr. Kontomanolis noted that it had a failed final inspection which caused it to go into expired status.

Mr. Moon verified that the 2009 permit was from the prior owner. He questioned whether there was an application for a permit on file. Mr. Kontomanolis replied in the negative. He indicated that the respondent would have to pay for the reactivation of the permit and pass inspection. He read the denial report.

Mr. Madden found that a violation did exist and the respondent was ordered to obtain a permit and final inspection by July 18, 2018; otherwise a fine per day pursuant to Code (\$250.00 per day) with \$425.00 in administrative costs and a recall date for July 26, 2018. The Town broke down their request for \$425.00 in administrative costs as follows: \$275.00 for normal costs, \$100.00 for consultation with attorneys and \$50.00 for code officers meeting with the attorney.

Property Owner: ORLANDINI JOSEPH & SHANNON
SUBJECT: FMB Property Maintenance Code Section: 302.10
NEW Storage of Construction Materials
LOCATION: 455 Palermo Cir.
STRAP NO: 19-46-24-W4-0060D-0100
CODE OFFICER: JOE KONTOMANOLIS
REFERENCE NO: CE18-0135

Mr. Kontomanolis inspected the property on March 3, 2018, April 2, 14, 19 and 27, 2018 and May 4, 2108. The following condition was observed: storage of construction materials. The actions necessary to correct the violation are to remove all storage of construction materials from the property. The notice of violation was provided to the owner on March 12, 2018 and it was claimed. The notice of hearing was provided to the owner on April 11, 2108 and it was claimed. If the hearing found a violation, the Town would request a finding of fact, removal of all construction materials by July 18, 2018; otherwise a fine per day pursuant to Code and \$425.00 will be assessed in administrative costs.

Mr. Moon questioned what construction material was left behind. Mr. Kontomanolis read the list of construction materials and he provided photos that accurately reflected the condition of the property. Mr. Moon questioned whether Mr. Kontomanolis determined whether a permit had been requested prior to the hearing. Mr. Kontomanolis did not see a request. Mr. Orlandini requested a permit in 2015 and it was still active. He was at the final stages of receiving the permit and he moved the equipment in preparation of the construction job. He noted that one item in the photo was not his and had been removed. The materials left were to prep the site. He noted that his neighbors renovated their property and they accessed his property during their construction without his permission. They damaged his property and he had to reset it and get a new survey, which he submitted. Mr. Bogart noted that there was a response for the permit rejection on May 9, 2018. Mr. Orlandini noted that there was a submittal after that date. Mr. Bogart stated that no temporary or permanent storage of materials or equipment was permitted on vacant parcels unless it was in conjunction with a building permit. Mr. Moon questioned which items had been removed and how long they were in that location. Mr. Kontomanolis did not know.

Mr. Madden found that a violation did occur and ordered the respondent to obtain a permit or remove the materials by July 18, 2018; otherwise a fine pursuant with Code (\$250.00 per day) will be assessed plus \$425.00 in administrative costs with a recall date of July 26, 2018.

Discussion was held regarding continuing the cases involving Mr. Persaud due to current litigation at the circuit court level. Mr. Madden stated that he preferred not to take up a code case that was being litigated in circuit court. Town Attorney Turner indicated that the argument was overreaching because the claim in circuit court dealt with a COP (consumption on property) license. He noted that the respondent failed to complete construction within the time limits in the Ordinance; therefore, he abandoned the privilege to serve alcoholic beverages on the sand. He stated that the court could enter an order that would not be in conflict with any circuit court ruling. He encouraged the court to deny the request for continuance. Mr. Moon stated that Mr. Persaud did not abandon the parking lot. He stated that the issue of abandonment should be argued in front of the circuit court.

Property Owner: PRESAUD PROPERTIES FL INVESTMENT
SUBJECT: LDC Section: 30-5
NEW Sign – Portable & Off-Premises
LOCATION: 1046 Estero Blvd
STRAP NO: 24-46-23-W3-00016-0000
CODE OFFICER: MOLLY JACOBS
REFERENCE NO: CE17-0659

Ms. Jacobs inspected the property on August 17, 2017 and January 26, 2018. She found prohibited sign off premise and a portable sign. The actions necessary to correct the violation is to remove the off-premise sign and portable sign or obtain a permit for a permanent sign and pass subsequent inspections. A notice of violation was provided to the owner and registered agent and it was unclaimed. It was posted at the Town on September 14, 2017 and on the property on September 20, 2017. A notice of hearing was provided to the owner and registered agent on February 1, 2018 and it was claimed. Ms. Jacobs will email a copy of the application to Mr. Moon.

If the hearing found a violation, the Town would request a finding of fact, removal of signs or obtain a permit by July 18, 2018; otherwise a fine per day pursuant to Code will be assessed and \$425.00 in administrative costs.

Mr. Madden found that a violation did occur and ordered the respondent to obtain a permit or remove the signs by July 18, 2018; otherwise a fine pursuant with Code (\$200.00 per day) will be assessed plus \$425.00 in administrative costs with a recall date of July 26, 2018. Mr. Moon requested \$300.00 in administrative costs. Mr. Madden assessed \$425.00 in administrative costs.

Mr. Madden ordered a continuance for case CE17-0707. Town Attorney Turner stated that the Town would not raise any abandonment arguments for use of the property for commercial purposes and asked that they proceed. Mr. Moon did not agree and he felt the issues would overlap. Mr. Madden continued the case to July 26, 2018. Town Attorney Turner requested that a fine of \$500.00 per day be assessed in the event there was a violation from this time forward. Mr. Moon asked that they allow the case to be continued. Mr. Madden continued the case.

Mr. Moon requested a continuance for CE18-0235 and CE18-0234 to July 26, 2018. Town Attorney Peterson stated the Town's position on both cases was that they were operating as a beach vendor without a permit. Mr. Moon replied that the beach vendor who operated on the property was evicted. Mr. Persaud applied for the permits and was advised that no new permits would be issued until after September 1, 2018. Mr. Madden continued the cases until June 28, 2018. Town Attorney Turner objected.

RE-HEARING CASES TO BE HEARD:

Property Owner: WHITE SWAN INVESTMENTS LLC
SUBJECT: LDC Section 34-621
RE-HEARING Non-Permitted USE – Converted SFR to Quad-Plex
LOCATION: 203-205 Fairweather Ln
STRAP NO: 19-46-24-W3-0110C.0090
CODE OFFICER: MOLLY JACOBS
REFERENCE NO: CE16-0445

Ms. Jacobs stated that the case was brought before the magistrate on February 22, 2017, finding of fact was established and an order was issued citing the respondent was in violation of creating a non-permitted use by converting a tri-plex residence into a quad-plex. The respondent was ordered to submit permits to revert to a tri-plex by April 14, 2017 and pass subsequent inspections by May 19, 2017. They were assessed \$175.00 in administrative costs and \$150.00 per day fine each day the violation was not abated. The permit was issued on May 3, 2017 and one inspection was scheduled by June 23, 2017 and the administrative fee had been paid.

Mr. Moon stated that the property was a quad-plex prior to the respondent purchasing the property. A permit was applied for to renovate the property. After the hearing, the court ruled that it was allowed to stay as a tri-plex. The respondent submitted plans for approval and a permit was issued on May 3, 2017, which only allowed 16 days to get the work done. June 29, 2017 was the first inspection and the fire inspection was done at the end of July. The hurricane caused delays for the contractor, the final electrical and plumbing inspections were done in December 18, 2017. He described the delays caused by the hurricane and delays due to the permitting process. He felt the respondents did everything they could to comply and they recognized that they owed administrative costs. Mr. Moon indicated that they requested a re-hearing but they were denied. Town Attorney Peterson stated that they requested a lien of \$30,450.00. Mr. Madden noted that the respondent's next move was to go before Town Council for mitigation. Mr. Moon stated that he sent an email to Ms. Jacobs requesting a second hearing. Town Attorney Turner noted that the request should have been sent to the magistrate. Mr. Moon read the order from Mr. Madden and it stated that the request should be sent to the code enforcement office at the Town of Fort Myers Beach. Mr. Madden agreed. He recommended that the Town consider the application for mitigation favorably. The respondent complied with the order and the timeframe made sense. Mr. Moon stated that they followed the procedure as stated. Town Attorney Turner indicated that they did respond to their request that they did not file their request within the timeline. Mr. Moon noted that it was within the 20 days. Video stopped at 2:16.

Signature: _____

- End of document