

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

Thursday, August 30, 2018

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.

BEACH PATROL CASE TO BE HEARD:

Property Owner: Chandler Martin
SUBJECT: Overtime Meter
CODE SECTION: Sec. 28-51 (A)
LOCATION: Old San Carlos
BASE OFFICER: Kevin Przbyszewski
REFERENCE NO: Citation # 71923460

BASE Officer Todd Sears testified on behalf of BASE Officer Kevin Przbyszewski. He stated that on July 29, 2018 at approximately 5:50 p.m. Officer Przbyszewski noticed an overtime meter at spot 15. He issued a citation to a Harley Davidson motorcycle parked in the spot. If the hearing found a violation, the Town requested that Chandler Martin pay \$35.00 plus \$175.00 in administrative costs by September 19, 2018 with a recall date of September 27, 2018. Judge Madden viewed photos and the data from the meter machine.

Judge Madden gave Chandler Martin an opportunity to pay the fine of \$35.00 without a hearing. Mr. Martin continued the hearing. He stated that the meter did not function correctly but finally processed his card the third time. The meter stated that it was printing the receipt, but it never came out of the machine. The screen showed that an hour (5:35 p.m. to 6:35 p.m.) was paid for then the screen went gray. Mr. Martin thought the machine ran out of paper. He was standing next to his motorcycle when code enforcement showed up. He explained to the officer what happened but the officer stated that he could not do anything because he already hit the button on his hand-held device. The officer gave him a printout that showed what had been paid. He questioned why the printout did not show non-payment. He questioned why the machine kept indicating it was printing out a receipt. Officer Sears noted that the readout indicated that the meter was working and no error showed up. Mr. Madden dismissed the case.

Property Owner: MARKOVICH GEORGE & AMY
SUBJECT: LDC Section: 34-621 Operating Parking Lot w/out a USE Permit
LOCATION: 1510 Estero Blvd
STRAP NO: 19-46-24-W4-0070C-0020
CODE OFFICER: Molly Jacobs
REFERENCE NO: CE18-0035

Code Officer Molly Jacobs inspected the property on December 27, 2017 and April 20, 2018 and she found the following condition: operating parking lot w/out a USE permit. The action necessary to correct the violation is to discontinue operating as a parking lot. A combination notice of violation and notice of hearing was provided to the owner on July 25, 2018 and it was claimed. It was posted to the property and Town Hall and sent regular mail on July 24, 2018. Code Officer Jacobs provided pictures taken by David Gray that accurately reflected the condition and stated that the parking lot operation no longer existed.

If the hearing found a violation, the Town requested a finding of fact, parking lot operations should be maintained in accordance with the daily operation of the existing business; otherwise a permit would be required.

Judge Madden questioned when the use ceased and requested clarification of the timeline of events. Attorney Moon represented Joe Orlandini, half owner. Mr. Orlandini stated that he was notified that the parking lot was being utilized as a parking lot without his permission. He took steps to prevent the situation from occurring in the future. Town Attorney Peterson stated that the Town requested a finding of fact with no costs involved.

Attorney Moon stated that there was no testimony that money changed hands and Mr. Orlandini testified that it was an unauthorized use of the parking lot and he removed the person committing the violation.

Judge Madden found that the parking operation was in violation of Town code. He noted that the finding of fact was made for the purpose of repeat violations. He noted that the operation had ceased but not within the 30-day period. He sent an order out to that effect.

Property Owner: UNKNOWN HEIRS OF MANNER RICHARD (SAMUN)
SUBJECT: LDC Section: 6-111 Adopting FBC 103.5 Unsafe Building
LOCATION: 1667 I St.
STRAP NO: 19-46-24-W4-0070B-005A
CODE OFFICER: Molly Jacobs
REFERENCE NO: CE16-0645

Community Development Building Official Robert Bogart reviewed the history of the case from February 22, 2017. The permit was finalized on October 27, 2017 and the administration fee of \$275.00 was paid. A fine of \$150.00 per day for 133 days with a single penalty of \$150.00 totaled \$19,800.00. The Town requested an order to lien.

Attorney Moon explained why the lien was time barred per FL Statute 733.710. He stated that the unknown heirs of Mr. Manner were not served properly after he passed on September 21, 2015.

Town Attorney Peterson questioned Attorney Moon's relationship to the estate. Mr. Moon replied that he represented a contracted owner of the property.

Town Attorney Peterson withdrew the case. Judge Madden stated that there was a filed lien that had to be addressed.

Property Owner: HUGHES MICHAEL + JENNIFER
SUBJECT: LDC Section: 14- 75 Turtle Inspections
LOCATION: 602 Estero Blvd
STRAP NO: 24-46-23-W4-0060D-015A
CODE OFFICER: Rae Burns
REFERENCE NO: CE18-0662

Code Enforcement Officer Joe Kontomanolis inspected the property on July 17 and 18, 2018 and he found the following condition: white porch light caused disorientation of sea turtle nest. The owner abated the situation and the Town requested a finding of fact.

Jennifer Hughes noted that the light was on at 11:15 p.m. but they turned it off before they went to bed. She stated that the notice indicated that rainfall during the middle of the night may have initiated the hatchling, so how did her light at 11:15 p.m. affect the situation? Environmental Technician Rae Burns provided an explanation. Mrs. Hughes did not see the connection between her light and the disorientation. Judge Madden provided a photo that showed her light as the only source in the immediate area.

Judge Madden found that a violation did occur and it was abated.

Property Owner: PRIMEAU NORMAN L TR FOR NORMAN
SUBJECT: LDC Section: 6-111 Adopting FBC 105.1 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

Community Development Building Official Robert Bogart reviewed the case from November 29, 2017. The permit was finalized on June 4, 2018 and the plumbing was finalized June 7, 2018. February 14, 2018 to June 7, 2018 was 113 days at \$150.00 per day, which equaled \$16,950.00. The administrative fee of \$175.00 had not been paid, which brought the total to \$17,125.00. The Town requested an order to lien.

Attorney Beverly Grady from Roetzel & Andress represented the Trust dated October 3, 1995. She referred to Florida Statute 162.092b regarding the amount of the fine. She noted that an order was imposed and recorded on March 29, 2018 but the legal description was incorrect. She stated that Mr. Primeau died on March 18, 2018 just prior to the March 29, 2018 order. Attorney Grady requested that Judge Madden consider an order for a reduction in fine. She filed the proposal on July 11, 2018 and Judge Madden stated that he received the packet but had not reviewed it.

Mr. Primeau testified that he hired a contractor to replace the tile floor and he gave his tenant permission to paint the interior. He was advised by the contractor that he did not have to obtain a

building permit to replace the tile or to paint the interior. He stated that drains in the floor needed some work and he received an estimate from Aztec Plumbing Co. on August 31, 2017. Mr. Primeau provided an email directing Aztec to pull a permit for the work if needed and Mr. Primeau noted that Aztec filed for a permit on or about January 30-31, 2018 and the permit was issued. Aztec stated that they posted the permit, called for an inspection and advised Mr. Primeau that the work had been completed. Attorney Grady provided an email exchange between Mr. Primeau and Aztec Plumbing regarding the status of the permit. Mark Hamilton from Aztec Plumbing stated that the inspection was done and the permit closed on February 14, 2018. Mr. Primeau informed Mr. Hamilton on February 20, 2018 that the permit was never signed off and he requested that Aztec provide a GC to pull a remodel permit. Mr. Hamilton responded that the plumbing end was complete and they did not use a GC. Attorney Grady submitted the email exchange to the Court. Attorney Grady referred to the recording of the November 29, 2017 hearing. She stated that Special Magistrate asked staff whether additional work was being done besides tiling. Code Officer Jacobs and Building Official Bogart replied that everything had been removed. Mr. Primeau stated there was no demolition at the site, no electrical work was done and there were no structural changes. Items were moved in order to tile the floor then replaced after the work was completed. Mr. Primeau noted that the work done by Aztec was not complete. He was advised by the Town to hire a general contractor. Mr. Primeau hired Jay Ursaleo who filed an application for a commercial building permit on or about February 27, 2018 and he advised Mr. Primeau that the permit was needed for the drains only. Attorney Grady indicated that the Town was required to review the building permit application and issue the permit or provide a written rejection. A review of COM 18-0045 was never conducted nor was a written rejection received. After weeks of no action, he met with Building Official Bogart to review the work and pictures. Mr. Bogart thought electrical work was performed, which was inaccurate. The electrical work consisted of unplugging and plugging equipment into existing electrical outlets. Despite that fact, Mr. Bogart required Mr. Primeau to retain an electrical contractor who performed no work, but he requested the electrical permit, which was issued. The Town issued final approval of the electrical permit. Mr. Primeau proceeded to hire another plumber to install a vent on the drains that Aztec neglected to do. The violation was abated in June with the completion of the permits. Attorney Grady stated that the application sat for over 90 days. She requested consideration of the fine for the time it sat in the office. On June 6, 2018, Jay Ursaleo requested that the Town void the commercial application since the electrical and plumbing permits satisfied the violation. Apparently, the Town did not close it out. Attorney Grady provided the information to Judge Madden.

Mr. Primeau indicated that the tiles were cracked and had to be replaced. He explained that he worked with Code Officer Jacobs to correct the situation. He was confused that they were cited for a remodel but they did not remodel anything. Attorney Grady noted the fine was \$17,125.00 regarding two floor drains for which he had a permit.

Building Official Bogart stated that a final inspection was required for gas connections and ground fault protection for electrical stuff in the commercial kitchen.

Attorney Grady questioned why the Town did not issue the commercial permit that was requested. Mr. Primeau stated that the gas connection was a quick disconnect for cleaning purposes. He stated that the kitchen was returned to the same condition except for a new top floor.

Judge Madden reviewed the Florida Statute. He ordered Mr. Primeau to pay a fine of \$2,500.00 to be paid by September 27, 2018. He requested to be advised when the fine was paid so he could file for a release of the lien.

The following appeal was not on the agenda.

Property Owner: Aquedock
Location: 266 Primo Dr.
Code Officer: Joe Kontomanolis

Code Enforcement Officer Joe Kontomanolis stated that on July 11, 2018 he received a complaint of illicit drainage. He indicated that they were installing an inground pool causing drainage to be piped out in front of the property. He took pictures of the water and washout on Primo Dr. A \$250.00 citation was issued and they were told to stop all activities. He spoke to the workers on site and they called the bosses to explain the situation. Later that night, another officer issued a \$500.00 citation and Code Officer Kontomanolis issued a third citation for \$500.00 and a stop work order was posted on the property. The activity continued and a total of one citation at \$250.00 and four citations at \$500.00 were issued. Code Officer Kontomanolis explained the pictures. He noted that companies normally used water tanks to contain their discharged water. He stated that hay bales were eventually put in but they were not adequate to filter the water. He noted that initially a system was set up in front of the property that pumped water out of a pipe but the front yard was too small to hold the water and mud covered the street. Code Officer Kontomanolis indicated that numerous neighbors complained about the situation.

David Haynick from Aquedock stated that they were issued permit POL17-0053 by the Town. A dewatering plan was provided and followed. Because of the condition of the ground, the water would not percolate. They could not shut down the pump at that point. He stated that he met with Building Official Bogart and Code Officer Kontomanolis at the property. They proposed another measure with a weir. He was told there were no storm drains on Primo. He was given 1.5 hours to fix the problem. As he left the meeting, he discovered a storm drain one house down from the project. The weir did not work so he received permission to discharge into the storm drain. It helped somewhat. Code Officer Kontomanolis and Mayor Gore visited the site the next day. Mayor Gore found and cleaned out a second drain on Primo and the water drained right off. Mr. Haynick stated that he contacted water management and was told that the uncontaminated, pumped groundwater should be returned to the bay. He commented that he operated within the permit and did everything the Town requested of him. He stated that if he knew the storm drains existed, he would have used them to begin with.

Building Official Bogart indicated that water management would have probably told him that a filter should have been used before the water was pumped into the storm drain.

Judge Madden reviewed the timeline of the citations. He verified that the pump could not be turned off without damaging the property.

Discussion was held regarding drainage.

Judge Madden found that a citation was issued for a violation but he questioned the fine for Monday. Mr. Bogart replied that a sufficient filter was not installed.

Judge Madden questioned whether all five violations were appropriate. Town Attorney Peterson replied that Judge Madden could pull the yellow citation.

Judge Madden found that a violation did occur, that each of the citations except 0604 in the amount of \$500.00. The following citations were confirmed: 0501, 0502, 0503 and 0504. Judge Madden will send an order to that effect.

Property Owner: GANIM PROPERTIES LLC
SUBJECT: LDC Section: 6-111 Adopting FBC 105.1 Work W/out permit - signs
LOCATION: 1240 Estero Blvd.
STRAP NO: 19-46-24-W4-0140A-0010
CODE OFFICER: Joe Kontomanolis
REFERENCE NO: CE17-0903

Building Official Robert Bogart reviewed the history from March 1, 2018. The permit was finalized on August 29, 2018, 20 days after the abatement date, totaling \$4,000.000. The administrative fee of \$275 had not been paid, bringing the total to \$4,275.00. The Town requested an order to lien. Jace Lavalle, business owner, noted that he did not appear at the March 1, 2018 hearing due to lack of notice from the landlord. He stated that the sign permit was filed in October of 2015 and approved and issued in November and December of 2015 but they did not have a final inspection. They thought the process was complete in 2015. After this current case came up, they hired a new contractor and reactivated the permit, which took about a month. Mr. Lavalle commented that Ganim Properties did not answer his correspondence. He became aware of the issue in March and he worked to abate the issue.

Mr. Madden noted that sign had been there since 2015 and no modifications were necessary to permit. Mr. Lavalle commented that he would have requested 60-90 days to abate the issue. He noted that he removed the other sign immediately. Mr. Lavalle stated that he looked online in 2015-2016 and it showed the permit was issued. He did not realize he had to hit another tab on the website to see that the permit was never finalized.

Judge Madden found that a violation did occur and a fine had accrued. He felt it was appropriate to impose a lien, but he was not comfortable with the final amount. He ordered a lien in the amount of \$2,275.00 to be paid within 60 days.

Property Owner: ROTH ALLAN
SUBJECT: LDC Section: 6-111 Adopting FBC 105.1 Work w/out Permit - Stairs
LOCATION: 165 Mango St
STRAP NO: 19-46-24-W3-0120E.0090
CODE OFFICER: Molly Jacobs
REFERENCE NO: CE17-0423

Building Official Robert Bogart reviewed the history of the case from October 4, 2017. As of July 20, 2018, permit BLD 170215 was finalized. He noted that 178 days had passed from the date of abatement and the administrative fees of \$175.00 had not been paid for a total of \$26,875.00. The Town requested an order to lien.

George Mora represented Mr. Roth. He noted that he filed the original permit and it was reviewed and inspected two or three times. The permit was issued October 30, 2017. The inspector stated that the permit was not posted on site. Mr. Mora indicated it was posted on site. He commented that the stairs had been installed years earlier and deck boards had been replaced. Mr. Mora stated that he called several times for final inspections. On April 25, 2018, he requested that the Town call him and give him an hour to get to the property. He never received a call. The next day the Town said they had to cancel. Recently he was told that it was over and everything passed. Then the owner received a posting on the fence stating that the violation was open. Mr. Mora went online and it said the permit was finalized. He provided a copy of the certificate. He questioned whether another violation regarding the driveway was being confused with the stair violation. Judge Madden noted that the handrails and treads were different on the stairs. Mr. Mora stated that he got involved after the violations occurred. All Mr. Mora did was paint and he requested that the inspector inform him of what needed to be done. Judge Madden explained the lien process. He found that it was appropriate to file the lien as requested. He sent an order to that effect.

Property Owner: COOK STEPHEN A TR FOR GST DESC
SUBJECT: LDC Section: 6-111 Adopting FBC 105.1 Work W/out permit- Fence
LOCATION: 5251 Estero Blvd.
STRAP NO: 33-46-24-W1-00203-0160
CODE OFFICER: Joe Kontomanolis
REFERENCE NO: CE18-0226

Code Enforcement Officer Joe Kontomanolis inspected the property on April 12, 2018 and June 4, 2018 and he found the following condition: work without a permit - fence. The action necessary to correct the violation was to obtain a permit and pass inspections.

The notice of violation was provided to the property owner on April 30, 2018 and it was claimed. The notice of hearing was sent to the property owner on June 14, 2018 and it was claimed. Code Officer Kontomanolis took pictures that accurately reflected the condition of the property. He indicated that the permit was issued on May 3, 2018 and was currently under review. Building Official Bogart stated that on August 21, 2018 they failed the final fence because it was facing the wrong way. The unit was occupied and he had contact with the owner.

If the hearing found a violation, the Town requested a finding of fact, obtain a permit and pass inspections by October 17, 2018; otherwise, a fine per day pursuant to the code with administrative costs of \$275.00 and a recall date of October 25, 2018.

Judge Madden questioned whether the owner applied for the administrative waiver since the fence was up since April. (I could not hear the reply.) Code Officer Kontomanolis noted that they filed for the permit as owner/builder. Judge Madden verified that the permit took about two months.

Judge Madden found that a violation did exist and made a finding that the permit application was pending, \$275.00 in administrative costs was imposed with a fine of \$25.00 per day if the final inspection was not obtained by October 17, 2018 with a recall date of October 25, 2018.

Property Owner: MCCARTY HAROLD + DORIS D
SUBJECT: LDC Section: 6-111 Adopting FBC 105.1 Work W/out Permit- Fence
LOCATION: 5247 Estero Blvd.
STRAP NO: 33-46-24-W1-00203-0150
CODE OFFICER: Joe Kontomanolis
REFERENCE NO: CE18-0227

Code Enforcement Officer Joe Kontomanolis inspected the property on April 12, 2018 and June 4, 2018 and he found the following condition: work without a permit - fence. The action necessary to correct the violation was to obtain a permit and pass inspections.

The notice of violation was provided to the property owner on April 30, 2018 and it was claimed. The notice of hearing was sent to the property owner on June 11, 2018 and it was claimed. Code Officer Kontomanolis took pictures that accurately reflected the condition of the property. He stated that the permit was currently under review.

If the hearing found a violation, the Town requested a finding of fact, obtain a permit and pass inspections by October 17, 2018; otherwise, a fine per day pursuant to the code with administrative costs of \$275.00 with a recall date of October 25, 2018.

Judge Madden found that a violation did exist and he gave the respondent until October 17, 2018 to abate the matter; otherwise, a fine of \$25.00 per day will be imposed and administrative costs of \$275.00 were assessed with a recall date of October 25, 2018.

The following cases were abated: CE18-0225, CE18-0260, CE18-0383, CE18-0396, CE18-0427, CE18-0431, CE18-0256, CE18-0266, CE18-0302, CE18-0304, CE18-0332 and CE17-0720. The following cases were continued one month: CE18-0156, CE18-0157 and CE18-0663. The following cases were continued two months: CE18-0014, CE18-0170, CE18-0234, CE18-0235 and CE17-0787.

Signature: _____

- End of document