

**deMINUTES**  
**FORT MYERS BEACH**  
**Special Magistrate Hearings**  
DiamondHead Beach Resort  
2000 Estero Boulevard  
Fort Myers Beach, FL 33931

Thursday, October 19, 2023

**Hearing Examiner - Special Magistrate: Myrnabelle Roche**

Magistrate Roche swore in those providing testimony.  
Attorney Nancy Stuparich represented the Town.  
Staff: Code Compliance Manager Vincent Berta

**BEACH PATROL CASES TO BE HEARD:**

Respondent: Laura M. Lebreton  
SUBJECT: Overtime Meter  
CODE SECTION: Sec. 28-51 (A)  
LOCATION: Gulf Dr.  
BASE OFFICER: J Kicha  
REFERENCE NO: 70518475

Officer Kicha noticed a white jeep in space 83 that was not paid so he issued a citation and placed it on the windshield. He explained how the app worked.

Ms. Lebreton stated she paid for two hours and then was rejected when she went to pay for the third hour, but she did not know that because she turned her phone off. She described climbing through the sand spurs at the parking spot and noticed the ticket. She called the town on Monday and was told they could do nothing. Attorney Stuparich reviewed the information on Ms. Lebreton's phone, but she could not prove that she paid for the third hour.

The town requested a fine of \$77.00 and administrative costs of \$175.00.

Magistrate Roche found a violation did exist and imposed a fine of \$77.00 and administrative fees of \$175.00.

Respondent: John H. Heitmann Jr.  
SUBJECT: Overtime Meter  
CODE SECTION: Sec. 28-51 (A)  
LOCATION: MP Bridge Lot 1  
BASE OFFICER: S Gonzalez  
REFERENCE NO: 71201922

While patrolling, Officer Gonzalez noticed a white Honda in spot 194 that was not paid for. He refreshed the app, wrote the citation, and placed it on the windshield.

Mr. Heitmann, Jr. explained that he did not have a smartphone that day, so he could not use the parking lot. He parked next to the floating dock and went to a restaurant. His wife met him there and handed him a citation from his car. He noted there were no signs that stated it was a Town parking lot, but there were QR codes behind the floating docks. He called the Town to pay the \$10.00 fine, but they would not take his money over the phone and said he had to appear before the Magistrate. He stated that he was being discriminated against because he did not have a smartphone with him. He described the process of downloading the app and noted it was time-consuming.

The Town requested a fine of \$77.00 and administrative fees of \$175.00.

Magistrate Roche found that a violation did exist and imposed a fine of \$77.00 and \$175.00 in administrative fees.

**NEW CASES TO BE HEARD:**

Property Owner: Infinite Pool Finishes LLC  
SUBJECT: LDC Section: 6-2 Amendments (Pool) Sec 303.3 Disposal of swimming pool water. Sec. 10-603 Prohibitions (Stormwater Discharge)  
LOCATION: 457 Estero Blvd. Fort Myers Beach 33931  
STRAP NO:  
CODE OFFICER: Patrick Morris  
REFERENCE NO: 20232160

Officer Morris testified that on July 24, 2023, he was notified of a pool being discharged into the bay. He spoke to the homeowner and they complied by discharging the water in their yard. Officer Morris received another call on July 27, 2023, that the homeowner was discharging the water into the bay again. The homeowner was not at home, so he called the pool company and they stopped the discharge. On August 3, 2023, the water was being discharged into the bay again and no one was at the property. The certified letter of violation was claimed on August 29, 2023. He stated that he took the pictures in the file. The Town requested a fine of \$500.00 to the property owner and a \$5,000.00 fine to the pool company. The property owner and a representative for the pool company were in attendance.

Attorney Stupavich noted that Officer Morris provided a packet of background materials to be entered into the record. Environmental Project Manager Chadd Chustz was available to answer questions. Officer Morris stated the citations were sent via certified mail and were claimed by the property owner and pool company. He described the photos in the packet and said they accurately reflected the situation.

Project Manager Chustz described his duties and responsibilities as related to the case. He stated that he was on the water on July 15, 2023, and noticed water streaming into the canal. He told the pool worker on the property that they could not discharge water into the canal. On July 24, 2023,

he observed water streaming into the canal again. He asked Officer Morris to notice the contractor and the property owner. On August 3, 2023, the Harbormaster saw water going over the canal wall again and noticed algae bleaching. The contractor and owner were cited for irreparable and irreversible damage.

Victor represented Infinite Pool Finishes LLC, stated there was no water in the pool because of Ian, but there was sand and tree debris. The pool company dug a hole in the middle to prevent the

pool from popping up. After the rains, water accumulated inside the pool, but no chemicals were in the water. He referred to a photo of their truck with no chemicals in the back and no chemicals were discharged into the canal. He requested that the fines be removed and reduced to an administrative fine since no chemicals were released into the canal.

The Town described a white area where the water was streaming and the assumption that a bleaching agent was coming from the pool. He referred to a photo taken by the Harbormaster and all the photographs were entered into the record.

After the Town informed Magistrate Roche that the owner was a separate case, she requested to hear it before ruling.

Property Owner: Schlender M. Thomas  
SUBJECT: LDC Section: 6-2 Amendments (Pool) Sec 303.3 Disposal of swimming pool water. Sec. 10-603 Prohibitions (Stormwater Discharge)  
LOCATION: 457 Estero Blvd. Fort Myers Beach 33931  
STRAP NO: 244623w10070d021a  
CODE OFFICER: Patrick Morris  
REFERENCE NO: 20232138

Officer Morris duplicated his testimony from the previous case with Infinite Pools LLC. The Town requested a fine of \$500.00 and \$250.00 in administrative fees. The homeowner was in attendance. Mr. Schlender explained that he hired the pool company after Ian and sand, tree limbs and furniture had to be removed before he could repair his pool. The pool had a foot or two of water left in it and was pumped out six months after the storm. After being informed that he could not discharge in the canal, he moved the hose to the neighbor's swale. He stated there were no chemicals in the water when it was drained because it had rained several times over the year.

Attorney Stuparich requested a continuance of the case and the respondents agreed. Magistrate Roche stated the cases should be combined going forward. She granted a continuance.

Case 20231727 was not addressed.

Signature: 

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