

STATE OF FLORIDA

DIVISION OF ADMINISTRATIVE HEARINGS

**TOWN OF FORT MYERS BEACH,  
A Florida Municipal Corporation,**

**DOAH Case No. 24-004407  
FMB Case No. 20240915**

Petitioner,

vs.

**KLC Surf, LLC / La Ola**

Respondent,

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**NOTICE OF HEARING**

The undersigned hereby gives notice that the Honorable Judge John G. Van Laningham will conduct a Certification of Lien Hearing in the above referenced case(s) at the Fort Myers Beach Town Council Chambers located at 2731 Oak Street, Fort Myers Beach, FL 33931 at **9:00 a.m. Friday, May 16<sup>th</sup>, 2025.**

Signed this 24<sup>th</sup> day of April 2025.

  
Thomas Yozzo,  
Emergency Services Director

BEFORE THE TOWN OF FORT MYERS BEACH  
CODE ENFORCEMENT SPECIAL MAGISTRATE

RE: 1035 ESTERO BLVD  
PARCEL STRAP NO: 24-46-23-W3-00208.0060

KLC SURF LLC  
4625 W EUCLID AVE  
TAMPA, FL 33629

DOAH Case No.24-004407  
CE Case No.20240915

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**AFFIDAVIT OF NON-COMPLIANCE & LIEN CERTIFICATION**

STATE OF FLORIDA  
COUNTY OF LEE

BEFORE ME, the undersigned authority, personally appeared Thomas Yozzo, Emergency Services Director, who is the Code Enforcement Director for the Town of Fort Myers Beach, who being by me first duly sworn, on oath, deposes and says the following:

1. My name is Thomas Yozzo. I am over 18 years of age and am competent to testify to the matters set forth herein. I make this Affidavit based upon my personal knowledge of the facts of these cases, the entire investigative files and all documents recorded with the Lee County Clerk of Court and contained in the files of the Town's official records.

2. I have been an employee of the Town of Fort Myers Beach, Florida ("Town") for over 2 years and currently serve as a Code Enforcement Director of the Towns Code Enforcement Department. I am aware of the facts of the cases contained herein.

3. KLC SURF LLC ("KLC") is the recorded owner of real property located in Lee County, Florida ("Property") by virtue of that certain Special Warranty Deed ("Deed") recorded on 7/2/2018 as Official Record Instrument No2018000210490 of the Public Records of Lee County, Florida. The Property is located at 1035 Estero Blvd, Fort Myers Beach, Florida 33931,

and is legally described as follows:

Lots 6 and 7, Block 8, Business Center, according to the plat thereof, as recorded in Plat Book 9, page 9, of the Public Records of Lee County, Florida. LESS the Westerly 6 feet of Lot 6 and LESS that portion of Lot 7 identified as follows: Commence at the Southwest corner of said Lot 7, Block 8, Business Center subdivision in Section 24, Township 46 South, Range 23 East, according to the plat recorded in Plat Book 9, page 9, of the Public Records of Lee County, Florida.

A true and correct copy of the Warranty Deed is attached hereto in **Hearing Exhibit “A1”**.

4. On or about September 24, 2024 the Town issued a notice of violation (“Notice of Violation”) to KLC for violations of Section **6-494 (ASCE 24-14)** of the Town of Fort Myers Beach Code of Ordinances (the “Town Code”), which provides Section. 6-501, Section 6-443 & Section 6-525. A true and correct copy of the Notice of Violation is attached hereto as **Hearing Exhibit “B1”**.

5. The Notice of Violation specified that KLC was required to correct the violations by a certain date (October 23, 2024) but KLC failed or refused to do so.

6. As a result of KLC’s failure or refusal to correct the violations, the Town scheduled a code compliance hearing for January 7, 2025 and served KLC with a notice of hearing for same.

7. On January 7, 2025 the Town’s Special Magistrate (“Special Magistrate”) held a duly noticed public hearing related to the violations. KLC appeared at the hearing and had the opportunity to present testimony, evidence, and arguments in its defense.

8. As a result of the January 07, 2025 hearing, the Special Magistrate entered a code enforcement order (“Code Enforcement Order”) on **February 4, 2025** finding that proper notice of the hearing had been provided to the property owners/violators and that the Property was in violation of Section **6-494 (ASCE 24-14)** of the Town Code which provides.

9. The Code Enforcement Order ordered that the Respondent must remove or bring the non-compliant structures into compliance with Town and FEMA regulations by **March 1, 2025**. The Special Magistrate will consider compliance steps taken in deciding whether to impose or defer fines.

A fine of \$250.00 per day will be imposed for each day the violation continues beyond the Compliance Date, unless deferred at the status review hearing based upon the circumstances then existing.

If compliance is not achieved by the deadline and no satisfactory progress is reported at the hearing, the town may abate the violation by removing the non-compliant structures. Associated costs will be recoverable as a lien on the Subject Property. A true and correct copy of the Code Enforcement Order is attached hereto as **Hearing Exhibit “C1”**.

10. Despite the Special Magistrate’s Order, KLC continued to fail or refuse to bring the Property into compliance.

11. As of March 1, 2025, daily fines began to accrue in the amount of \$250.00 per day as specified in the Code Enforcement Order.

12. The Non-Compliant Structures have not been removed or brought into compliance as ordered. Please see **Hearing Exhibit “D1”** for true and accurate photo’s showing same.

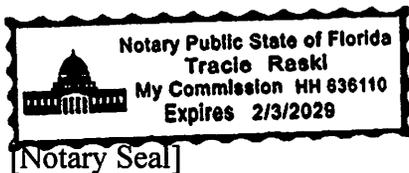
13. Due to KLC's continued failure to bring the Property into compliance since March 1, 2025 to April 22, 2025, the Subject Property has been in non compliance for 53 days.

14. As of April 22, 2025 a fine in the amount of \$13,250.0 is due and owing to the Town.

**SWORN AND ATTESTED BY:**

  
Thomas Yozzo, Emergency Services Director  
Town of Fort Myers Beach

The foregoing instrument was sworn to, subscribed and acknowledged before me by means of either  personal presence or  online notarization this 22 day of April, 2025, by Thomas Yozzo. He  is personally known to me or  has produced FL DL as identification.



  
Notary Public, State of Florida  
Print Name: Tracie Raski  
My Commission Expires: 2/3/2029

HEARING

EXHIBIT

A1

- Warranty Deed

THIS INSTRUMENT PREPARED WITHOUT  
REVIEW OR OPINION OF TITLE BY:

Adam A. Bleggi, Esq.  
ABN LAW, PLLC  
2390 Tamiami Trail N., Suite 214  
Naples, FL 34103

Property I.D. Number: 24-46-23-W3-00208.0060

**CORRECTIVE WARRANTY DEED**

**THIS CORRECTIVE WARRANTY DEED** is made as of the 2nd day of July, 2018, between CHRISTOPHER A. PRIMEAU and LISA A. LAGEMANN, as Co-Trustees of the BEVERLY A. PRIMEAU TRUST DATED OCTOBER 3, 1995, whose mailing address is 950 San Carlos Drive, Fort Myers Beach, FL 33931 (collectively, "Grantor"), and KLC SURF, LLC, a Florida limited liability company, whose mailing address is 8201 Moccasin Trail Drive, Riverview, FL 33578 ("Grantee").

**WITNESSETH**, that Grantor, for and in consideration of the sum of Ten and 00/100 Dollars (\$10.00), and other good and valuable consideration to Grantor in hand paid by Grantee, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said Grantee and Grantee's heirs, successors and assigns forever, the following described land, situate, lying and being in the County of Lee, State of Florida, to wit:

Lots 6 and 7, Block 8, Business Center, according to the plat thereof, as recorded in Plat Book 9, page 9, of the Public Records of Lee County, Florida. LESS the Westerly 6 feet of Lot 6 and LESS that portion of Lot 7 identified as follows: Commence at the Southwest corner of said Lot 7, Block 8, Business Center subdivision in Section 24, Township 46 South, Range 23 East, according to the plat recorded in Plat Book 9, page 9, of the Public Records of Lee County, Florida; thence run South 70° 37' 09" East 84.78 feet to a Point of Beginning; thence continue South 70° 37' 09" East 20.00 feet; thence North 22° 23' 59" West 16.00 feet; thence South 57° 26' 01" West 15.15 feet to the Point of Beginning. LESS and Except that portion of Lot 7, Block 8, Business Center, according to the plat thereof, as recorded in Plat Book 9, page 9, of the Public Records of Lee County, Florida, described as follows: Commencing at the Southwest corner of said Lot 7; thence run South 70° 37' 09" East, a distance of 60.57 feet along the Northerly right of way line of Estero Boulevard to the Point of Beginning; thence run North 18° 43' 54" East a distance

**NOTE: PURSUANT TO F.A.C. § 12B-4.014(3), MINIMUM DOCUMENTARY STAMP TAXES ARE BEING PAID HEREWITH AS THIS CORRECTIVE WARRANTY DEED IS BEING RECORDED TO CORRECT THE LEGAL DESCRIPTION IN THE WARRANTY DEED DATED JULY 2, 2018, AND RECORDED ON JULY 10, 2018, IN O.R.I. NO. 2018000165667, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, TO SHOW THE LESSED OUT PORTION OF THE PROPERTY CONVEYED TO THE TOWN OF FORT MYERS BEACH IN THE WARRANTY DEED DATED NOVEMBER 5, 2001 AND RECORDED ON DECEMBER 13, 2001, IN O.R. BOOK 3539, PAGE 3351, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.**

of 9.35 feet; thence run South 69° 18' 03" East a distance of 14.04 feet; thence run North 19° 02' 04" East, a distance of 25.02 feet to a point on the Westerly right of way line of center street; thence run South 22° 24' 27" East a distance of 29.65 feet along said Westerly line; thence run South 57° 25' 57" West, a distance of 15.15 feet; thence run North 70° 37' 09" West, a distance of 24.21 feet along said Northerly right of way line of Estero Boulevard to the Point of Beginning.

Christopher A. Primeau warrants that at the time of this conveyance, the subject property is not his homestead property, his spouse, minor children, or that of anyone for whose support he is responsible, if any, within the meaning set forth in the constitution of the state of Florida, nor is it contiguous to or a part of homestead property.

Lisa A. Lagemann warrants that at the time of this conveyance, the subject property is not her homestead property, her spouse, minor children, or that of anyone for whose support she is responsible, if any, within the meaning set forth in the constitution of the state of Florida, nor is it contiguous to or a part of homestead property.

**TOGETHER** with all tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

**TO HAVE AND TO HOLD** the same in fee simple forever.

**AND** Grantor hereby covenants with said Grantee that Grantor is lawfully seized of said land in fee simple; that Grantor has good right and lawful authority to sell and convey said land; that Grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes for the current year and subsequent years; zoning, building code and other use restrictions imposed by governmental authority; outstanding oil, gas and mineral interests of record, if any; and restrictions, covenants, conditions, reservations, limitations and easements of record.

*[Signatures Intentionally Appear on Following Page]*

IN WITNESS WHEREOF, Grantor has hereunto set his/her hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:

[Signature]  
Witness #1

[Signature]  
CHRISTOPHER A. PRIMEAU, as Co-Trustee of the BEVERLY A. PRIMEAU TRUST DATED OCTOBER 3, 1995

Andre J. Parkone  
(Printed Name of Witness)

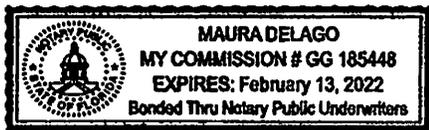
Zui Kei  
Witness #2

Zoë Kaiser  
(Printed Name of Witness)

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 20th day of August, 2018, by CHRISTOPHER A. PRIMEAU, as Co-Trustee of the BEVERLY A. PRIMEAU TRUST DATED OCTOBER 3, 1995, who is personally known to me or who has produced \_\_\_\_\_ (type of identification) as identification.

(SEAL)



[Signature]  
Notary Public  
Maura Delago  
Printed Name of Notary Public  
2/13/2022  
Commission Expiration Date

Signed, sealed and delivered in our presence:

[Signature]  
Witness #1

Lisa A. Lagemann  
LISA A. LAGEMANN, as Co-Trustee of the  
BEVERLY A. PRIMEAU TRUST DATED  
OCTOBER 3, 1995

Andre J. Patone  
(Printed Name of Witness)

Zui Kei  
Witness #2

Zoë Kaiser  
(Printed Name of Witness)

**STATE OF FLORIDA  
COUNTY OF LEE**

The foregoing instrument was acknowledged before me this 20th day of August, 2018, by LISA A. LAGEMANN, as Co-Trustee of the BEVERLY A. PRIMEAU TRUST DATED OCTOBER 3, 1995, who is personally known to me or who has produced \_\_\_\_\_ (type of identification) as identification.

[Signature]

Notary Public

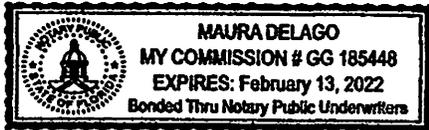
Maura Delago

Printed Name of Notary Public

2/13/2022

Commission Expiration Date

(SEAL)





Previous Parcel Number Next Parcel  
Number Tangible Accounts Tax Estimator  
Tax Bills Print

**Property Data**

STRAP: 24-46-23-W3-00208.0060 Folio ID: 10127306

[Hurricanes Helene/Milton Tax Roll Value Letter](#) [Hurricane Ian Tax Roll Value Letter](#)

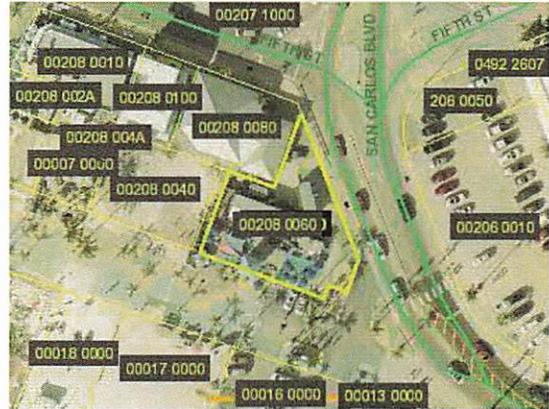
Generated on 4/23/2025 7:43 AM

Owner Of Record - Sole Owner  
[\[Change Mailing Address\]](#)



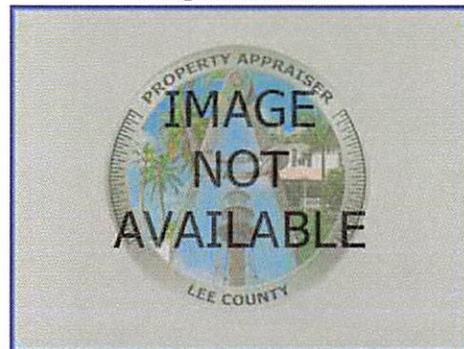
KLC SURF LLC  
c/o CHRISTOPHER  
PRIMEAU  
2327 NURSERY RD  
CLEARWATER FL  
33764

[\[ Tax Map Viewer \]](#) [\[ View Comparables \]](#)



[\[ Pictometry Aerial Viewer \]](#)

**Image of Structure**



**Site Address**

Site Address maintained by E911 Program Addressing

1035 ESTERO BLVD  
FORT MYERS  
BEACH FL 33931

**Property Description**

Do not use for legal documents!



BUSINESS CENTER  
BLK.8 PB 9 PG 9 LT  
7 + LOT 6 LESS WLY

6 FT LESS ROW

OR3539 PG3351

[View Recorded Plat at LeeClerk.org](#) - Use this link to do an Official Records search on the Lee County Clerk of Courts website, using 9 and 9 for the book and page numbers.

### **Attributes and Location Details**

Total Bedrooms / 0

Bathrooms

1st Year Building N/A

on Tax Roll •

Historic No

Designation

<b>Township</b>	<b>Range</b>	<b>Section</b>	<b>Block</b>	<b>Lot</b>
46	23E	24	002080060	

**Municipality** Latitude Longitude

Town of Fort Myers 26.45315-81.95547

Beach

# [View Parcel on Google Maps](#)

## Property Values / Exemptions / TRIM Notices

Generated on 4/23/2025 7:43 AM

## Property Details (Current as of 4/22/2025)

Generated on 4/23/2025 7:43 AM

Use Code	Use Code Description	Land Tracts	Number of Units	Unit of Measure
1000	Commercial, Vacant		7574.00	Square Feet

## Property Details (2024 Tax Roll)

Generated on 4/23/2025 7:43 AM

Use Code	Use Code Description	Land Tracts	Number of Units	Unit of Measure
1000	Commercial, Vacant		7574.00	Square Feet

## Taxing Authorities

Generated on 4/23/2025 7:43 AM

## Sales / Transactions

Generated on 4/23/2025 7:43 AM

## Building / Construction Permit Data

Generated on 4/23/2025 7:43 AM

**Parcel Numbering History** ⓘ

Generated on 4/23/2025 7:43 AM

**Solid Waste (Garbage) Roll Data**

Generated on 4/23/2025 7:43 AM

**Flood and Storm Information**

Generated on 4/23/2025 7:43 AM

Flood Insurance [Find my flood zone](#)

Community	Panel	Version	Date	Evacuation Zone
071C	0554	G	11/17/2022	A

Generated on 4/23/2025 7:43 AM

[Previous Parcel Number](#) [Next Parcel Number](#)

[New Query](#) [Search Results](#) [Home](#)

**HEARING**

**EXHIBIT**

**B1**

- Notice of Violation



## Town of Fort Myers Beach

### CODE COMPLIANCE

2731 Oak Street Fort Myers Beach, FL 33931  
Phone: (239) 765-0202 Fax: (239) 765-0909

09/24/2024

Case Number:	20240915
Certified Mail:	9589071052700636647287
Regular Mail	

KLC SURF LLC  
4625 W EUCLID AVE  
TAMPA, FL 33629

SITE ADDRESS: 1035 ESTERO BLVD  
PARCEL STRAP NO: 244623W3002080060

### NOTICE OF VIOLATION

YOU ARE HEREBY NOTIFIED that an inspection of the above-referenced property on 09/19/2024 by Town of Fort Myers Beach Code Enforcement Officer **Thomas Yozzo** indicates that the following items are in violation:

For the keeping and/or maintaining of non-compliant structure(s) and/or shipping containers on property, which are not built to current flood design codes in the Special Hazard Areas as defined in Section 6-494 of the FMB Code of Ordinances. (VE Zone for this property requires 14 feet)

These items are a violation of the following Town Codes:

ASCE 24-14 A copy is available at [https://www.fema.gov/sites/default/files/2020-07/asce24-14\\_highlights\\_jan2015.pdf](https://www.fema.gov/sites/default/files/2020-07/asce24-14_highlights_jan2015.pdf)

*Sec. 6-501. - Design and construction of buildings, structures and facilities exempt from the Florida Building Code. Pursuant to section 6-443, buildings, structures and facilities that are exempt from the Florida Building Code, including substantial improvement or repair of substantial damage of such buildings, structures and facilities, must be designed and constructed in accordance with the flood load and flood-resistant construction requirements of ASCE 24. Structures exempt from the Florida Building Code that are not walled and roofed buildings must comply with the requirements of division 10, subdivision VII.*

*Sec. 6-525. - General requirements for other development. All development, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in this article or the Florida Building Code, must:*

*(1)Be located and constructed to minimize flood damage;(2)Be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood;(3)Be constructed of flood damage-resistant materials; and(4)Have mechanical, plumbing and electrical systems above the design flood elevation or meet the requirements of ASCE 24, except that minimum electric service required to address life safety and electric code requirements is permitted below the design flood elevation provided it conforms to the provisions of the electrical part of building code for wet locations.*

### COMPLIANCE:

The following action is needed to bring the violation(s) into compliance. 1) Remove Structure(s) and/or Shipping Containers from property. 2) Provide proof of compliance with the requirements of Chapter 6, Article IV Division Section 6-501 and 5-525 of the Land Development Code .

You are hereby directed to bring these violations into compliance within 30 days.

**ONCE THIS VIOLATION(S) IS (ARE) IN COMPLIANCE, IT IS YOUR OBLIGATION TO NOTIFY CODE ENFORCEMENT SO THAT THE PROPERTY CAN BE INSPECTED TO VERIFY THAT THE VIOLATION(S) HAS (HAVE) BEEN CORRECTED ON OR BEFORE THE ABOVE-SPECIFIED COMPLIANCE DATE.**

If you fail to correct the violation(s) by the date specified above, or if the violation(s) is (are) brought into compliance and reoccur(s), the case may be scheduled for hearing before the Town of Fort Myers Beach Special Magistrate. The Code Enforcement Division may, in their discretion, schedule the case for

a hearing and seek a finding of a violation by the Special Magistrate even if you have corrected the violation prior to the time set for the hearing.

You will be provided with a Notice of Hearing specifying the date, time and location of the hearing if, one is scheduled. Please be aware that under Florida Statutes, Chapter 162 and Town of Fort Myers Beach Land Development Code, Section 2-427(b), a fine of up to \$250.00 per day for the first violation or \$500.00 per day for a repeat violation may be imposed for each day the violation continues to exist past the date set for compliance by the Special Magistrate. If the Special Magistrate finds that a violation is irreparable or irreversible in nature, a fine of up to \$5,000.00 per violation may be imposed. The Special Magistrate may also assess the costs of prosecution of the case against you and you may be required to pay those fees, even if the violation has been corrected prior to the hearing.

Please contact the Town of Fort Myers Beach Code Enforcement Division at 239-765-0202 or [code@fmbgov.com](mailto:code@fmbgov.com) if you have any questions concerning this Notice of Violation.

Respectfully,

**Thomas Yozzo**  
Code Enforcement Officer  
Town of Fort Myers Beach

HEARING

EXHIBIT

C1

- Code Enforcement Order

CODE COMPLIANCE SPECIAL MAGISTRATE  
THE TOWN OF FORT MYERS BEACH, FLORIDA

TOWN OF FORT MYERS BEACH,  
FLORIDA,

Petitioner,

vs.

CE CASE NO. 2024-0915  
DOAH CASE NO. 24-4407

KLC SURF, LLC,

Respondent.

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**CODE ENFORCEMENT VIOLATION FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND ORDER**

THIS CAUSE came before the undersigned Administrative Law Judge, John G. Van Laningham, serving as the Special Magistrate for the Town of Fort Myers Beach (“Special Magistrate”), on January 7, 2025, for a public hearing. The Town of Fort Myers Beach (“Town”) appeared through its counsel, Nancy Stuparich, Esquire. Amy Thibaut, Esquire, appeared as attorney for Respondent, KLC Surf, LLC. Chris Primaeu, Manager of KLC Surf, LLC, was present on behalf of the property owner, and Tom Houghton, Manager of TEH4, Inc., d/b/a La Ola Surfside Restaurant, was present on behalf of the lessee, which operates the restaurant on the subject property and utilizes the shipping containers in question. The purpose of the hearing was to determine whether Respondent violated Sections 6-501 and 6-525 of the Town’s Land Development Code (“LDC”), as alleged in the Notice of Violation, and to decide on the appropriate enforcement action, if necessary. After reviewing sworn testimony and supporting evidence, including photographs, FEMA correspondence, the Affidavit of Non-Compliance, Town resolutions, the permit-related documents, and arguments from both parties, the Special Magistrate makes the following findings and orders:

**A. FINDINGS OF FACT**

1. The property at 1035 Estero Boulevard (the “Subject Property”) is owned by KLC Surf, LLC, whose manager is Chris Primaeu. The lessee, TEH4, Inc., d/b/a La Ola Surfside Restaurant, managed by Tom Houghton, operates a restaurant at the location, which utilizes shipping containers for commercial operations. These containers function as part of the restaurant’s infrastructure, serving as a bar and kitchen area, and have given rise to the violations at issue.

2. On May 15, 2023, the Town Council adopted Ordinance 23-05 in response to the ongoing recovery efforts following Hurricane Ian. This ordinance authorized the temporary placement of

emergency structures to aid in rebuilding efforts while ensuring compliance with FEMA floodplain management requirements. Subsequently, on May 6, 2024, the Town Council adopted Ordinance 24-04, which amended Ordinance 23-05 to explicitly authorize commercial Emergency Temporary Placement Permits (“ETPPs”) and establish conditions for their revocation. These legislative actions were intended to balance disaster recovery with regulatory compliance in flood-prone areas, preserving public safety and the Town’s standing in the National Flood Insurance Program (“NFIP”).

3. On or around January 9, 2023, Respondent applied for a temporary use permit for the placement of shipping containers to serve as a bar and kitchen area. The application specified that the containers measured 20 feet in length, 16 feet in width, and 9 feet in height. The application stated that the containers were intended as a temporary measure to support uninterrupted restaurant operations during post-hurricane recovery efforts.

4. On August 4, 2023, the Town issued Temporary Use Permit No. 233201 for the shipping container bar at La Ola Surfside Restaurant, with an expiration date of September 23, 2025. The permit required compliance with mandatory hurricane evacuation orders, stating that failure to comply could result in revocation. Additionally, the permit required that any manufactured home, mobile home, trailer, RV, or similar structure must meet all Florida Statutes and Florida Building Code tie-down requirements.

5. On July 19, 2024, FEMA issued a formal notice to the Town outlining ongoing compliance deficiencies related to floodplain management and the Town’s participation in the NFIP. The letter warned that unless all violations were corrected by November 18, 2024, the Town would be placed on NFIP probation, effective April 1, 2025. This would result in significant increases in flood insurance premiums for property owners within the Town.

6. FEMA’s letter identified multiple deficiencies in the Town’s floodplain management enforcement, including failure to require floodplain development permits, inadequate record-keeping for permit applications, and failure to conduct substantial damage/substantial improvement determinations for Hurricane Ian-affected structures. FEMA’s compliance review specifically highlighted non-compliant shipping containers, including those at the Subject Property, as structures that must either be removed or brought into compliance to maintain the Town’s standing in the NFIP.

7. On September 18, 2024, Code Enforcement Officer Thomas Yozzo conducted an inspection of the Subject Property and determined that the shipping containers failed to meet required flood design codes. Specifically, he found that the structures did not comply with the elevation, anchoring, or flood-resistance requirements mandated by ASCE 24-14 and Sections 6-501 and 6-525 of the LDC. The inspection confirmed that the Subject Property is located within a VE Zone, requiring a Base Flood Elevation of 13 feet, which the shipping containers do not meet.

8. On September 24, 2024, the Town issued a Notice of Violation to Respondent, citing violations of Sections 6-501 and 6-525 of the LDC. The notice required Respondent to either

remove the non-compliant structures or bring them into compliance by October 24, 2024, within 30 days of issuance.

9. On November 1, 2024, the Town sent a formal letter to FEMA requesting an extension to allow compliant, easily removable shipping containers, including those used by La Ola Surfside Restaurant, to remain in place until June 1, 2025. The Town stated that many businesses, including La Ola, demonstrated that their containers could be quickly disassembled and removed before a storm event, citing Hurricane Milton as an example.

10. On November 12, 2024, FEMA responded, denying the proposed extension. FEMA's letter stated that under the Code of Federal Regulations governing the NFIP, the shipping containers qualify as structures and not recreational vehicles. FEMA further stated that all development in the Special Flood Hazard Area must comply with NFIP minimum standards and local floodplain management regulations, without exceptions for temporary structures.

11. A follow-up inspection of the Subject Property was conducted on November 18, 2024. This reinspection confirmed that the property remained non-compliant. An Affidavit of Non-Compliance, executed by Officer D. Batt, documented that the containers had not been removed or brought into compliance with flood regulations.

12. On November 21, 2024, FEMA issued a letter formally placing the Town on probation within the NFIP due to ongoing violations of federal floodplain management regulations. The letter reiterated the Town's failure to complete a full assessment of all floodplain development that occurred after Hurricane Ian, enforce code compliance on non-conforming structures within the Special Flood Hazard Area, and remove incorrectly permitted structures that violated FEMA's floodplain management regulations. FEMA emphasized that the Town's inability to correct these deficiencies within the established timeframe had resulted in probationary status and would lead to financial consequences for all insured property owners in the Town.

13. The letter confirmed that as a direct consequence of these unresolved violations, all flood insurance policies sold or renewed within the Town would incur an additional \$50 surcharge, beginning immediately. Furthermore, FEMA notified the Town that, as of April 1, 2025, it would be downgraded to a Class 10 in the Community Rating System ("CRS"), eliminating all NFIP premium discounts that had previously been available to Fort Myers Beach property owners. Additionally, the Town would be ineligible to apply for an improved CRS rating for at least two years, and only upon FEMA's verification that all outstanding compliance issues had been resolved and corrective actions had been fully implemented.

14. FEMA's November 21, 2024, letter identified non-compliant shipping containers as among the violations that required immediate resolution. FEMA emphasized that these structures had been improperly permitted and must either be removed or brought into compliance with applicable floodplain management regulations. The continued presence of these structures at the Subject Property directly contributed to the Town's NFIP probation status.

15. On December 16, 2024, the Town Council adopted Resolution No. 24-296, formally revoking and rescinding all Emergency Temporary Placement Permits (ETPPs) issued for non-

compliant structures within the Special Flood Hazard Area. This legislative action was taken in direct response to FEMA's November 21, 2024, letter. The resolution mandated that all permit holders be formally notified of revocation and that code enforcement actions be pursued for any non-compliant structures still present. Resolution No. 24-296 applied to the shipping containers at the Subject Property, which FEMA identified as non-compliant structures requiring removal or regulatory compliance.

16. In compliance with Resolution No. 24-296, the Town issued a formal notice of revocation to Respondent on December 19, 2024, advising that Temporary Use Permit No. 233201 for 1035 Estero Blvd had been revoked, effective December 16, 2024. The notice explained that the revocation was necessary to comply with federal floodplain management requirements and avoid prolonged NFIP probation and financial penalties for all Town property owners.

## **B. CONCLUSIONS OF LAW**

17. The Town has charged Respondent with violations of Sections 6-501 and 6-525 of the LDC. Respondent disputes these allegations, arguing that the LDC provisions cited by the Town do not apply to them because the containers on the Subject Property do not qualify as "structures" under FEMA regulations.

18. Section 6-501 provides, in pertinent part, as follows: "Pursuant to section 6-443, buildings, structures and facilities that are exempt from the Florida Building Code ... must be designed and constructed in accordance with the flood load and flood-resistant construction requirements of ASCE 24." Section 6-501 refers to Section 6-443 and must be read in conjunction with it. Section 6-443 states that pursuant to the requirements of federal regulation for participation in the NFIP, floodplain development permits or approvals will be required for certain buildings, structures, and facilities that are exempt from the Florida Building Code and are subject to the Town's floodplain regulations. Section 6-443 then lists the structures for which floodplain permits are required. These include railroads, nonresidential farm buildings, temporary buildings or sheds used for construction, mobile or modular structures used as temporary offices, and many others.

19. For Section 6-501 to apply, the containers must (1) be exempt from the Florida Building Code and (2) fall within one of the exempt categories listed in Section 6-443. The Town contends that the containers qualify as either "temporary buildings used exclusively for construction" or "mobile or modular structures used as temporary offices." However, this assertion lacks factual and legal support. The containers are used as part of a commercial restaurant operation rather than for any kind of office or construction-related purpose. Section 6-443's reference to "temporary buildings or sheds used exclusively for construction" applies only to short-term structures that serve an active construction project, while the reference to "mobile or modular structures used as temporary offices" concerns administrative or clerical office space. Because the containers here serve as a restaurant's bar and kitchen, they do not qualify for either exemption and are therefore not subject to Section 6-501.

20. Alternatively, for the foregoing conclusion suffices to deem Section 6-501 inapplicable, Respondent argues that the containers in question are not “structures” within the meaning of Section 6-501. The LDC does not specifically define the term “structure.” To fill the void, Respondent relies on FEMA’s definition of “structure” as set forth in 44 C.F.R. s. 59.1, but its reliance is misplaced because the LDC, which is the controlling law, does not default to the federal definition of “structure.” Instead, the LDC provides that where terms are not defined in the LDC, they have the meanings ascribed to them in the Florida Building Code, and if not found there, they assume their ordinarily accepted meanings. See LDC §§ 6-492 & 6-493. The Florida Building Code defines “structure” broadly as “[t]hat which is built or constructed.” See FBC § 202. Because the containers are things that were built or constructed, they qualify as structures for purposes of Section 6-501.

21. To fall under Section 6-501, the containers must not only be structures, which they are, but also exempt from the Florida Building Code. Section 102.2 of the FBC identifies structures that are exempt, including temporary buildings or sheds used exclusively for construction, and mobile or modular structures used as temporary offices, among other categories. The containers here are neither used in a construction project nor employed as administrative or office space. Instead, they function as a commercial bar and kitchen area. Because they do not meet any FBC exemption, they fall outside the regulatory scope of Section 6-501.

22. Respondent suggests that the containers might qualify as either recreational vehicles (“RVs”) or manufactured homes under applicable regulations. However, this classification is irrelevant to determining their status under Section 6-501. Even if the containers met the definition of an RV or manufactured home, they would not be exempt from the Florida Building Code but, instead, not covered by it, which is different from being exempt. Simply put, Section 6-501 applies exclusively to structures that are exempt from the Florida Building Code, and because the containers do not qualify for any listed exemptions, Section 6-501 does not pertain to them.

23. Because Section 6-501 applies only to structures that are exempt from the Florida Building Code, and because these containers are not exempt, it follows that Respondent is not guilty of violating Section 6-501. This resolves one of the alleged violations.

24. The remaining charge is brought under Section 6-525, which provides that all “development, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in that article or the Florida Building Code,” must be located and constructed to minimize flood damage, be anchored to prevent flotation, collapse, or lateral movement from hydrostatic loads, be constructed of flood damage-resistant materials, and have mechanical, plumbing, and electrical systems above the design flood elevation or meet the requirements of ASCE 24. Minimum electric service required to address life safety and code requirements is permitted below the design flood elevation if it conforms to the electrical part of the building code for wet locations.

25. Both the Town and Respondent agree that neither the LDC nor the FBC contains provisions prescribing flood-resistance requirements specifically for shipping containers placed in the manner they are placed at the Subject Property. Section 6-525 thus applies if the containers

constitute “development.” Section 6-494 defines “development” to include any man-made change to improved or unimproved real estate, including buildings or other structures, temporary or permanent storage of equipment or materials, and other activities. The containers at issue qualify as “development” within this broad definition.

26. Based on the evidence presented, it is concluded that the containers violate the requirements of Section 6-525, because they are not elevated to or above the Base Flood Elevation of 13 feet, are not anchored to prevent flotation or lateral movement, and are not constructed of flood damage-resistant materials.

27. Respondent argues that the Town’s previous issuance of Temporary Use Permit No. 233201 should estop it from enforcing floodplain regulations. At the outset, the undersigned notes that the Special Magistrate’s jurisdiction likely does not extend to full adjudication of equitable estoppel claims, which may require resolution in a court of general jurisdiction. Nevertheless, for the purposes of this enforcement proceeding, the Special Magistrate will evaluate the factual basis of Respondent’s estoppel defense to create a complete record.

28. Florida courts have consistently held that municipalities or counties generally cannot be estopped from enforcing land use requirements when a permit or approval is erroneously issued or maintained. *See Corona Props. of Fla., Inc. v. Monroe Cty.*, 485 So. 2d 1314, 1317 (Fla. 3d DCA 1986) (holding that a county was not estopped from revoking a building permit illegally issued). Equitable estoppel may apply only under exceptional circumstances, typically requiring that the permit or approval was lawfully issued in good faith, relied upon substantially by the permittee, and then arbitrarily rescinded. *See Sakolsky v. City of Coral Gables*, 151 So. 2d 433, 435 (Fla. 1963). Where the permit was never lawfully valid or the government’s conduct was simply a mistake of law or oversight, estoppel is ordinarily unavailable. *See Crowell v. Monroe Cty.*, 578 So. 2d 837 (Fla. 3d DCA 1991).

29. Under Florida law, permitting authorities may be estopped only where the owner can demonstrate clear reliance upon the government’s express assurance that the activity is lawful, coupled with extensive obligations or expenses undertaken that render it inequitable to deny the validity of the permit. *See Santa Rosa Dev. LLC v. Santa Rosa Cty.*, 2023 WL 3089818, \*8 (N.D. Fla. Mar. 20, 2023). In *Santa Rosa Development*, the court rejected estoppel where the county mistakenly allowed an RV park, contrary to a restrictive lease. The court found that because the approval violated the controlling legal requirements, the county retained authority to withdraw the improperly issued development order, even though the developer had invested money in reliance. Likewise, in *Corona Properties*, the county was permitted to revoke a permit that had been issued on the basis of a finding by a zoning official acting outside his lawful authority. Those holdings reflect a general principle that the government’s mistaken interpretation of the controlling law, without more, does not create a vested right.

30. In rare situations, a government’s prolonged acceptance of a non-compliant situation can equitably estop a later enforcement action. *See Fraga v. Dep’t of HRS*, 464 So. 2d 144, 147-48 (Fla. 3d DCA 1984). In *Fraga*, the court found that the state’s continued reimbursement of a physician, along with affirmative misleading conduct and callous non-responsiveness over a multi-year period, rose to a level of “exceptional circumstances” justifying estoppel. By contrast,

no evidence here shows the Town engaged in comparably egregious or misleading conduct. Rather, the Town acted to correct or revoke a non-compliant situation once FEMA clarified that these containers were disallowed, consistent with the controlling floodplain regulations. In the absence of a deliberate, lawful approval or an explicit assurance to Respondent that the structures were permanently allowed, the circumstances do not warrant estoppel.

31. The issuance of Temporary Use Permit No. 233201, which FEMA subsequently deemed to be an improper permit, did not create a vested right to maintain the containers indefinitely. The permit was granted with the understanding that compliance with all applicable regulations, including FEMA floodplain requirements, remained mandatory. Because the permit contravened controlling flood provisions, the Town was obligated to revoke it upon discovering the error. The Town's error in issuing or maintaining the permit does not negate its duty to ensure that all structures within the Special Flood Hazard Area meet the minimum standards mandated by NFIP-participating communities.

32. Once a municipality or county realizes that a permit is improperly issued in violation of public safety or floodplain requirements, the doctrine of equitable estoppel will not bar enforcement unless the property owner shows extraordinary and affirmative misrepresentations by the government, along with substantial good-faith reliance on a lawful approval. No such demonstration has been made here. Respondent's reliance on the original permit was not authorized by controlling regulations, as FEMA's letters, the local floodplain management code, and Town records all show the containers do not meet required elevation, anchoring, or construction standards. The Town did not engage in any "callous non-responsiveness" or multi-year misleading approvals of the type found in Fraga. Thus, the circumstances do not suffice to sustain an estoppel claim.

33. In sum, Respondent is not in violation of Section 6-501 but is in violation of Section 6-525. Equitable estoppel does not bar the Town's enforcement of floodplain management regulations, as the Town is legally obligated to comply with FEMA's enforcement directives to maintain its participation in the NFIP. The Town's corrective actions were taken in response to Resolution No. 24-296 and FEMA's July 19, 2024, and November 21, 2024, compliance letters, which mandated strict enforcement of floodplain regulations.

#### **C. ORDER**

Based on the foregoing, it is hereby ORDERED as follows:

**Compliance Deadline and Review Hearing:** Respondent shall, no later than March 1, 2025, either remove the non-compliant structures from the Subject Property or take all necessary actions to bring them into full compliance with Town floodplain regulations, ASCE 24-14 standards, and FEMA directives governing structures in the Special Flood Hazard Area. A status review hearing is scheduled for March 4, 2025, to assess compliance progress. The Special Magistrate may consider evidence of substantial compliance efforts in determining whether to impose or defer penalties.

**Daily Fine:** A fine of \$250 per day shall be imposed for each day the violation continues beyond the Compliance Date. However, the Special Magistrate reserves discretion to defer fines based on evidence of substantial compliance efforts presented at the status review hearing existing.

**Abatement Authorization:** If Respondent fails to achieve compliance by the deadline and does not demonstrate substantial progress at the status review hearing, the Town shall be authorized to initiate abatement procedures as expressly provided in Resolution No. 24-296. The Town's abatement efforts shall ensure compliance with FEMA's November 21, 2024, compliance letter, which mandated the removal of non-compliant structures to maintain NFIP eligibility. All abatement costs shall be assessed as a lien against the Subject Property, enforceable under applicable Florida law.

**Costs:** Pursuant to section 162.07(2), Florida Statutes, Respondent shall pay \$250 to cover the costs associated with this enforcement action.

This Order may be appealed by any aggrieved party to the Circuit Court of Lee County no later than 30 days from the date of this Order. Failure to timely file a written Notice of Appeal will waive the right of appeal.

DONE AND ORDERED this 4th day of February, 2025, at the Division of Administrative Hearings, Tallahassee, Florida.

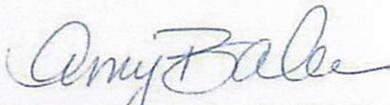
  
John G. Van Laningham  
Special Magistrate

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of this Order has been furnished to by U.S. mail on this 5 day of February, 2025, to:

KLC Surf LLC  
4625 W. Euclid Avenue  
Tampa, Florida 33629

Amy Sarazen Thibaut, Esquire  
Attorney at Law  
1833 Hendry Street  
Ft. Myers, Florida 33901

BY:   
Town Clerk and Clerk to Special Magistrate

Dated Feb. 5, 2025

HEARING

EXHIBIT

D1

- Photo's

Apr 22, 2025 9:45:45 AM  
Town of Fort Myers Beach



Apr 22, 2025 9:45:26 AM  
Town of Fort Myers Beach



Apr 22, 2025 9:45:45 AM  
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