

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

Thursday, May 20, 2021

Hearing Examiner - Special Magistrate: Mymabelle Roche

Magistrate Roche swore in those providing testimony.
Town Attorney Herin, Jr. represented the Town.
Staff: Code Compliance Manager Daphnie Saunders.

EVIDENTIARY HEARING

Property Owner: PERSAUD PROPERTIES FL INVESTMENT, LLC
SUBJECT: LDC Chapter 10, Art IV Illicit Discharge
LOCATION: 1028 Estero Blvd.
STRAP NO: 24-46-23-W3-00017.0000
CODE OFFICER: Eli Lee
REFERENCE NO: CE20-0315

Magistrate Roche stated that they were in session regarding the Town's invoice of \$13,097.00 to clean the drainage system.

David Scafidi, Vice President of Mitchell & Stark Construction, testified that he was familiar with the Town's stormwater infrastructure because his company installed the system and they were currently under contract with the Town. He noted they had a contract for emergency repairs with established rates. He described how he learned of the emergency spill and how they cleaned the system. He explained the invoice and stated that the hourly rate was contracted with the Town. Attorney Chionopoulos represented Mr. Persaud and verified that Mr. Scafidi was at the scene for about an hour on May 7. Pictures from the camera used to view the inside of the pipe were included in the record.

Chris Rowe, Town of Fort Myers Beach Stormwater and Utilities staff, reported that he was onsite when the event happened and observed grease in the system. He revealed that he took the pictures of the manhole and verified the work done by Mitchell & Stark. He stated that the storm system in Times Square was isolated and the grease was from the Sunset Grill. Chris Rowe noted he arrived at the scene at about 7:00 a.m. on the day of the spill. He indicated that he did not see who put the sand down around the area because he had to leave around 8:00 a.m. He returned at approximately 9:00 a.m. and noticed the sand. Chris Rowe testified that five storm basins had to be cleaned.

Kevin Fraser worked at the Sunset Grill. He arrived at work at 7:00 a.m. on May 7 and noticed that sand and cones were around a puddle of water, as seen in photo #6. Mr. Fraser stated that Officer Lee told him that he had one hour to clean up the spill. Mr. Fraser called two workers, put

more sand down and power washed the area. In the meantime, he showed a worker two 55-gallon drums where he discarded all the restaurant's oil. He stated that he was told that if they cleaned up the area there would be no fine and it took them less than an hour to clean it. He was at the restaurant all day and never saw anyone open the storm drain.

Magistrate Roche questioned how the grease got into the drums. Mr. Fraser explained that the oil was pumped into the containers by flipping a switch and was installed by a company. He stated that the grease trap was for grease from plates and the dishwasher.

Joe Orlandini, real estate development, stated that he received a phone call the evening of May 6 and decided to address the situation in the morning. He arrived on May 7 at about 7:00 a.m. He saw employees of Sunset Grill cleaning up the sand as in picture #2 on the bottom. He saw them finish the cleanup except for a little sand. Mr. Orlandini testified that he worked on grease traps and explained how they worked. Attorney Chionopoulos stated that he intended to show that the grease trap leak was not responsible for the entire cleanup cost. Mr. Orlandini did observe a substance that leaked out of the grease trap per picture #4 in the bottom row. Discussion was held regarding substances that might end up in the drainage system. Mr. Orlandini could not say whether grease did or did not come from the Sunset Grill. He noted that he observed the Mitchell & Stark pump truck back up to the catch basin after the spill was cleaned. The invoice stated that 8,200 gallons of water were pumped out.

Town Attorney Herin, Jr. confirmed that Mr. Orlandini was not a stormwater engineer. Mr. Orlandini stated that he was not aware of the cost to pump out systems or the price to put bladders in the system. He did not see Mitchell & Stark go into the drains. He noted the Sunset Grill system was pressurized and he did not see any evidence that the closed system leaked. He did see evidence that the grease trap leaked.

Mr. Scafidi stated that he was not sure whether bladders were used, but the Town was not invoiced for bladders. He guessed that the pipes in question were between 18 and 24 inches in diameter. Chris Rowe stated that the pipes in that area were 24 to 32 inches. He explained how the bladders worked and indicated one was installed across the street from the LeeTran stop exit. He drew a diagram of how the drainage system worked in that area.

Magistrate Roche questioned how many inches of water was pumped out from the 20 to 30 feet of pipe. Attorney Chionopoulos calculated how many gallons were pumped out. Mr Rowe explained why water was pumped in to clean the pipes.

Mr. Orlandini estimated that no more than 100 gallons could have been pumped out of the system. He stated that the material he saw come out of the pipe was a high percentage of water.

Chris Rowe observed a predominance of grease and he felt the invoice was reasonable.

Town Attorney Herin, Jr. stated that the invoice was reasonable and there was no evidence to the contrary. He requested that Magistrate Roche enter an order confirming the amount owed by the property owner.

Attorney Chionopoulos did not think the Town met the burden of proof that the respondent was responsible for the entire invoice. He requested that the Sunset Grill pay a portion of the bill that was equal to their minor spill of non-toxic contaminants. He suggested that the cleaning was part of their regular quarterly maintenance schedule.

Magistrate Roche found that a substantial amount of grease was from the Sunset Grill location per the pictures provided and evidence provided by the Town. She granted the Town's request that Sunset Grill pays \$13,097 for the cleanup.

BEACH PATROL CASES

W

Violator: EGUIA, ALEXIS
SUBJECT: Overtime Meter
CODE SECTION: Sec.28-51 (A)
LOCATION: Old San Carlos Blvd. Meter 18
BASE OFFICER: Nello Cernoia
REFERENCE NO: 70960256

Officer Todd Sears indicated that Officer Cernoia was unable to attend. On Sunday, April 11 at 1:25 p.m. Officer Cernoia observed an overtime meter and issued a citation. Photographs and notice of the hearing were provided. The respondent requested a hearing. The Town requested a fine of \$35.00 and \$175.00 in administrative fees.

Magistrate Roche noted that the respondent was not in attendance and found that a violation did exist. She ordered the respondent to pay the \$35.00 fine and \$75.00 for administrative costs within 30 days.

W

Violator: EGUIA, ALEXIS
SUBJECT: Overtime Sign, Parked in Same Spot Over 2 Hours
CODE SECTION: Sec. 28-51 (B)
LOCATION: Old San Carlos Blvd. Meter 18
BASE OFFICER: Dan Weber
REFERENCE NO: 73705236

Officer Todd Sears stated that he reviewed Officer Weber's file and the respondent was parked for over two hours. He explained that she paid for two hours, but she changed her account details and paid for additional time after two hours. When it was discovered, the Town called the owner and left a message informing her to move her car. She did not respond. The Town sent a citation and the owner requested a hearing. The Town requested the respondent to pay \$35.00 plus a \$75.00 administrative fee.

Magistrate Roche found that a violation did exist and ordered the respondent to pay a fine of \$35.00 and \$75.00 in administrative fees within 30 days.

Violator: VALENTINE, CHARLES LEE
SUBJECT: Dog off Leash
CODE SECTION: Ord. 10-3 Sec 35
LOCATION: Area of Mango Beach Access
BASE OFFICER: Kevin Przbyszewski
REFERENCE NO: Citation 2406

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Officer Przbyszewski noted that he observed a gentleman playing fetch with his dog off the leash. He described the situation and stated the owner was belligerent and he issued a citation. The owner put the dog on the leash at one point but took it off again. The Town requested a fine of \$100.00. Magistrate Roche noted that the respondent was not in attendance and ordered the respondent to pay \$100.00 plus \$75.00 in administrative fees to be paid within 30 days.

Violator: VALENTINE, CHARLES LEE W
SUBJECT: Dog off Leash
CODE SECTION: Ord. 10-3 Sec 35
LOCATION: Area of Mango Beach Access
BASE OFFICER: Roxanne Tucci
REFERENCE NO: Citation 1035

Officer Tucci reported that she observed a small dog off the leash with the owner nearby. She stated that she had previous interactions with the gentleman. She requested that the dog be put on a leash and the owner complied. Later she noticed the dog on a leash, but he was loose. She informed Mr. Valentine that he had to hold the leash and he stated he would see her in court. She issued a citation for \$250.00 for a repeat violation, but he refused to sign it.

The Town requested a one-time violation of \$250.00 for a repeat violation. Mr. Valentine was not in attendance.

Magistrate Roche found that the violation did exist and imposed a one-time fine of \$250.00 for a repeat violation plus \$75.00 in administrative fees.

IMPOSITION OF LIEN CASE W

Property Owner: ORTIZ, DANIA CARBALLO + GARCIA, DAISY
SUBJECT: LDC Section: 34-2391, Weekly Rental Restrictions Repeat- Rentals for Less Than (1) One Week
LOCATION: 268/270 Nature View Ct.
STRAP NO: 20-46-24-W4-01700.0050
CODE OFFICER: Kristin Schumacher
REFERENCE NO: CE20-0597

Officer Schumacher testified that the property owner was ordered to pay \$6,000.00 for 12 violations on September 17, 2020, but has not paid. In the meantime, she managed to violate the law 12 more times for a total of \$12,075.00, including \$75.00 in administrative fees. The Town requested that the Magistrate order a lien in the amount of \$12,075.00.

Magistrate Roche noted that the respondent was not in attendance and found the order entered on March 24, 2021, was not complied with and additions violation occurred. She certified the amount of \$12,075.00 accrued to date and ordered a lien against the property. The amount included \$75.00 in administrative fees.

NEW CASES

Property Owner: RODRIGUEZ, WILFREDO W
SUBJECT: LDC Section: 34-2391, Weekly Rental Restrictions Repeat-Multiple Rentals During a One Month Period
LOCATION: 5765 Lauder St.
STRAP NO: 33-46-24-W2-005M0.0020
CODE OFFICER: Kristin Schumacher
REFERENCE NO: CE21-0053

Officer Schumacher stated that she received a complaint that the property owner was renting the unit multiple times during a one-month period. She noted it was a repeat case and provided photos that accurately reflected the violations of multiple rentals. The Town requested a finding of fact for repeat violations and requested the maximum fine allowed plus an administrative fee of \$75.00. Magistrate Roche found that the violations did exist and seven violations between March 5 and May 15. She assessed a fine of \$500.00 per violation for a total of \$3,500.00. Future violations would be assessed at \$500.00 per violation. She ordered the property owner to pay \$75.00 in administrative costs to be paid within 30 days.

Property Owner: BLUE, ELLEN J. 
SUBJECT: LDC Section: 10-198. Registry of Short-Term Vacation Rentals
Unregistered Short-Term Rental
LOCATION: 6672 Estero Blvd. A108
STRAP NO: 03-47-24-W1-0280A.1080
CODE OFFICER: Kristin Schumacher
REFERENCE NO: CE21-0122

Officer Schumacher testified that she received a complaint regarding short-term rentals. She sent a notice of violation and hearing. She could not contact the property owner, but she informed the realtor that the property owner had to register their unit. The Town requested a finding of fact and asked that the Magistrate order the property owner to come into compliance within 10 days; otherwise, pay a \$250.00 fine per day plus \$75.00 in administrative fees to be paid within 10 days. Magistrate Roche found that a violation did exist and continued to exist. She ordered the property owner to come into compliance within 10 days; otherwise, a fine of \$250 per day will be imposed until the violation was corrected. She ordered the property owner to pay \$75.00 in administrative fees within 30 days.

Cases continued: 70329302, CE21-0020, CE21-0021, CE21-0022, CE21-0023 and CE21-0028. Case CE21-0050 was a compliance agreement.

Signature: _____



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