

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

Thursday, June 30, 2022

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

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

**B.A.S.E. CASES TO BE HEARD:**

Violator: BRAYRUD, CHRISTINE  
SUBJECT: Not a Legal Space  
CODE SECTION: Sec. 28-20 (2)R  
LOCATION: Delmar Ave.  
BASE OFFICER: David Scott  
REFERENCE NO: 70033950

While Officer Scott was patrolling on Delmar Ave., he noticed a white jeep parked in front of a dumpster on Delmar Ave. He provided photos of the vehicle and no parking signs. The violator requested a hearing. A citation was issued for parking in an illegal space.

The Town requested a fine of \$50.00 and an administrative fee of \$175.00. Ms. Brayrud was not in attendance.

Magistrate Roche found that a violation existed; she imposed a fine of \$50.00 and \$75.00 in administrative fees to be paid within 30 days.

Violator: WAYLAND, ASHLEY  
SUBJECT: Not a Legal Space  
CODE SECTION: Sec. 28-20 (2)R  
LOCATION: Ohio Ave.  
BASE OFFICER: Roxanne Tucci  
REFERENCE NO: 72664163

Officer Tucci observed a vehicle parking illegally on the street on Ohio Ave. She issued a citation for parking in an illegal space. She provided photos of the vehicle and no parking signs. The violator requested a hearing.

Ms. Wayland stated that it was her first day working at a restaurant and the owner told her she could park on the street. She did not see any no parking signs on the street.

The Town requested a \$50.00 fine and an administrative fee of \$175.00. Magistrate Roche found a violation did exist and ordered the owner to pay a \$50.00 fine plus an administrative fee of \$75.00 to be paid within 30 days.

**NEW CASES TO BE HEARD:**

Property Owner: FMB ASSOCIATES LP  
SUBJECT: LDC Section: 14-3 (a)(3), 14-3 (a)(8), 14-3 (a)(13), 14-6(a)  
Dune Destruction and Unpermitted Use of Boxblade on Beach  
LOCATION: 684 Estero Blvd.  
STRAP NO: 24-46-23-W3-00400.0090  
CODE OFFICER: Chadd Chustz  
REFERENCE NO: CE21-0301/ 20220321

Environmental Projects Manager Chustz was notified on June 16 by FWC (Fish & Wildlife Conservation Commission) regarding a complaint about a bern of sand placed on the beach. He observed approximately a 30' x 3' x 2' tall bern of sand placed on the wet sand. He provided photos. The property owner indicated they performed the work and declined to return the sand. Projects Manager Chustz said he met with the property owner and Lee County. The violation occurred on June 16, 2021, and an August 2021 hearing was continued based on a mitigation contingency, but the property owner had not complied. He noted it was turtle season and indicated that the tide eventually smoothed out the sand.

Attorney Kaylee Tuck from Henderson Franklin confirmed the meeting with the town on August 24, 2021. Since there was no reinspection or further contact from the town, the owners thought they complied. She added that Projects Manager Chustz visited the property several times between the last hearing and today's hearing and never mentioned a continued noncompliance. She requested time to remedy the situation.

Paul Melbon, owner of the Best Western, stated that he piled the sand up to fill a hole. He ended up smoothing out the section and Eve Haverfield inspected the area and said it was fine. He indicated that he also removed the old sandbags as requested by the town.

Magistrate Roche stated that Mr. Melbon could not flatten out the beach again. Projects Manager Chustz noted that the FDEP (Florida Department of Environmental Protection) was aware of the situation.

The town requested a one-time fine of \$5,000.00. Projects Manager Chustz indicated the property owner could not put the dune back, but they could replace the vegetation to mitigate the situation. Mr. Melbon stated that he did not destroy the dune; he took sand from another area to fill the hole. Projects Manager Chustz explained that the property owner took sand from a dry section of the beach and put it on the wet section of the beach. He described the photos to explain better how the dune was affected. Discussion continued. Projects Manager Chustz indicated that the property owner had to devise a mitigation plan.

Magistrate Roche requested an aerial of the property before Mr. Melbon moved the sand. She tabled the case.

Projects Manager Chustz returned with aerials from 2019, 2020, 2021 and 2022.

Magistrate Roche found that a violation existed and continued to exist. She ordered the town and property owner to meet by next Friday to develop a mitigation plan and granted the property owner

75 days to come into full compliance. Failure to comply in that timeframe will result in a fine of \$250.00 per day until the violation is corrected. She ordered the property owner to pay a one-time fine of \$2,500.00 and \$75.00 in administrative fees to be paid within 30 days.

Property Owner: TOVAR JEFFREY M TR FOR JEFFREY M TOVAR TRUST  
SUBJECT: LDC Section: 34.1575 Coastal Zones, 14-455, and Sec. 14-62  
Unpermitted Development in EC Zone  
LOCATION: 8020 Estero Blvd.  
STRAP NO: 03-47-24-W3-00300.0080  
CODE OFFICER: Chadd Chustz  
REFERENCE NO: CE21-0028/ 20220351

The town requested an order of violation, an immediate fine of \$500.00, 30 days to remove the structure or submit an appropriate zoning application; otherwise, a fine of \$250.00 per day if not complied within 30 days plus an administrative fee of \$150.00 to be paid within 30 days.

Projects Manager Chustz testified that he received a complaint regarding a structure in the CWA (Critical Wildlife Area). When he inspected the area, he found a 30-foot bridge was constructed. He determined that the bridge was not in the CWA but was on the property owner's land. He stated that the bridge required a special exception, but none was on file. He had corresponded with the property owner's attorney.

Attorney Amy S. Thibaut with Pavese Law firm represented the property owner. She explained the platted lot boundaries and noted that the property owner was the riparian owner. She indicated that Morris Depew was hired to assist the property owner with the special exception application. She noted the only approval the property owner needed now was a special exception to pull a building permit to permit the structure retroactively. Attorney Thibaut stated the bridge was there before the property owner purchased the property in 2019. She requested time for the property owner to complete the process.

Town Attorney Herin, Jr. stated that the case started over a year ago and the town was in the same place. He noted the town had not been updated regarding the property owner's actions. The town requested that the bridge be removed until a permit application was submitted.

Attorney Thibaut thought she forwarded an email to the town from the FDEP regarding ownership of the property. She added that she would resend the email to the town. She described the timeline and indicated they were on their fourth surveyor. Morris Depew contacted the town in August or September of 2021 and continued discussions. She explained that the survey had to be documented, but everything else was completed.

Magistrate Roche found that the violation existed and continued to exist. She ordered the property owner to submit the special exception application within 30 days, block off the pathway within 10 days and an additional three months for the review process. A status hearing was ordered for August 2022 and a one-time fine of \$250.00 with \$75.00 for administrative fees to be paid within 30 days. Failure to comply with any deadline will result in a fine of \$250.00 per day until the violation is corrected.

Property Owner: PERSAUD PROPERTIES FL INVESTMENTS, LLC  
SUBJECT: LDC Section: 14-5, Beach Furniture & Equipment, (j)  
Repeat- Beach Chair Rental Without Permit

LOCATION: 1046 Estero Blvd.  
STRAP NO: 24-46-23-W3-00016.0000  
CODE OFFICER: Bill Stout  
REFERENCE NO: CE21-0286/ 20220655

The town requested an order of violation and immediate compliance. The repeat violation was from February 14, 2021, which was 126 days at \$500.00 for a total of \$63,000.00 plus an administrative fee of \$150.00 to be paid within 30 days.

Office Stout stated the location was the Sunset Grill and he was aware of previous violations and orders from the Magistrate. He continued to monitor the property, took photos and indicated that chairs and umbrellas were still available for the public to rent without purchasing items from the restaurant. Photos in the file accurately represented the situation. Officer Stout noted he had conversations with Mr. Persaud, who denied charging people to rent the chairs. A permit application had not been submitted.

Magistrate Roche stated that she denied a request for a continuance for this case and two others. Attorney Sara Spector from Roetzel & Andress represented the property owner and questioned which case was continued. Town Attorney Herin, Jr. replied that the unsafe stairway and handrails violation was continued because the stairway was blocked off and a permit application had been submitted.

Attorney Spector distributed documentation and Town Attorney Herin, Jr. objected to the admission of the exhibits based on determining relevancy. Magistrate Roche gave Attorney Spector leeway to tie everything together. Attorney Spector brought up Mr. Persaud's right to sell alcohol on the beach. Magistrate Roche stated that the hearing had nothing to do with selling alcohol; it had to do with renting beach chairs and umbrellas without a permit. Attorney Spector replied that it was relevant. She referred to the last page of Exhibit A regarding a premises map. Town Attorney Herin, Jr. objected because he noted Mr. Persaud submitted the map and the previous approval was for the map that Top O'Mast submitted. Attorney Spector stated the map was from the Top O'Mast application and Town Attorney Herin, Jr. noted it was not the entire application.

Attorney Spector argued that the property line extended to the mean high water line and he had permission to serve there and provide chairs and umbrellas. Magistrate Roche responded that he was renting the chairs without a permit and Attorney Spector stated that he was not renting chairs. She described pictures in Exhibit C showing people being served on the beach while sitting in chairs. Exhibit D included a form that people had to sign saying the chairs were not for rent and they were required to pay a service fee. Customers were given a wristband after signing the form. She discussed the pictures and statements from the town in Exhibit E that claimed people were paying to rent the chairs without purchasing food or drinks. Officer Stout stated that he observed the activity on several occasions.

Short-term Rental Specialist Kristin Schumacher testified that she rented a chair and umbrella on May 25, 2022, without purchasing food or a beverage.

Magistrate Roche found that a violation existed and was a repeat violation. She ordered immediate compliance and ordered the fine of \$63,000.00 plus \$75.00 in administrative fees to be paid within 30 days.

Property Owner: PERSAUD PROPERTIES FL INVESTMENTS, LLC

SUBJECT: Violation of Special Exception Resolution Number 20-8; Section 4  
Conditions  
LOCATION: 1046 Estero Blvd.  
STRAP NO: 24-46-23-W3-00016.0000  
ZONING OFFICER: Eli Lee  
REFERENCE NO: CE22-0001/ 20220652

The town requested an order of violation for not complying in 30 days. The town requested \$500.00 per day per incident after the 30 days allowed in the notice of violation, which totaled \$607,500.00. The town requested the fine be paid and become compliant within 30 days or an additional fine of \$500.00 per day per incident shall be charged.

Officer Lee testified that the town granted the property owner a special exception with conditions and a series of variances, but the property owner had not complied with the conditions. Officer Lee had no contact with the property owner. Town Attorney Herin, Jr. reviewed the resolution and conditions. Officer Lee noted that the hours of operation condition had been complied with. Attorney Spector stated that the property owner met with the Mayor and Town Manager regarding amending the special exception. He would like another meeting with them to get their approval before submitting an application. He requested time to meet again, but in the meantime, the property owner would operate it as a single-use parking lot for Sunset Grill. He would still charge a fee for patrons to park. Town Attorney Herin, Jr. objected to hearsay and Magistrate Roche allowed it.

Magistrate Roche found a violation existed and continued to exist. She granted the town's request of \$607,500.00 for 135 days of non-compliance times nine incidents. The fine would continue to accrue at \$500.00 per day per incident per paragraph 14 of the resolution. She also ordered \$75.00 for administrative fees to be paid within 30 days.

Property Owner: FIRST BAPTIST CHURCH OF FORT MYERS BEACH  
SUBJECT: LDC Section: 34-2351- Recreational vehicle subdivisions,  
34-2352- Recreational vehicle parks -Parking Lot Used as Camping Site  
LOCATION: 110-138 Connecticut St.  
STRAP NO: 29-46-24-W1-00151.0010  
CODE OFFICER: James Campbell  
REFERENCE NO: 20220414

The town requested payment of six citations totaling \$2,750.00, an order of violation, immediately cease violation of an RV park, plus an administrative fee of \$75.00 to be paid within 30 days.

Officer Campbell received an email on April 25, 2022, complaining about people camping out and he issued a warning on April 27, 2022, and attached the ordinance. He issued six citations and described the photos that accurately reflected the property's condition. The use was not permitted. He spoke with the property owner regarding the citations. Town Attorney Herin, Jr. stated that the property owner would have to amend their site plan and get it rezoned to potentially receive a permit for the activity. He added that he and staff spoke to the property owner in the past to discuss what was or was not permitted on the site.

Forrest Critser, co-Pastor, represented his son Pastor Shawn Critser. Mr. Critser provided the resolution from Fort Myers that allowed them to park RVs. He indicated the advertising site was

removed when he was informed, they were in violation. Another violation was issued because advertising was still online. Mr. Critser spoke to Officer Campbell, who showed him the website, but the advertising was not for the same event. He explained that the Harvest Host program allowed people to spend the night for free who were traveling but could not find anywhere else to park overnight. He stated that they did not want an RV park in the church parking lot. Mr. Critser stated they do not charge anyone for staying on their lot overnight. He described the people his church helped and noted there were some RVs parked in the lot, which was allowed, but they were not hooked up.

Magistrate Roche stated that the property was not permitted for the number of vehicles and questioned whether people could sleep in the structure at the church and park the RVs. Code Compliance Manager Saunders indicated she would have to check whether that was allowed. She stated that the neighbors complained about people staying in RVs.

Town Attorney Herin, Jr. stated that the church would have to apply for a text amendment to the zoning code and explained the process to move forward. He agreed to reduce the fine to \$500.00. Magistrate Roche found that a violation existed and ordered the property owner to cease and desist from having RVs at the property. She ordered a one-time fine of \$500.00 and \$75.00 in administrative fees payable within 30 days.

Property Owner: B + B PROPERTIES OF FORT MYERS BEACH LLC  
SUBJECT: LDC Section: 6-111, Adopting FBC 105.1 Work Without Permit- Deck  
LOCATION: 1668 I St.  
STRAP NO: 19-46-24-W4-0070B.0110  
CODE OFFICER: James Campbell  
REFERENCE NO: 20220521

The town requested an order of violation, an immediate fine of \$250.00, apply for a permit within 7 days, obtain a permit within 21 days, a \$250.00 fine if not complied with and \$75.00 in administrative fees.

The property owner stated that he had applied for a permit. Code Compliance Manager Saunders noted that the permit was not issued because they were waiting on the fire department for something.

Magistrate Roche found that a violation did exist and continued to exist. She ordered the property owner to come into compliance and obtain the permit within 30 days; otherwise, a fine of \$250.00 per day would be imposed. She ordered a one-time fine of \$250.00 and \$75.00 in administrative fees. The town waived the \$250.00 fine.

Property Owner: GREGG LEAH EQUITY TRUST COMPANY  
SUBJECT: LDC Section: 10-198- Registry of short-term vacation rentals  
Failure to Renew Short-Term Rental  
LOCATION: 430 Bonita St.  
STRAP NO: 24-46-23-W3-0030A.0090  
CODE OFFICER: Kristin Schumacher/ Bill Stout  
REFERENCE NO: 20220471

The town requested an order of violation, register the short-term rental within 7 days or a fine of \$250.00 per day and an administrative fee of \$75.00 to be paid within 30 days. Specialist Schumacher stated that the property did not apply for a renewal as of two days ago. Leah Gregg stated that she paid the fee but was told she had to pay two fees for her duplex. She discussed exemptions and questioned why she was not exempt. Magistrate Roche found that a violation existed and continued to exist. She ordered the property owner to come into compliance within 7 days; otherwise, a fine of \$25.00 per day until the violation was corrected. She ordered \$75.00 in administrative costs to be paid within 30 days.

Property Owner: RODRIGUEZ, WILFREDO  
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, Bill Stout  
REFERENCE NO: CE22-0008/ 20220355

The town requested an order of violation, immediately cease weekly rentals, a fine of \$9,000.00 and an administrative fee of \$50.00 to be paid within 30 days. Specialist Schumacher stated it was a repeat violation and the property owner received a notice of violation on January 21, 2022. Receipts, pictures and complaints were included in the file. She described 18 violations at \$500.00 per day. Magistrate Roche noted the property owner was not in attendance. She ordered the property owner to cease and desist renting short-term rentals immediately and granted the town's request of \$9,000.00 and \$75.00 in administrative fees to be paid within 30 days.

Property Owner: DANKS CYNTHIA MARIE  
SUBJECT: LDC Section: 6-111, Adopting FBC 105.1 Work Without Permit- Erection of Chickee Hut  
LOCATION: 3324 Shell Mound Blvd.  
STRAP NO: 29-46-24-W1-0030A.0070  
CODE OFFICER: John Encarnacao  
REFERENCE NO: 20220242

The town requested an order of violation, apply for the permit within 7 days and obtain the permit within 21 days; otherwise, a fine of \$250.00 per day plus \$75.00 for administrative fees to be paid within 30 days. Officer Encarnacao stated that the town received a complaint on March 21, 2022, regarding the chickee hut. He spoke to the owner and individual who erected the chickee hut. The property owner thought that no permit was required since a Native, American built the hut. Officer Encarnacao researched and found that the chickee hut needed a building application before building the hut. He printed out the documents, presented them to the property owner and advised her to contact town hall. An application was filed but returned due to incomplete information. A corrected application was not filed, so he issued a notice of violation. On April 27, 2022, the

property owner responded that she submitted the paperwork and emailed the documentation to him, but it was still incomplete.

Magistrate Roche found that a violation existed and continued to exist. She ordered the property owner to come into compliance within 30 days; otherwise, a fine of \$150.00 per day shall be imposed. She ordered the property owner to pay \$75.00 in administrative fees to be paid within 30 days.

Cases continued or compliant: 20220482, CE21-0274/20220683, CE21-0469/20220406, 20220359, 20220588, 20220305, 20220442 and 20220289. Not addressed: 73424901. (I'm unsure if CE21-0287/20220462 was included with CE21-0286/20220655.)

Signature:  7-11-22

- End of document