

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

Thursday, April 20, 2023

Hearing Examiner - Special Magistrate: Myrnabelle Roche (via phone)

Magistrate Roche swore in those providing testimony.
Town Attorney Herin, Jr. represented The Town.
Staff: Floodplain Manager Kristin Schumacher

IMPOSITION OF LIEN CASES TO BE HEARD:

ND

Property Owner: NATURE VIEW CT, LLC
SUBJECT: Section: 6-111, Adopting FBC 105.1
SWO Work Without Permit- Remodel
LOCATION: 313/317 Nature View Ct.
STRAP NO: 20-46-24-W4-01700.0230
CODE OFFICER: Bill Stout
REFERENCE NO: 20190653

Officer Stout reported that the Special Magistrate ordered compliance on March 19, 2021. As of today, The Town has been denied access to the property.

Attorney Dwayne Dickerson represented Nature View and cited the Land Development Code (LDC) and state law regarding a certificate of completion on April 26, 2022, by a private provider. He presented the certificate to Town Attorney Herin, Jr. and stated The Town did not send a notice of deficiency within two business days. He indicated that The Town did inspect the property and Nature View followed the state statute.

Attorney Dickinson cross-examined Officer Stout regarding habitable living space below base flood elevation and grandfathered properties. Town Attorney Herin, Jr. objected to the question and stated the Special Magistrate addressed the issue at the original hearing. Special Magistrate Roche allowed the question. Officer Stout responded that there were cases where living space was allowed, but he did not know whether this property qualified. Magistrate Roche stated that the property did not qualify for grandfathering due to timing. She questioned how the building department ended up issuing a permit since The Town determined it could not be grandfathered. Office Stout thought the permit was issued for storage, but he was not sure. He was not aware of the state statute Attorney Dickerson referred to above.

Town Attorney Herin, Jr. questioned Officer Stout concerning the permit process and noted that the permit application for this property was waiting for the resubmittal of certain documents. He did not think the permit was to build habitable space at base flood elevation. Attorney Dickinson

stated that he had a permit from The Town and it was in the file. Magistrate Roche revealed that the permit did state it was for interior remodeling, but she did not see a bathroom in the plan review. She questioned whether it was intended to be a living space. Attorney Dickerson replied that the area was a livable space before his client purchased it. Magistrate Roche reiterated that there was no physical certificate of completion issued from The Town. She noted that an inspection was attempted on April 20, 2022, with a notation stating that the inspector was denied access. Attorney Dickerson commented that the owner made the property available. Magistrate Roche requested evidence that his client requested a final inspection and Attorney Dickerson replied that he was told The Town was notified. He countered by saying that if his client did not allow access, The Town should have notified them of the deficiency.

Town Attorney Herin, Jr. noted that anyone could apply for a permit to do work under base flood elevation, but it had to comply with code requirements. He stated that it was the responsibility of the property owner to request inspections for determination of compliance with the original code violation and that had not occurred to date. He noted that the interior remodel application plans did not indicate that the work was to build out livable space below base flood elevation. Town Attorney Herin, Jr. added that the property owner submitted a permit revision application to relocate the electric panel several months after the punitive action. He remarked that the file contained 2.5 pages of comments provided as to what was wrong with the submitted plans and that the property owner was notified of the deficiencies. He stated that The Town was not denying the issuance of the permit, but they had not been allowed to inspect the site to verify that the work complied with the permit. He read emails between the client's inspector and The Town's building department.

Attorney Dickerson stated that he did not think the permit was issued in error and The Town did not revoke the permit. He noted that The Town had been operating as though the permit was active by continuing to work with his client for the past couple of years.

Magistrate Roche questioned whether the property was occupied. Attorney Dickerson replied that the ground floor had not been occupied since her order. Town Attorney Herin, Jr. responded that since The Town was not allowed to inspect the property, he could not verify whether it was occupied. He read a listing from the MLS describing the property with two livable units on the ground floor and three bedrooms on the second floor. Magistrate Roche remarked that the issue was separate, and she explained why she felt the applicant was in compliance.

Town Attorney Herin, Jr. explained why he thought the issuance of the permit argument was a bait and switch. He stated that the original permit application did not show a buildout of livable space and the work that was done exceeded the scope of the permit. Magistrate Roche noted the permit that was issued was for renovations upstairs. Attorney Dickerson questioned why The Town requested more information regarding flood plain information and risers if they were unaware that the work was being done. Magistrate Roche questioned whether Attorney Dickerson had proof that the downstairs was not built out as a habitable space contrary to what was submitted to The Town in their plans. Attorney Dickerson was granted recess and the hearing continued with the next case.

The Town requested a continuance until the next meeting and Magistrate Roche granted the request. She ordered that her March 18, 2021 order be recorded to alert potential buyers that there was a problem with the property. The attorney of record, Tony Lawhon stated that the property was not for sale and that the MLS info was out of date. He requested to receive a notice of the

hearing and Town Attorney Herin, Jr. agreed. Attorney Dickerson requested that the order be released if the owner was determined to be in compliance and Magistrate Roche agreed.

NEW CASES TO BE HEARD: *Wx*

Violator: REMOVE IT PROS INC.
SUBJECT: LDC Section: 14-455- Permit required. (Mangroves)
Mangrove Tree Removal Without Permit
LOCATION: 6425 Estero Blvd.
STRAP NO: 34-46-24-W4-00046.0000
CODE OFFICER: Chadd Chustz
REFERENCE NO: 20230399

Property Owner: ESTERO 4148, LLC *Wx*
SUBJECT: LDC Section: 14-455- Permit required. (Mangroves)
Mangrove Tree Removal Without Permit
LOCATION: 6425 Estero Blvd.
STRAP NO: 34-46-24-W4-00046.0000
CODE OFFICER: Chadd Chustz
REFERENCE NO: 20230369

Town Attorney Herin, Jr. stated that these two cases were the same. One violation was issued to the property owner and the other to the contractor.

Environmental Projects Manager Chustz was notified on the weekend of February 19, 2023, that dredging, and construction activities occurred at the beach theater. Upon inspection, he found that vegetation had been removed and there was evidence that mangroves had been cut at the trunk. He contacted the property owner after the citation was issued and no permit has been issued to date. The property owner intended to build a seawall on the canal and the Florida Department of Environmental Protection (FDEP) was reviewing the case. A \$5,000.00 fine was issued to the property owner and contractor, and both had been paid to The Town.

Town Attorney Herin, Jr. requested that the Magistrate set a timeframe to obtain the necessary permits and if they did not comply, additional fines would be ordered.

Property owners Steve Boge and Cory Nanke paid the fine to get the permit to move forward with the seawall. Plans for the seawall were sent to the FDEP and he did know what the next steps were. He was not given a timeline for their review. Projects Manager Chustz stated that The Town would require state and federal permits before the seawall could be constructed. He indicated that The Town had not received seawall or dock plans and he reported that mangroves were altered on their property and in The Town's right-of-way. Magistrate Roche questioned whether The Town would allow the owners to build the seawall and then deal with the mangrove mitigation. Project Manager Chustz responded that The Town required habitat creation with the new seawall. Mr. Boge commented that they had not submitted restoration plans yet and they planned to hire a professional. Project Manager Chustz added that the property owners could submit applications for the seawall, dock and restoration plans with the condition that construction could not begin until state and federal permits were obtained.

The Town requested a fine of \$250.00 per day for each day they remain out of compliance.

Magistrate Roche found that a violation did exist and continues to exist. She ordered the property owners to come into compliance within three months; otherwise, they will face a fine of \$250.00 per day until the violations are corrected. There will be no extension absent good cause. She stated that both parties were responsible, and she ordered that \$250.00 be paid for administrative fees. She ordered a status hearing at the next hearing unless The Town determined that one was not needed.

Property Owner: OAKLEY, MATTHEW B. + TRISIA O. *WR*
SUBJECT: Section: 6-111, Adopting FBC 105.1
Work Without Permit- Ground Level Remodel
LOCATION: 280 Sterling Ave.
STRAP NO: 33-46-24-W2-005K0.0230
CODE OFFICER: Bill Stout
REFERENCE NO: 20220305

Property Owner: OAKLEY, MATTHEW B. + TRISIA O. *WR*
SUBJECT: Section: 6-111, Adopting FBC 105.1
Work Without Permit- Ground Level Remodel
LOCATION: 280 Sterling Ave.
STRAP NO: 33-46-24-W2-005K0.0230
CODE OFFICER: Bill Stout
REFERENCE NO: 20220707

Officer Stout noticed possible construction on the lower level of the house. A neighbor contacted Officer Stout and he thought it was built out into an apartment. Officer Stout obtained pictures of the lower level and they indicated a build-out. He did not observe work at the property, but he noticed evidence of construction. There were no permits on file and the property owners received a notification of violation via certified mail. Attorney Anthony M. represented the Oakleys and objected several times.

Officer Stout did not have contact with the property owners, and he confirmed that the owners were sent a notice of hearing. Officer Stout described the photos he took of the downstairs interior. Town Attorney Herin, Jr. entered the photos into the record. Attorney Anthony M. objected more than once.

Officer Stout explained that the second case was created to address the citations separately due to timing and process issues. Town Attorney Herin, Jr. provided details.

Attorney Anthony M. cross-examined Officer Stout regarding the neighbor who complained about his clients and their relationship. He also questioned the photos he took. Attorney Anthony M. stated that permits were issued in 2018 by Lee County after Hurricane Irma. He stated that no one was living in the area and the electricity and plumbing were grandfathered. Magistrate Roche requested proof of the permits and a copy of the site plans.

Mrs. Oakley testified that she applied for the permits in 2017 before Irma and described the timeline of their improvements. She noted that Lee County did the inspection before Irma and she reviewed what happened after Irma destroyed their house. She stated that FEMA issued a stop work order on their house for eight weeks and they ended up rebuilding the house. The wall that Officer Stout referred to in pictures was put there years ago to stabilize the house.

Magistrate Roche noted that the permits online were obtained after Irma and she requested to see the actual permits to prove that they corresponded to work done downstairs. Attorney Anthony M. stated that a record of the permits no longer existed. Mrs. Oakley did not have a copy of the plans from the architect because they were destroyed by Hurricane Ian. She indicated that she had emails from The Town regarding the plans and Magistrate Roche requested a copy. Mrs. Oakley forwarded the email to Magistrate Roche. Mrs. Oakley did not have a copy of the CO and was told that Lee County had it somewhere. FEMA released the hold after they noticed that flood vents were installed. Mrs. Oakley stated there was a bathroom downstairs when they bought the house. She stated that the permitting situation after Irma was the same as it was now with Hurricane Ian and they did the best they could under the circumstances.

Magistrate Roche reviewed the information and indicated according to the plans, the area was meant to be a garage with storage space. She commented that the plans removed the toilet and sink but Mrs. Oakley stated that the plans were revised and the toilet was to remain. She stated that plumbing was installed for the water heater, washer and dryer and testified that there was no electrical or plumbing in that area today because of Ian.

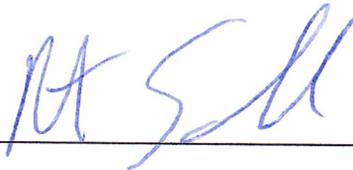
Attorney Anthony M. proposed an inspection in 60 days. Town Attorney Heirn, Jr. suggested that the Oakleys pay in 90 days. Attorney Anthony M. stated that his clients were never out of compliance and should not pay anything.

Magistrate Roche ordered the property owner to allow The Town to inspect the downstairs within 30 days and she will enter an order based on the findings of the inspection.

Cases continued or compliant: 20220462, 20220655, 20220652, 20220415 and 20220392.

Not addressed: 20230479 and 20220949

Signature: _____



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