

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

Thursday, June 15, 2023

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

Magistrate Roche swore in those providing testimony.  
Town Attorney Herin, Jr. represented the Town.  
Staff: Flood Plain Coordinator Kristin Schumacher

**IMPOSITION OF LIEN CASES TO BE HEARD:**



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

Town Attorney Herin, Jr. stated there had been communications with representatives for the property owner right up to the meeting.  
Attorney Dwayne Dickerson noted there was significant activity to get to the bottom of the issue and felt they were close to a resolution. He indicated that he was waiting for the state floodplain administrator to put their opinion in writing and requested a stay until the state responds. He acknowledged that work was done without a permit, but they did receive one. He stated that the ground floor had not been occupied and the inspection was completed. He felt it would be premature to levy fines while they sought answers from the state.  
Special Magistrate Roche ordered the case to be continued.

**NEW CASES TO BE HEARD:**

Property Owner: OAKLEY, MATTHEW B. + TRISIA O.  
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

The town withdrew case 20220305.

Property Owner: OAKLEY, MATTHEW B. + TRISIA O. *no*  
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

Town Attorney Herin, Jr. stated that an inspection occurred and issues still had to be dealt with. Photos from the inspection are included in the package and were entered into the record. Town Attorney Herin, Jr. listed items that had to be removed or reviewed by the building official.

Ms. Oakley, property owner, submitted information after the inspection concerning the two incomplete permit applications from May 2022 and August 2022. She indicated that she had yet to hear back. She stated that the electrical and plumbing were in the 2018 plans and approved. Magistrate Roche indicated that the photos showed items that contributed to making the space livable. Ms. Oakley stated that she has yet to receive information from The Town regarding what must be done to comply.

Town Attorney Herin, Jr. read a form from The Town from February 15, 2019, that listed all items that had to be removed from the ground floor. The Town requested an order that the property owner obtains a demolition permit to remove the materials in violation and submit and obtain a building permit for the improvements that could be permitted within 90 days. The Town asked for \$150.00 for each day out of compliance and \$500 in administrative fees to cover both cases.

Magistrate Roche found that a violation existed and continued to exist. She ordered the property owner to come into compliance within 90 days; otherwise, a fine of \$150.00 per day would accrue until the violations were corrected and she ordered \$250.00 in administrative fees. *no*

Property Owner: THOMAS SWANBECK, PA  
SUBJECT: LDC Section: 3 0-55- Permits; inspections; 6-441-Permits; inspections  
Sign Without Permit  
LOCATION: 2450 Estero Blvd.  
STRAP NO: 19-46-24-W3-0120A0070  
CODE OFFICER: Patrick Morris  
REFERENCE NO: 20230613

Officer Morris stated a notice of violation was sent on **March 7, 2023** and claimed. The notice was posted on the property and the Town's website. On May 8, 2023, a notice of hearing was sent and claimed. It was posted on the property and website. Mr. Swanbeck applied for a permit on June 6, 2023, but it has not been reviewed yet. The Town asked for 30 days to comply; otherwise, a fine of \$250.00 per day for each day out of compliance and \$266.50 in administrative fees. *29*

Thomas Swanbeck, property owner, noted the sign was there before the hurricane but was pulled out and refaced before reinstalling. He did not know a permit was needed to reinstall the sign.

Magistrate Roche ordered the property owner to come into compliance within 30 days; otherwise, a fine of \$250.00 per day until the violation was corrected. She ordered \$100.00 in administrative fees.

Property Owner: THOMAS SWANBECK, PA   
SUBJECT: LDC Section: 6-111, Adopting FBC 105.1- Permits required; 6-441-  
Permits; inspections Deck Without Permit  
LOCATION: 2450 Estero Blvd.  
STRAP NO: 19-46-24-W3-0120A0070  
CODE OFFICER: Patrick Morris  
REFERENCE NO: 20230612

Officer Morris stated that a notice of violation was sent on March 28, 2023, and claimed. It was posted at the Town and the property. On May 8, 2023, a notice of hearing was sent and claimed. On May 16, 2023, the notice was posted at the property and The Town. Mr. Swanbeck applied for a permit on June 12, 2023, and the town was waiting for payment so they could review it. The town requested 30 days to comply or \$250.00 per day until compliance was reached and \$266.50 in administrative fees.

Mr. Swanbeck stated that the trailer was temporary and the deck was not attached to the trailer. He noted that the permit fee cost more than the deck and asked if he could remove it and reapply for a permit. Magistrate Roche replied affirmatively. She found that a violation occurred and continued to exist. She ordered the property owner to come into compliance within 30 days; otherwise, a fine of \$250.00 until the violation was corrected. She awarded The Town \$100.00 in administrative fees.

Property Owner: KENARY, JUDITH   
SUBJECT: LDC Section: 6-111, Adopting FBC 105.1 Demolition Without Permit  
LOCATION: 5840 Lauder St.  
STRAP NO: 33-46-24-W2-0030E.0060  
CODE OFFICER: Patrick Morris  
REFERENCE NO: 20221185

Officer Morris indicated that a notice of violation was sent on Dec. 5, 2022, and claimed. On May 15, 2023, a notice of hearing was sent and claimed. He spoke to Ms. Kenary on the phone and she could not attend the hearing. She stated that she submitted a permit application in Dec. 2023 and again in March 2023, but The Town did not receive either. Officer Morris had a copy of the application, but it was not in the system. As of today, there is still no application.

Town Attorney Herin, Jr. stated that all The Town needed was a demolition permit and verification that the water and sewer connections were capped. Officer Morris explained what she needed to do. The Town requested 30 days; otherwise, a fine of \$250.00 per day until compliance plus \$292.13 in administrative fees.

Magistrate Roche found that a violation existed and continued to exist. She ordered the owner to apply for the permit within 30 days; otherwise, a fine of \$250.00 per day until the violation was corrected. She awarded The Town \$100.00 in administrative fees.

Property Owner: PROCK, DENNIS M.   
SUBJECT: LDC Section: 6-111, Adopting FBC 105.1- Permits required; 6-441-  
Permits; inspections. Lower-Level Enclosure  
LOCATION: 8124 Estero Blvd.  
STRAP NO: 03-47-24-W3-00300.0180  
CODE OFFICER: Patrick Morris  
REFERENCE NO: 20230476

Officer Morris noted that a notice of violation was sent on March 9, 2023, and claimed. It was posted to The Town and the property on March 11, 2023. On May 8, 2023, the notice of hearing was sent and claimed. It was posted to The Town and the property on May 15, 2023. The property owner submitted an application on May 26, 2023. On June 11, 2023, the property owner requested a postponement due to his wife's illness. At some point, Mr. Prock met with the permit department, but as of today, there was no application. The Town requested 90 days to comply; otherwise, a fine of \$250.00 per day of noncompliance and \$250.26 in administrative fees.

Magistrate Roche found that a violation occurred and continued to exist. She ordered the property owner to come into compliance within six months; otherwise, a fine of \$250.00 per day until the violation was corrected. She awarded the town \$100.00 in administrative fees.

Property Owner: LYNN, ROBERT F. + LINDA S.   
SUBJECT: LDC Section: 6-111, Adopting FBC 105.1 Demolition Without Permit  
LOCATION: 278 Ohio Ave.  
STRAP NO: 19-46-24-W4-0090E.0110  
CODE OFFICER: Bill Stout  
REFERENCE NO: 20221311

Officer Stout observed contractors demolishing the house and he spoke to the owner on Dec. 13, 2022, and informed him that a demolition permit was needed. The property owner was on his way north and said he would submit an application later. As of today, there was no application in the system.

Frank Kaiser helped to demo the house. Mr. Kaiser spoke to the property owner and said he sent an application. The Town needed a record of application and Mr. Kaiser continued encouraging Mr. Lynn to resend the application. As far as he knew, no one was occupying the structure left on the property.

Magistrate Roche noted that an engineer must certify that the remaining structure was sound. She found that a violation existed and continued to exist. She ordered the property owner to come into compliance within 90; otherwise, a fine of \$250.00 per day until the violation was corrected. She awarded the town \$100.00 in administrative fees.

Property Owner: ESTERO 4148, LLC  
SUBJECT: LDC Section: 14-455; Permit required Mangrove Removal- Status Update  
LOCATION: 6425 Estero Blvd.  
STRAP NO: 34-46-24-W4-00046.0000  
CODE OFFICER: Chadd Chustz  
REFERENCE NO: 2023036

Officer Chustz stated that the Florida Department of Environmental Protection (FDEP) was issuing a compliance assistance offer that was still under review. The property owner hired a coastal engineer and they submitted preliminary plans showing the seawall and dock plan with mangrove restoration. He added that they were making progress in coming into compliance.

Jim Dunlap, a neighbor two houses down, has been working with Officer Chustz. He stated that removing the mangroves was a 3 to 1 replacement, but the DEP indicated that if they installed a seawall, they could receive an exemption from the mangrove removal. Mr. Dunlap described the area before the mangroves were removed. He wanted to ensure the property owners were ordered to replace the mangroves. Magistrate Roche noted that the state overrode local government. Town Attorney Herin, Jr. agreed that the state essentially preempted all local government regulations regarding mangroves. He added that they would look into what The Town could do.

Officer Chustz stated that as of 1996, the FDEP would not require state mitigation of the mangroves; however, The Town code was clear that restoration was required if mangroves were removed without a permit. He added that the Army Corp also required mitigation. Town Attorney Herin, Jr. stated that it would be difficult to put mangroves back in the exact location would be difficult. In the past, the property owner was required to pay into a mitigation program, but he needed to find out whether that was still in place.

Officer Chustz revealed that the property owners would mitigate the property within the area specified.

Magistrate Roche ordered an extension of three months to continue progressing with compliance.

Cases continued: 20220355, 20190653, 20220462, 20220655, 20220652 and 20220569. The town withdrew case 20220305.

Signature: \_\_\_\_\_



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