



**Fort Myers Beach Special Magistrate Hearing
Division of Administrative Hearings**

**Town Hall Council Chambers
2731 Oak Street
Fort Myers Beach, FL 33931
Tuesday, January 7, 2025**

Minutes

9:00 AM

ORDER OF BUSINESS

I. CALL TO ORDER

Town Clerk Amy Baker, Town Attorney Nancy Stuparich, Floodplain Manager Carl Thomas and Operations & Compliance Manager Thomas Yozzo were present.

II. NEW CASES TO BE HEARD

Town Attorney Stuparich noted the town would present four cases, with four requesting to be continued. The four cases to be heard today are A, B, C, and G. She indicated copies of exhibits were electronically sent to the judge and representatives were present.

The Special Magistrate introduced himself as John Van Laningham from Tallahassee. Town Attorney Stuparich commented that cases D, E, F and H would be continued to February 4, 2025.

A. 1035 Estero Boulevard, KLC Surf LLC / La Ola

DOAH Case #: 24-004407

Case Number: 20240915

Amy Thibaut from Roetzel & Andress represented respondents Chris Primeau, KLC Surf, LLC and Thomas Houghton, La Ola. Town Attorney Stuparich stated she would display and describe the exhibits. All the information was included in the agenda packet. Exhibit A was a letter from FEMA with the Post Disaster Compliance Status Update Report from FEMA. She read highlighted sections of the report and explained how the town complied with the requests. She read portions of FEMA's November 12, 2024, letter and stated the town worked with owners with non-compliant structures on their property.

Operations & Compliance Manager Thomas Yozzo described his duties with the town. On September 19, 2024, he observed shipping containers on the property, which he determined to be non-compliant based on current floodplain regulations.

According to the Fort Myers Beach Floodplain Manager Carl Thomas, the shipping containers were not elevated, and the structures were non-compliant. A certified copy of the notice of violation was sent to the address on record on September 24, 2024, posted at the property and Town Hall. All copies were included in Exhibit B and information was displayed on the town's website under Public Notices. Photos accurately representing the condition of the shipping containers were included in Exhibit

C. Mr. Primeau was given 30 days to remove the shipping containers or come into compliance with the town code. Officer Danielle Batt inspected the property on November 18, 2024, and the shipping containers were still on the property. She prepared an affidavit of non-compliance, which was included in Exhibit D. The property owner received a letter revoking its permit on December 19, 2024, which was in Exhibit F. Exhibit G contained a notice of violation and a notice of hearing. Manager Yozzo inspected the property on January 6, 2025, and took photos of the shipping containers still on the property. He requested the photographs be added to Exhibit H. Town Attorney Stuparich explained that the exhibits mentioned differed slightly from what was initially filed with DOAH.

Attorney Thibaut indicated that she would present after the town's presentation.

Manager Thomas described his education and experience. He reviewed his conversations on September 24, 2024, with Manager Yozzo concerning the violation. He noted that relevant sections of the Land Development Code (LDC) and an excerpt of the American Society of Civil Engineers (ASCE) standard 24-14 regarding design and construction standards were a part of Exhibit E. He accompanied Manager Yozzo during inspections in December and yesterday. To illustrate the hazards non-compliant structures could cause, he received a photo from Town Manager Andy Hyatt after Hurricane Milton showing that a non-compliant structure was displaced and ended up in the area of North Estero Blvd. He did not know who the structure belonged to, but it posed a hazard to the community. In his opinion, the shipping container on the property was non-compliant with the town's floodplain ordinances. He indicated that he believed Public Works Director Jeff Hauge took the photo.

Town Attorney Stuparich requested a finding of violation as of January 6, 2025, requiring that the property owner come into compliance with the town code or remove the shipping containers within a reasonable period of time, a fine of \$250.00 per day in the event there was no compliance, an administrative fee of \$250.00 and authorize the town to abate the violation by removing the shipping containers if compliance is not obtained by March 1, 2025. The property owner will pay expenses incurred by the town within 30 days and a lien will be imposed if expenses are not paid. A proposed order was included in the information sent to the Special Magistrate.

Attorney Thibaut's presentation included an Overview of Property, History of Case, Trailer Images, Overview of Case, Summary of Argument, Containers Do Not Violate CFR Requirements, FEMA Regulations - 44 CFR 59.1, Configuration of Subject Property, Containers Do Not Violate LDC, Sec. 6-403, LDC Intent (Floodplain Regulations), Sec. 6-501, LDC, Sec. 6-443, LDC, The Structures are Not Exempt From the FBC, Sec. 6-525 LDC - General Requirements for Other Development, ASCE 24-14, The Containers Meet the Requirements of Sec. 6-525, LDC, Cannot Penalize Conduct that not Prohibited, Law Must Provide Fair Warning of Prohibited Conduct, Containers not Prohibited in Current Configuration and Therefore Cannot be Penalized, Equitable Estoppel Applies to Permit Recission, Substantial Hardship will Result and More than Property Owner and Operator. Special Magistrate Van Laningham asked Attorney Thibaut how she labeled the container configuration, but she did not know. She added that it was an innovative concept and suggested they were a mobile bar and restaurant. Town Attorney Stuparich stated there was a dispute concerning whether the containers were sitting on a trailer because the trailers were not visible. The property owner did not disclose that the containers were on the trailers in July. She objected to the inclusion of the photo of the trailers since it was not authenticated. She indicated that Manager Thomas and FEMA considered the containers violations. She did not think the equitable estoppel issue was applicable because the permit was issued after the town was trying to come back from Ian and was issued in error. Manager Yozzo stated that the trailers were not visible because of the skirting, decking and accessory structures built around it. He had no idea the trailers were there.

Attorney Thibaut indicated that the trailer photos were included with the temporary use permit application in November 2022. Thomas Houghton, respondent, testified that his friend owns a trucking company up north and drove the trailers to Florida. The containers were originally on the ground until the town informed him they had to be elevated, so the town was aware the containers were on the trailers. He added that the trailers were clearly visible in the evacuation video footage. Attorney Thibaut stated that a link to the video was included with the town's letter to FEMA dated November 1, 2024, and was in the record. She was not aware that there was a factual dispute regarding the trailers. Mr. Houghton described the evacuation video and noted it took about four hours, but it could have been done in an hour if they had just driven over the bridge. He commented that he had approximately 21-25 employees and entertainers.

Town Attorney Stuparich questioned whether Mr. Houghton received his permit before July 19, 2024, and he replied affirmatively. Mr. Houghton provided details of the pick-up trucks used to pull the trailers. Town Attorney Stuparich asked why he brought the containers back after evacuating for Milton. Mr. Houghton responded that his containers were not non-compliant. He confirmed the containers were removed on Monday, October 7, 2024, starting at 7:00 a.m., two days before the hurricane.

Town Attorney Stuparich requested that Manager Thomas discuss the day-to-day interpretations and applications of some CFR sections. Manager Thomas explained why the containers were in a gray area between a structure, trailer, and RV. He confirmed that the deck and stairs were not attached to the trailers.

Manager Yozzo stated the notice of violation was posted on the property on September 24, and the respondent left on October 7 before the hurricane. They came back after they knew they were in violation. Attorney Thibaut noted that receiving a notice of violation did not mean there was an actual violation and she asked that the statement be stricken from the record. Special Magistrate Van Laningham agreed to strike it from the record. Special Magistrate Van Laningham asked whether both parties wanted to submit their arguments in writing. Both parties agreed. Attorney Thibaut will submit her argument by January 17, 2025, and Town Attorney Stuparich will submit hers by January 24, 2025. Special Magistrate Van Laningham will issue the order before the next hearing.

B. 1821 Estero Blvd., 1821 Estero Blvd Corp / Steve Larson dba Sun and Fun Rentals

DOAH Case #: [24-004834](#)

Case Number: 20240914

Town Attorney Stuparich provided an overview of the case. She noted her comments were tied to the documents in Exhibit A, which included a letter from FEMA dated July 19, 2024, with a summary regarding compliance with codes and a detailed report regarding temporary non-compliant structures. She noted the town was placed under a deadline of November 18 or 19, 2024, to remedy the matter and the town requested an extension to June of 2025. A video was linked to demonstrate how quickly containers could be removed from properties in the event of a hurricane warning. FEMA replied that they were not authorized to grant an extension and she summarized their reasons. She requested that all exhibits in the packet be entered into the record.

Manager Yozzo requested that all exhibits be entered into the record. On September 19, 2024, he observed three shipping containers he determined to be non-compliant based on the current floodplain regulations. He testified that the shipping containers were not elevated to the best of his knowledge and did not have engineered plans to meet the regulations. He consulted with Manager Thomas, who confirmed that the shipping containers were non-compliant structures. A copy of the certified notice of violation was issued on September 24, 2024, and included in Exhibit B. The notice of violation was posted on the property and in the town hall. He requested that the affidavit of mailing and posting be entered into the record. Photos accurately documenting the violation on September 19, 2024, were in Exhibit C. Additional photos showed the posting of the notice of violation on October 2, 2024. The property owner was given 30 days to remove the containers or come into compliance.

Officer Marcio Chavez inspected the property on December 10, 2024, and the containers were still on the property. Officer Chavez prepared an affidavit of non-compliance, which was included in Exhibit D. The owner received a letter revoking his permit on December 1, 2024, included in Exhibit F. Exhibit G contains a notice of today's hearing sent to the property owner. Manager Yozzo was accompanied by Manager Thomas when he inspected the property yesterday. He took photos that verified that the containers were still on the property and were in Exhibit H.

Gordon Stojkoski, the respondent, did not have any questions for Manager Yozzo.

Manager Thomas testified that he had conversations with Manager Yozzo in September 2024 regarding concerns about the shipping containers that were in violation of the floodplain regulations as claimed by FEMA. He explained the criteria to be satisfied for compliance and a copy of the code and an excerpt of ASCE 24-14 are in Exhibit E. He accompanied Manager Yozzo to the property the second week in December and yesterday. He discussed the requirements to meet the floodplain regulations. Public Works Director Jeff Hauge took a picture illustrating the hazard caused by the displacement of non-compliant structures after Hurricane Milton. In his opinion, the shipping containers located on the property were non-compliant with the town's floodplain ordinances.

Town Attorney Stuparich stated she provided a draft order and requested a finding of violation, a period of time for the respondent to come into compliance, a fine of \$250.00 for each day the violation extends beyond the compliance date, an administrative fee of \$250.00, authorizing the town to abate the violation if there is no compliance by March 1, 2025, with expenses to be paid by the respondent within 30 days. If not paid, the town would request certification of the amount owed to be imposed as a lien on the property.

Mr. Stojkoski explained that he had a successful business with about 40 full-time employees before Hurricane Ian. The storm wiped out the building and a family home behind the restaurant. He explained that Steve Larson, a bicycle rental business owner, also lost his structure and approached him about leasing his parking lot space to open his business. Mr. Stojkoski thought it was a wonderful idea, and the town issued permits, but the town came back and said they were issued in error. He explained that Steve took out a loan and bought the trailers to the specifications provided by the town. Pictures of the containers with axles and tires were in Exhibit H and he indicated they could be moved within an hour. He questioned whether the containers would be compliant if FEMA were not involved since the town initially approved them. He added that the town revoked the permit a few weeks ago. He discussed investing a lot of money and hanging by a thread after losing everything. The containers were specifically purchased based on the town's requirements, so why would they issue permits for non-compliant structures?

The containers would not have been purchased if the town had not allowed them. He noted there had to be some solution for the small business owners who invested hundreds of thousands of dollars in loans to purchase the structures and invest in the island's future.

Mr. Larson stated that the town issued a permit after extensive meetings and drawings. He invested hundreds of thousands for the equipment he rented, like golf carts, bicycles, scooters, e-bikes and other items. He noted that going out of business was not an option and described how the containers were constructed. He requested that the containers remain and, if not, that the town clarify what he could do. He needed time to remove the containers, but not during the busy season. He added that he ended up with three 40-foot storage containers.

Town Attorney Stuparich questioned whether the containers were moved before Hurricanes Helene and Milton. Mr. Larson replied negatively because it was a logistics issue, but they opened them up and let them flood, and they did not move. He testified that the containers had not been moved since being delivered to the property. Conditions of the permit were that the containers had to have wheels and the rental equipment had to be inside.

Special Magistrate Van Laningham asked when the temporary permits expired. Town Attorney Stuparich replied that the permit stipulated an extension that could be requested within 180 days. Special Magistrate Van Laningham confirmed that the permit was revoked due to the town's error, not because of non-compliance with the permit. Town Attorney Stuparich did not think the correctness of the revocation letter was the issue because other administrative remedies could address those questions. Mr. Larson stated he would provide a copy of the permit, which had no expiration date. Special Magistrate Van Laningham questioned whether the respondent took any action to challenge the revocation notice. Mr. Larson replied negatively because they decided to come to the hearing. He will submit the temporary permit.

Special Magistrate Van Laningham asked whether either party wanted to submit a proposed order. Mr. Larson declined.

Manager Yozzo requested proof that the wheels worked and the containers could be removed or that a mechanics report be provided. Mr. Stojkoski asked whether the containers would be compliant if they proved they could be moved. Manager Yozzo replied that would be one part of it and Manager Thomas commented that the only requirement was that the containers could be moved. If the proper documentation certifying that the containers were highway-ready, they would not need to meet the flood-resistant requirements. Special Magistrate Van Laningham stated he would review the permit provided by Mr. Larson by January 10, 2025, and rule after that.

C. 2815 Estero Blvd., Himmelstein Associates LLC

DOAH Case #: [24-004838](#)

Case Number: 20240994

Town Attorney Stuparich described the documents in Exhibit A that were included in the agenda packet and requested that they be entered into the record.

Manager Yozzo observed two non-compliant shipping containers on the property on October 17, 2024. The containers were not elevated, had no engineered plan for pilings and did not have visible axles or chassis.

Manager Thomas confirmed the structures were non-compliant. The notice of violation was sent via certified mail to the property owner on October 17, 2024, posted on the property and at the town hall. All documents were in Exhibit B. The respondent was given 30 days to remove the containers or come into compliance with town codes. Manager Yozzo inspected the property again on December 10, 2024, and there was no change. He prepared an affidavit of non-compliance with photos included in Exhibit C. Exhibit E included a letter revoking his permit sent on December 19, 2024.

The property owner was provided with a notice of today's hearing and relevant documents in Exhibit F. Manager Thomas accompanied Manager Yozzo on another inspection yesterday and the containers remained on the property. Photos were included with the documents in Exhibit G.

Manager Thomas noted that Exhibit A included FEMA documents to meet the requirements of the post-disaster compliance report for Hurricane Ian.

Exhibit E included criteria to satisfy compliance with the town's codes. He confirmed meeting with Manager Yozzo to inspect the property in December and yesterday and observed no change. An illustrative photo of what could happen with the displacement of non-compliant structures after hurricanes is included in Exhibit H.

Town Attorney Stuparich requested an order of violations, requiring compliance with the town's codes or removal of the structure in a reasonable time, imposing a fine of \$250.00 per day each day the violation remains in effect past the compliance date, an administrative fee of \$250.00 and authorizing the town to abate the violation by removing the structures if they are still there on March 1, 2025. The property owner will pay any expenses incurred by the town within 30 days and if the town's expenses are not paid, the town will request that a lien be imposed on the property.

Jeff Walker, manager for Himmelstein Associates, LLC Properties, stated that the town permitted the temporary containers and that they have a permit to rebuild their building. He recently submitted a permit to elevate and anchor the containers to become compliant and needed time for the permit to be issued. He anticipated a timeframe of four to six weeks after he received the permit.

Town Attorney Stuparich stated the town would work with the respondent with a compliance plan.

Special Magistrate Van Laningham noted a compliance plan was a positive step. He entered the Exhibits into the record and will review the documentation and issue an order soon.

D. 4900 Estero Blvd., Island Towers Condo Association

DOAH Case #: [24-004841](#)

Case Number: 20240960

Continued to February 4, 2025.

E. 1249 Estero Blvd, 1249 Estero Adventures LLC

DOAH Case #: [24-004842](#)

Case Number: 20240919

Continued to February 4, 2025.

F. 2450 Estero Blvd., 2450 Estero Blvd LLC

DOAH Case #: [24-004843](#)

Case Number: 20240946

Continued to February 4, 2025.

G. 81 Miramar St., Smith Patricia O Tr for Patricia O Smith

DOAH Case #: [24-004844](#)

Case Number: 20240912

Town Attorney Stuparich described the documents in Exhibit A and asked that they be entered into the record.

On September 18, 2024, Manager Yozzo observed two manufactured sheds on the property that were not elevated, did not have engineered plans for pilings and did not have visible chassis or steerable axles. Manager Thomas confirmed that the sheds were not compliant. A notice of violation was sent to the property owner on September 19, 2024, and posted at the property and the town hall. Copies of the notice and supporting documents are in Exhibit B. Exhibit C includes photos taken on September 19, 2024, and accurately represents the sheds on the property. Manager Yozzo inspected the property on December 10, 2024, and the storage units remained there. He filed an affidavit of non-compliance with photos in Exhibit D. Exhibit E consisted of a letter dated December 19, 2024, revoking the permit. The owner was provided with a notice of hearing in Exhibit G. He inspected the property and took photos yesterday and there were no changes. That information is in Exhibit H.

Manager Thomas verified that the sheds were non-compliant and explained the criteria for becoming compliant. Copies of relevant documents are in Exhibit F. He accompanied Manager Yozzo to the inspection yesterday and compliance was discussed. He provided an illustrative photo of what can happen to non-compliant shipping containers after a hurricane.

Attorney Eric Stocks stated that the structures were fixed to the ground on a foundation. He asked if they were at the hearing because they were not elevated. Manager Thomas replied that they were not 13 feet above base flood elevation, they did not appear to be adequately anchored and there were no visible vents or breakaway walls.

Town Attorney Stuparich requested an order of violations requiring compliance or removal of the non-compliant structures within a reasonable timeframe, a fine of \$250.00 per day for each day the violation continues past the compliance date and an administrative fee of \$250.00. She also asked that the town be allowed to abate the violation by removing the non-compliant structure by March 1, 2025, with expenses incurred by the town to be paid by the property owner within 30 days. If the town's expenses remain unpaid, the town will request a lien on the property.

Attorney Stocks objected to imposing fines because he properly secured a permit for the structures. There was no issue with the structures until FEMA stepped in. Since the town granted the permit in error, it should not fall on his client to pay financially for that error. He added that this is the time of the year his client makes money. He noted that one of the structures would be moved in the next couple of weeks and his client was working to remove the second structure. He added that his client had purchased a structure that would be in compliance. Attorney Stocks requested that the Special Magistrate allow his client as much time as possible and waive the administrative fee.

Special Magistrate Van Laningham entered all the exhibits into the record and will review documents before issuing an order.

Attorney Stocks stated that he was standing in a structure not elevated 13 feet and across from the beach.

- H. 406 Estero Blvd., Windward Passage Resort Condo
DOA Case #: [24-004845](#)
Case Number: 20240921
Continued to February 4, 2025.

Minutes approved by Judge Van Laningham as presented on this 4th day of March 2025.



Amy Baker,
Town Clerk and Clerk to Special Magistrate