



Fort Myers Beach Special Magistrate Hearing

Town Hall Council Chambers
2731 Oak Street
Fort Myers Beach, FL 33931

Minutes

Tuesday, June 3, 2025

9:00 AM

ORDER OF BUSINESS

I. CALL TO ORDER

Present: Town Clerk Amy Baker, Town Clerk Administrative Coordinator Lizzette Roman, Town Attorney Nancy Stuparich, Special Magistrate John Van Laningham and Emergency Services Director Thomas Yozzo.

II. APPROVAL OF MINUTES

- A. Special Magistrate Hearings - May 16, 2025
Special Magistrate Van Laningham approved the minutes.

III. VIOLATION CASES

- A. 134-138 Connecticut Street (First Baptist Church of Fort Myers)

FMB Case # 20241086

Property Owner: First Baptist Church of Fort M

Property Address: 134/138 Connecticut St

Violation: Non-Compliant Structure

Town Attorney Stuparich reviewed the background of the case. Special Magistrate Van Laningham swore in those providing testimony.

Director Yozzo observed non-compliant structures on October 28, 2024, based on the current floodplain regulations for the coastal AE zone. The non-compliant structure was not elevated and lacked engineer plans for pilings or infrastructure. The floodplain manager at the time confirmed that the structures were in violation. A notice of violation was issued on November 13 and sent to the address of record by certified mail. A copy was posted at the property and at the town hall. Copies are included in Exhibit C. Director Yozzo took photos of the violation on October 20, 2024, and unaltered copies are in Exhibit C. The property owner was given 30 days to remove the non-compliant structure from the property or to come into compliance with the town's codes. The shipping container has been removed, but the other structures on the property are still non-compliant. He reinspected the property on April 15, and the shipping container and non-compliant structures

were still on the property. He prepared an affidavit of non-compliance and photos are in Exhibit D. The property owner received a revocation of the temporary use permit on December 19, 2024, included in Exhibit B. The property owner was notified of today's hearing with an affidavit of notice and posting as shown in Exhibit A. Director Yozzo reinspected the property on June 2, 2025, and took pictures of the non-compliant structures that still existed on the property. He would like to add them to Exhibit C.

Floodplain Manager Kelli DeFedericis stated that there was not an elevation certificate on record to determine what the finished floor elevation is. An elevation certificate is needed to determine how much higher the structure would need to be for compliance. The property is in a base flood elevation of 11, and the structure is required to be one foot above base. The respondent must provide a certificate from a surveyor to determine the correct height of the structure.

Town Attorney Stuparich requested an order of violation and authorization to remove the non-compliant structure if the property owner fails to do so within the timeframe established by the Special Magistrate. She also asked for an administrative fee of \$250.00.

Pastor Critser did not contest the findings but wanted to leave the structure there while the church was being rebuilt. He felt it was the town's responsibility to remove it because he did not receive a temporary permit to move into the structure until August 31, 2024, and the fire inspection was completed on September 11. FEMA sent a letter to the town on April 8, 2024, indicating there was a problem, but the town allowed him to proceed through the permitting process without notifying him of the issue. He borrowed approximately \$121,000.00 to put the structure in place because he was told he could. He did not contest the removal of the building, but did not think he should have to pay for the town's error. He requested that the town refund \$121,000.00 or part of it. The LDO for the new building was in process and the final drawings have been submitted. Pastor Critser expects to break ground in the next 60 to 90 days.

Special Magistrate Van Laningham stated that he did not have the authority to make awards. Pastor Critser asked that he waive the administrative fee. Town Attorney Stuparich asked if Pastor Critser considered elevating the structure to come into compliance rather than removing it. Pastor Critser replied that it sat at 43 inches and if the town were willing to pay to raise it, that would help. He revealed that the town signed off on the permit after he submitted the base flood level certificate, which was 43 inches. Manager DeFedericis offered to meet with Pastor Critser to discuss his options. She explained how FEMA calculated the base flood elevation and how high the structure would have to be raised.

Town Attorney Stuparich modified the request to ask for a longer timeframe for compliance. She suggested August, but Pastor Critser requested September. Special Magistrate Van Laningham suggested a compliance date in August, with a review in September to determine whether to initiate fines. Town Attorney Stuparich commented that the town was agreeable.

Special Magistrate Van Laningham will make a finding of violation and set a compliance date near the end of August. A status review will be scheduled for September 2, 2025.

B. 5790 Estero Blvd

FMB Case # 20241095

Property Owner: Tonino Dimillo Trust + Lynn Jackson Dimillo Trust

Property Address: 5790 Estero Blvd

Violation: Non-Compliant Structure

Town Attorney Stuparich noted the property owner was in attendance and requested a continuance to August 5, 2025. Director Yozzo stated the notice of violation was sent via certified mail to the address of record on November 13. It was posted at the property and at town hall and copies were included in Exhibit A. He confirmed that he attempted to reach the property owner by phone but had not made contact. Town Attorney Stuparich noted they wanted to continue the case and try to notify the property owner.

Special Magistrate Van Laningham continued the case to August.

C. 6500/6502 Estero Blvd

FMB Case # 20240965

Property Owner: Privateer of Ft Myers Beach

Property Address: 6500/6502 Estero Blvd

Violation: Non-Compliant Structure

Town Attorney Stuparich indicated the property owner was in compliance. Director Yozzo described the case and noted the non-compliance structure had been removed, and an affidavit of compliance was completed on May 29, 2025. The town requested an administrative fee of \$250.00.

Special Magistrate Van Laningham entered an order establishing that the violation has been corrected and ordered \$250.00 for administrative fees.

IV. CERTIFICATION OF LIEN(S) (NON-COMPLIANCE)

A. 2815 Estero Blvd., Himmelstein Associates LLC

FMB Case #: 20240994

Property Owner: Himmelstein Associates LLC

Property Address: 2815 Estero Blvd

Violation: Non-Compliant Structure (Storage Container)

Town Attorney Stuparich noted the property owner was not in attendance and requested a continuance. She indicated the town wanted to provide a courtesy notice to Mr. Himmelstein's attorney. The property owner was in compliance, but the town requested an assessment of the lien for the period subsequent to the compliance date. Special Magistrate Van Laningham granted a continuance to August 5, 2025.

V. COMPLIANCE CASES

No cases.

VI. LIEN FORECLOSURE CASES

No cases.

VII. BUILDING OFFICIAL APPEALS

No appeals.

VIII. ADJOURNMENT

Special Magistrate Van Laningham adjourned the meeting at 9:52 AM.

Minutes adopted as presented on June 3, 2025, by Special Magistrate Van Laningham.



~~Amy Baker (Aug 11, 2025 09:12:14 EDT)~~
Amy Baker, Town Clerk