

July 2, 2019

**VIA HAND DELIVERY AND
ELECTRONIC MAIL**

Josh Martin
Director, Planning, Building and Zoning
Department
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Paul Castro
Zoning Administrator
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Re: Supplement to Administrative Appeal: 1236 South Ocean Boulevard

Dear Messrs. Martin and Castro:

This Firm represents 100 Emerald Beach Way LC (“100 EBW”). 100 EBW filed an appeal of an administrative decision of the Town to dismiss a code enforcement case regarding 13 illegal “Tow Away” signs on Emerald Beach Way. Since the filing of the appeal on May 14, 2019, the Town has produced numerous emails that show that the Town staff and Town attorney agreed that the tow-away signs on Emerald Beach Way are illegal and are in direct violation of Section 134-2410.

February 13, 2019	Written Warning finding the tow-away signs in violation of Code Section 134-2410 and requiring removal by February 28, 2019
February 19, 2019	Tim Hanlon proposes to replace the “Tow Away” signs with no parking signs. (p. 2-3)
February 21, 2019	Paul Brazil wants to speak to Josh Martin about the Tow Away signs. (p. 1)
March 8, 2019	Internal meeting with staff and Skip Randolph to discuss the illegal tow-away signs. (p. 16)
March 26, 2019	Skip Randolph asks a lawyer from his firm to research whether there are any additional Attorney General opinions that would define whether or not the Town is pre-empted from prohibiting these no parking tow-away signs from private property. (p. 4-12)
March 28, 2019	Skip Randolph sends Castro Section 134-2410 and asks Paul to call him to discuss. (p. 13-14)

March 29, 2019	Skip Randolph advises Tim Hanlon “Upon further research and upon conferring with Paul Castro, I have advised Code Enforcement to proceed with Code Enforcement Case 19-114. The signs will therefore be required to be removed.” (p. 20)
March 29, 2019	Skip Randolph advises Moriarty that “Pursuant to further research and upon conferring with Paul Castro, the Town takes the position that these tow-away signs referenced in CE 19-114 are in violation of Section 134-2410 of the Town’s Code. Therefore, I am providing this direction to allow this case to proceed as initially presented.” (p. 15)
April 1, 2019	Notice of Violation issued requiring compliance by April 16, 2019, or a hearing will be held on May 16, 2019 before the code enforcement board.
April 3, 2019	Carla Marcote advises Hanlon that a Notice of Violation for the illegal tow-away signs was mailed April 1, 2019 and the Thorntons have until April 16, 2019 to remove the signs. (p. 18)
April 3, 2019	Paul Castro advises Tim Hanlon that “I see no code provision in Chapter 134, Zoning, that allows “no parking signs on private property which can be seen from a street. If you can point something out in the code that specifically allows such signs, please guide me to that provision and I would be glad to look at it.” Hanlon asks Castro “From what street are they visible?” and Castro replies “the private platted street known as Emerald Beach Way.” Martin asks to discuss the matter with Castro and Randolph prior to responding. (p. 28-29)
April 5, 2019	Martin asks Paul Brazil to have someone attend a meeting on April 8, 2019 with Margaret Thornton because “we are trying to resolve the no parking sign issue on Emerald Beach Way.” Brazil responds that “we will find a way to help. (p. 23-24)
April 8, 2019	Josh Martin meets with Margaret Thornton for at least 2 hours, and then advises Tim Hanlon that “We resolved this matter today and will be issuing ARCOM staff level approvals for the signs.” Martin subsequently advises Randolph of the same. (p. 23-27, 34)
April 12, 2019	Hanlon submits an application for staff approval for the tow-away signs. Martin states that when he spoke to Margaret, “we discussed only issuing the permit for the Thornton Property- the other property owner fronting South Ocean Boulevard would have to permit the signs on his property via an application from him.” (p. 41)
April 16, 2019	Skip Randolph tells Martin “we still need to talk in regard to your decision on the tow-away signs on Emerald Beach Way.” (p. 44)
April 23, 2019	ARCOM staff approval for tow-away signs.
May 9, 2019	Skip Randolph asks Martin to call him regarding the tow-away signs at 100 Emerald Beach Way. (p. 46)
May 10, 2019	Josh Martin advises Moriarty that the signage matters related to this property have been resolved. Moriarty responds that CE 19-114 regarding pole mounted Tow Away signs is still in violation and will be presented at the May 16, 2019 code enforcement board hearing. Tim Hanlon said that a building permit was issued for the signs, so it should be resolved. Moriarty responds that there are 13 signs, and the permit is only for 10 signs and is only approved and not issued.

	(p. 48) Wayne Bergman confirms that Permit B-19-78890 was issued on April 18 for 10 tow-away signs. (p. 47)
May 13, 2019	Tim Hanlon asks Moriarty to confirm that the Thorntons are in compliance and the code enforcement hearing will not proceed. Skip Randolph responds and asks that if the matters have been removed from the agenda, “someone should let Amanda Hand, the attorney for the complainant know along with the reasons for these items being dropped.” (p. 54)
May 14, 2019 7:55 am	Skip Randolph asks Josh Martin to confirm that someone advised Amanda Hand that the code enforcement case regarding the tow-away signs has been removed from the May 16, 2019 code enforcement board agenda. (p. 52)
May 14, 2019 8:34 am	John Moriarty sends an email to Amanda Hand advising that “Case 19-114 (“Tow Away” signs) has been closed. PZB issued permits for the signs to remain in place.”
May 14, 2019 11:45 am	Josh Martin asks Paul Castro and Wayne Bergman for information/permits that you have involved in the parking/towing signs for Emerald Beach Way. In response, (a) Wayne Bergman sends Martin the ARCOM staff approval and permit application; (b) John Lindgren states his “only involvement in this was routing the staff approval you stamped and gave to me.”; and (c) Paul Castro sends Code Section 134-2410 and a copy of the plat showing Emerald Beach Way as a platted street. (p. 59-88)
May 14, 2019	Appeal filed by 100 EBW
May 15, 2019	Martin sends an email to Bergman, Castro and Lindgren with Florida Statutes Section 715.07 and states “FYI we need to discuss.” (p. 89-92)

On March 26, 2019, at Skip Randolph’s request, a lawyer at Mr. Randolph’s firm prepared a memorandum concluding that Town code section 134-2410 “would preclude the Thornton’s from placing the allegedly illegal tow-away signs on their property.” (p. 4-12) Further, the attorney opined that “it is appropriate for the Town to prohibit such signs, as there is a specific remedy for the property owner without the need for posting, as the Town’s Ordinance uses the exact language set forth in Florida Statute 715.07, which states tow-away signs shall not be allowed on property appurtenant to or obviously a part of a single-family residence.” (p. 4-12)

Section 134-2410 unambiguously prohibits the Tow-away signs:

Tow-away signs shall not be allowed on private property appurtenant to or obviously part of a single-family residence.

Consistent with the Town Attorney’s determination, this code provision does not conflict nor is it preempted by Florida Statutes Section 715.07 which provides guidelines for towing vehicles from private property, and specifically exempts “property appurtenant to and obviously a party of a single-family residence” from posting Tow-away signs. Fla. Stat. Section 715.07(5).

Emerald Beach Way is approximately 300 feet long. There are 13 illegal tow-away signs polluting the visual environment. The signs are specifically prohibited by Section 134-2410. The Town Attorney, after extensive consultation with staff and legal research, concurred that the signs are

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illegal. Only after John Martin had a 2-hour meeting with Margaret Thornton on April 8 did Mr. Martin independently decide to issue ARCOM staff approval for the per se illegal signs.

If the application had gone to the ARCOM board, it may have not been approved. At the March 27, 2019 ARCOM hearing regarding the tennis courts, Board Member Floersheimer sua sponte raised the tow-away signs:

[I]t harkens back to making Palm Beach beautiful and attractive and preserving it for all residents...when I drove onto Emerald Beach Way yesterday, I noticed 20 signs that say no parking. And that, I think, also is excessive and doesn't add to the beauty of Palm Beach. Transcript at 94-95.

Counsel for 100 EBW was preparing for a code enforcement board hearing scheduled for May 16, 2019, when the Town advised on May 14, 2019 at 8:34 am that CE 19-114 had been closed. 100 EBW immediately appealed this determination, in accordance with Section 134-141 et. Seq., as the determination to close CE 19-114 was in direct contravention of the prohibition of tow-away signs appurtenant to single family property set forth in Section 134-2410. Therefore, 100 EBW respectfully requests that the Town Council grant the appeal, and require the removal of the 13 tow-away signs on Emerald Beach Way.¹

Please govern yourselves accordingly.

LEHTINEN SCHULTZ PLLC

By:/s/ Amanda Quirke Hand
Amanda Quirke Hand, P.A.

¹ 100 EBW reserves the right to supplement this appeal with additional records, as there is a pending public records request regarding this matter. In addition, 100 EBW has not received Mr. Martin's interpretation of the Code, as was promised on May 14, 2019.