

September 24, 2019

**VIA HAND DELIVERY AND  
ELECTRONIC MAIL**

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Re: Appeal of September 14, 2019 ARCOM staff approval for Town Away Signs

Dear Madame Clerk, Messrs. Martin, Bergman, Castro, and Randolph:

This Firm represents 100 Emerald Beach Way LC ("100 EBW"). John and Margaret Thornton ("Thorntons") applied for ARCOM staff approval for 15<sup>1</sup> tow-away signs on Emerald Beach Way (the "Illegal Signs.") On August 7, 2019, the Thorntons applied for "10 tow away signs around the boundaries of Emerald Beach Way." (the "Application<sup>2</sup>." ) The Application was initialed for ARCOM staff approval by Josh Martin on September 14, 2019. The Thorntons submitted a sketch that shows "the red dots show the location of each sign" (the "Sketch"), which shows 15 tow away signs. The

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<sup>1</sup> It is unclear how many signs have been applied for or approved. The Application is for 10 signs, the drawing with Josh Martin's initials has 15 signs, and the building permit notes are for 17 tow away signs.

<sup>2</sup> The Application, Sketch, and September 14 ARCOM Staff Approval are collectively attached as Ex. A. z

Sketch was initialed for ARCOM staff approval by Josh Martin on September 14, 2019. Then, the building permit system says the permit description is “staff approval to install seventeen tow away signs around boundaries of Emerald Beach Way.” (the “September 14 ARCOM Staff Approval”) This is an appeal pursuant to Section 18-177 (the “Appeal”) of the September 14 ARCOM Staff Approval.

### **Section 134-2410 Prohibits the Illegal Signs**

Section 134-2410 “Tow-away signs” specifically prohibits tow-away signs on “private property appurtenant to or obviously a part of a single-family residence.” All lots on Emerald Beach Way, as well as all lots to the North and South, are designated R-AA Large Estate Residential. “This district is located to protect and preserve existing development of estate character.” Section 134-786.

The September 14 ARCOM Staff Approval is for at least 10 tow away signs on Emerald Beach Way, which is a 300-foot platted private street. These signs are placed on Emerald Beach Way, in the R-AA large estate residential. Some of the signs are nearly touching the gates of 100 Emerald Beach Way- a large oceanfront estate. Therefore, the Illegal Signs are specifically prohibited by Section 134-2410 because they are on “private property appurtenant to or obviously a part of a single-family residence.”

In fact, 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.” 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.” (Ex. B)

Therefore, Town Attorney Randolph advised Town code enforcement staff:

**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. (Ex. C)**

The Illegal Signs are practically touching the entrance gate of the single-family oceanfront estate at 100 Emerald Beach Way, and therefore, the Illegal Signs are prohibited by Section 134-2410. Furthermore, the Illegal Signs are obviously a part of a single-family residence at 200 Emerald Beach Way. In fact, the Thorntons have argued that 200 Emerald Beach Way is part of the 1236 South Ocean Boulevard single family residence.

TIM HANLON: As you can see, it's very, very close to the main residence, and there's complete access from the residence to the tennis courts. There may be a separate easement and access point from the courts and the parking area to South Ocean Boulevard, but they're completely one parcel. And we have submitted the unity of title as part of our presentation

materials to confirm that. So legally they are one and the same parcel. **Very important.** ARCOM March 27, 2019, p. 21 L: 7-16 (Ex. D) (emphasis supplied)

The Town has also taken the same position:

MR. CASTRO: I don't know a situation like that, no, but it's all part of the same lot. It's all tied together by unity of title. It's all one large estate that we consider one lot. Town Council March 19, 2019, p. 40, L:13-16 (Ex. E)

The Thorntons and the Town cannot argue that 200 Emerald Beach Way is obviously a part of the 1236 South Ocean Boulevard single family residence in support of its position that Tennis Court Complex at 200 Emerald Beach Way are “accessory” to the single family residence, and then argue that 200 Emerald Beach Way is not obviously part of a single family residence to avoid the Section 134-2410 prohibition on the placement of the Illegal Signs on R-AA single family estate property.

Therefore, this Appeal must be GRANTED and the September 14 ARCOM Staff Approval revoked.

### **The Illegal Signs Are Not Eligible for ARCOM Staff Approval**

The Town Sign Code makes a distinction between approval by the “Architectural Commission” and the “architectural commission review process.” Section 134-2410 requires approval by the *Architectural Commission*.

In addition, all tow-away signs shall be uniform in appearance as approved by the town's Architectural Commission.

On the contrary, Section 134-2373(7) and (8) state that the following signs can be approved by the “architectural review commission review process”:

- (a) Identification of sale or rental signs for single family dwellings, two-family dwellings and multi-family dwellings permitted in R or commercial districts;
- (b) Temporary political signs or other temporary noncommercial signs in R or commercial districts;
- (c) Development signs;
- (d) Artisan signs;
- (e) Menu signs in commercial districts; or
- (f) Temporary display signs in commercial districts.

Furthermore, since the Illegal Signs defeat the purposes and objectives of this article, ARCOM staff approval may not be granted for the Illegal Signs. Section 18-175(c). In fact, John Lindgren testified on September 11, 2019 before the Town Council that ARCOM staff approval would not be appropriate for anything that would “have any kind of adverse impact on a neighbor.”

MR. LINDGREN: No, sir. That's not part of the process of administrative or staff approvals. They're usually things that are so minor that they're not going to affect other folks. If I think that there's going to be an adverse impact on someone, then I won't -- I wouldn't do that administratively. I no longer -- The director now does the administrative approvals. That began at the end of June of this year. But neither one of us would approve something that we thought would have any kind of adverse impact on a neighbor. (Ex. F)

It is well known that 100 EBW strenuously objects to the Illegal Signs, and the Illegal Signs are nearly touching the entrance gate of 100 EBW. The Town Council held a hearing on a previous version of the signs on August 14, 2019. Unbeknownst to 100 EBW or the members of the Town Council, the Thorntons had already applied for this version of the Illegal Signs on August 7, 2019. It is outrageous that the Thorntons failed to inform the Town Council that they had submitted another application for another version of the Illegal Signs – which are still illegal – on August 14, 2019 when the Town Council held a hearing regarding a previous and also illegal version of the 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. (Ex. D)

Since Section 134-2410 specifically requires approval by the Architectural Commission, Section 18-175(c) prohibits staff approval, and the Town has actual knowledge of the fervent objection of 100 EBW to the Illegal Signs, the Illegal Signs are not eligible for ARCOM staff approval. Therefore, this appeal must be granted.

### **Section 134-2373(5) Prohibits the Illegal Signs**

Section 134-2373(5) prohibits any sign other than an official traffic sign erected by a government agency within the right of way lines of any street.

No sign other than an official traffic sign erected by the town, Palm Beach County, the State of Florida, the United States government and/or any agency thereof shall be erected within the right-of-way lines of any street or public way, nor shall any sign or banner be hung on, from, or beneath any canopy, awning or marquee. 134-2373(5)

Josh Martin previously found that Section 134-2373(5) prohibits the placement of signs within the right of way lines of Emerald Beach Way. (Ex. G) He stated that he originally issued ARCOM Staff approval for illegal signs within the rights of way of Emerald Beach Way because he believed that the Section 134-2373(5) prohibition only applied to public streets. However, he reviewed the definition of streets set forth in Section 134-2 and found that the Section 134-2373(5) prohibition applied on both public and private streets. Therefore, he advised the Town Council that a permit should not be issued for signs within the right of way lines of Emerald Beach Way.

*Street* means a facility, either public or private, that affords the primary access to abutting property and that is intended for general traffic circulation. A street includes the entire area between street lines (right-of-way lines), including provisions for culs-de-sac. 134-2

At the August 14, 2019 Town Council hearing, the Town Council denied 100 EBW's appeal on the basis that Emerald Beach Way is not a street because it is private and thus not intended for general traffic circulation.

The Town Council's finding is contrary to both (a) the express language of the plat; and (b) the express language of the Section 134-2 definition of street. Pursuant to the Replat of the Replat of the Emerald, Plat Book 45 Pg 177, Emerald Beach Way is "hereby dedicated as a private street for ingress and egress to the residents of this subdivision and for construction and maintenance of utilities and drainage." (Ex. H) The nature of all private streets is that access is limited. However, Emerald Beach Way is specifically called a "private street" on the plat itself.

In addition, Section 134-2 specifically includes private streets within the definition of street. In fact, Section 110-68 requires that all lots in the Town of Palm Beach "shall abut a public or private street for the required minimum lot width for the zoning district where the lots are located." The word "private" in the Section 134-2 definition of street would be meaningless if all private streets were excluded because there is a limitation on access. The plain meaning of "general traffic circulation" is that it is intended for vehicles, service vehicles, mail, garbage, etc.

Consistent with Planning and Zoning Director's July 9, 2019 determination, the Illegal Signs within the right-of-way lines of Emerald Beach Way are prohibited by Section 134-2373(5). Therefore, this Appeal should be granted.

**There is NO Section of the Town Code that Permits the Illegal Signs**

While Section 134-2410 and 134-2372(5) prohibit the Illegal Signs, the Illegal Signs are also prohibited because all signs not specifically authorized by the Town Sign Code are prohibited.

Sec. 134-2372. - Compliance; substitution, and severability.

(1) *Compliance.* Signs may be erected and maintained only as authorized and when in compliance with the provisions of this article and other applicable town ordinances. All

signs are subject to the Florida Building Code and Fire Prevention Code. Signs that are not specifically permitted by this division are prohibited.

There is no section in the Town of Palm Beach code that permits the Illegal Signs. This is consistent with the previous determination by Paul Castro, that there is no provision in the code that would permit the Illegal Signs even if they said something else like “no parking.” (Ex. I) The Thorntons must point to a specific provision of the Town Sign Code (Section 134-2171 et. Seq.) that permits the Illegal Signs. Since there is no provision that specifically permits the Illegal Signs, the Illegal Signs are prohibited by Section 134-2372(1) and this Appeal must be granted.

### **The Application Does Not meet Requirements of Chapter 18**

The Application does not meet the requirements of Chapter 18, because it does not include photographs or necessary information on the site plan to support a finding of compliance with the Code.

Section 18-202 requires photographs of the facades of adjacent buildings and structures 200 feet in both directions of the proposed structure.

Sec. 18-202. - Notice; photographs.

An applicant for a building permit shall comply with the following:

- (3) The applicant shall provide digitized color photographs of the facades facing public or private way (alleys not included) of the adjacent buildings or structures 200 feet in either direction from the proposed construction on both sides of the public or private way (alleys not included). Photos shall measure at least 4 inches × 6 inches.

This is particularly important in this case. The Sketch that is attached to the September 14 ARCOM Staff Approval does not include the properties that actually abut Emerald Beach Way, which are undeniably offended by the Illegal Signs. Photographs would show the obvious incompatibility of placing 10-17 Illegal Signs on the 300-foot private street known as Emerald Beach Way, in the R-AA large estate residential district.

Furthermore, the site plan is deficient.

Sec. 18-207. - Site plans.

(a) A site plan shall be illustrated to scale and shall sufficiently indicate the following for consideration of visual, safety and economic factors:

- (1) Dimensions and orientation of the parcel;
- (14) Such other architectural and engineering data as may be required to permit necessary findings that the provisions of this Code are being complied with.

Again, the Site Plan is deficient because it does not include the portions of the abutting residential estates which are adversely affected by the placement of the Illegal Signs on the only access to 100 EBW. Excluding the abutting residential estates is intentional, because it would show the gross incompatibility with the code criteria and would preclude approval of the Illegal Signs.

Since the Application does not meet the criteria of Chapter 18, the Appeal must be granted.

### **The September 14 ARCOM Staff Approval is Not Consistent with the Application**

The Application is to “Install ten tow away signs around the boundaries of Emerald Beach Way.” The Sketch of the “red dots show the location of each sign” includes 15 Illegal Signs. The building permit system notes is for “Staff Approval to Install Seventeen Tow Away Signs Around Boundaries of Emerald Beach Way.” (Ex. A)

So, how many Illegal Signs were purported approved by the September 14 ARCOM Staff Approval? 10? 15? 17? What are the approved locations?

The September 14 ARCOM Staff Approval contradicts the Application and its attachments, and it is absolutely unclear as to the number and location of Illegal Signs that were purportedly approved. Therefore, this Appeal must be granted.

### **The Illegal Signs Do Not Meet the Section 18-205 Criteria for Approval**

#### **Sec. 18-205. - Criteria for building permit.**

**(a) The architectural commission may approve, approve with conditions, or disapprove the issuance of a building permit in any matter subject to its jurisdiction only after consideration of whether the following criteria are complied with:**

**(1) The plan for the proposed building or structure is in conformity with good taste and design and in general contributes to the image of the town as a place of beauty, spaciousness, balance, taste, fitness, charm and high quality.**

**Objection:** The Illegal Signs are not in conformity with good taste and design and do not contribute to the image of the Town as a place of beauty, spaciousness, balance, taste, fitness, charm and high quality.

This is stated best by Councilwoman Araskog, who called the placement of the previous version of the signs “horrible looking” and atrocious on August 14, 2019. Aug. 14, 2019 Transcript, Tr. P. 17 L: 13, p. 79 L:14-16.

Again, ARCOM Board Member Floersheimer even 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.



The placement of 10-17 Illegal Signs on a 300-foot private street that is used to access three single family residences in the R-AA large estate residential zoning district does not contribute to the image of the Town as a place of beauty and taste. It has already been stated publicly by members of the Town Council and ARCOM.

- (3) The proposed building or structure is not, in its exterior design and appearance, of inferior quality such as to cause the nature of the local environment to materially depreciate in appearance and value.**

**Objection:** The placement of 10-17 Illegal Signs on metal poles in the R-AA large estate residential district cause the local environment to materially depreciate in appearance and value. Again, this is a 300-foot private street solely for the access to three single family residential estates. The Illegal Signs are actually designed to materially depreciate the environment in appearance and value, where the proposed placement flanks the entrance gates of 100 EBW.

- (4) The proposed building or structure is in harmony with the proposed developments on land in the general area, with the comprehensive plan for the town, and with any precise plans adopted pursuant to the comprehensive plan.**

**Objection:** Undersigned counsel has not located any other private street with such obnoxious and inappropriate signage as the proposed 10-17 Illegal Signs on Emerald Beach Way. There are many private streets in Palm Beach, and none of them have proposed to degrade the visual environment in this manner, in contravention of the provision and intent of the Code.

- (8) The proposed building or structure is appropriate in relation to the established character of other structures in the immediate area or neighboring areas in respect to significant design features such as material or quality or architectural design as viewed from any public or private way (except alleys).**

**Objection:** Emerald Beach Way is a private platted street used to access three large estate residential homes, including 100 EBW. The placement of 10-17 Illegal Signs on a 300-foot private street can only be for the intention of degrading the visual environment the adversely impacting the beauty and aesthetic of Emerald Beach Way and 100 EBW. The placement of Illegal Signs flanking the entrance gate of 100 EBW is absolutely ridiculous and unnecessary and is in contravention of the provisions and intent of the Town Sign Code.

- (9) The proposed development is in conformity with the standards of this Code and other applicable ordinances insofar as the location and appearance of the buildings and structures are involved.**

**Objection:** As stated herein, the Illegal Signs are specifically prohibited by Section 134-2410 and 134-2473(5). In addition, the Illegal Signs are prohibited because they are not specifically permitted by any section of the Town Sign Code (Section 134-2372(1)). The Illegal Signs are also in contravention of intent of the Town Sign Code:

**Sec. 134-2371. - Statement of findings and purpose.**



**The town council has found that Palm Beach is internationally known and has become a worldwide synonym for beauty, quality and value and that a proliferation of signs without regulations as to size, location and material detracts from such beauty, can become a visual blight. Signs, particularly if placed in rights-of-way, can create distractions for drivers impacting the safety and welfare of pedestrians and drivers and further create an aesthetically unpleasant atmosphere.**

The town council has found that this Code is required to regulate signs as provided by F.S. § 163.3202(2)(f). The town council does not wish to censor speech but does wish to provide for the public welfare by **regulating signage in the town in a manner that enhances the aesthetics of the community, reduces visual pollution, provides clear information and minimizes distractions to drivers in the interest of traffic safety. (emphasis supplied).**

There can be no dispute that the placement of 10-17 Illegal Signs on a 300-foot private street serving large residential estate homes is inconsistent with Section 134-2171. The Illegal Signs have an adverse effect on beauty, quality, value, and creates a visual blight. Illegal Signs within the right-of-way of Emerald Beach Way create an aesthetically unpleasant atmosphere and contributes to the distraction of drivers. The Town of Palm Beach is a synonym for beauty, quality, and value, and the Illegal Signs are the exact opposite- the Illegal Signs are atrocious, numerous, obnoxious, and tacky.

### **Conclusion**

The Application was prepared by the Applicants one week before the Town Council heard the appeal regarding the previous version of the Illegal Signs. However, the Town Council was not advised of the Application. The Appeal must be granted for **any or all** of the following reasons:

1. The Illegal Signs are prohibited by Section 134-2410
2. The Illegal Signs cannot be approved by ARCOM staff
3. The Illegal Signs are prohibited by Section 134-2373(5)
4. There is no section of the Town Sign Code that permits the Illegal Signs
5. The Application does not meet the requirements of Chapter 18
6. The September 14 ARCOM Staff Approval is Not Consistent with the Application or the Sketch
7. The Illegal Signs Do Not Meet the Criteria of Section 18-205

100 EBW has outstanding public records requests and is currently reviewing documents provided by the Town of Palm Beach within the past 2 weeks. Therefore, 100 EBW reserves the right to supplement this Appeal prior to hearing by the Town Council. Furthermore, Section 18-177 suspends the building permit until ruling by the Town Council. As Councilwoman Araskog stated at the August 14, 2019 meeting, the signs are “horrible looking” and “atrocious.” Therefore, this Appeal pursuant to Section 18-177 must be granted.

Please govern yourselves accordingly.

LEHTINEN SCHULTZ PLLC

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